

PART 20—[AMENDED]

1. The authority citation for part 20 continues to read as follows:

Authority: Migratory Bird Treaty Act, sec. 3, Pub. L. 85-188; 40 Stat. 755 (16 U.S.C. 701-708h) sec. 3(h), Pub. L. 95-618; 92 Stat. 3112 (16 U.S.C. 712).

(Editorial Note: The following annual hunting regulations provided for by § 20.110 of 50 CFR part 20 will not appear in the Code of Federal Regulations because of their seasonal nature).

2. Section 20.110 is amended by revising paragraphs (c)(1), (g)(8)(vi), and the Special Exception for Geese in (h)(2) to read as follows:

§ 20.110 Seasons, limits and other regulations for certain Federal Indian reservations, Indian Territory, and ceded lands.

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(c) *Fort Hall Indian Reservation, Fort Hall, Idaho (Nontribal Members Only).*

(1) *Ducks (including Mergansers).*
Season Length and Dates: October 20 through December 17.

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(g) *Great Lakes Indian Fish and Wildlife Commission, Odanah, Wisconsin (Tribal Members Only).*

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(8) *General Conditions:*

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(vi) *Wisconsin Zone.* Tribal members will comply with sec. NR 10.09 (1)(a) (2) and (3), Wis. Adm. Code (shotshells), sec. 10.09, Tribal Model Off-Reservation Cons. Code (Structures), sec. NR 10.12 (1)(g), Wis. Adm. Code (decoys), and sec. 29.27 Wis. Stats. (duck blinds).

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(h) *Flathead Indian Reservation, Pablo, Montana (Nontribal Members Only).*

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(2) *Geese:* * * *

Special Exception for Geese: A special early closure for all goose hunting will begin at sunset, November 25, 1990, within the following area: Beginning at Ronan, thence north along U.S. Highway 93 to Polson and Elmo, thence south along said highway to its intersection with State Route 382, thence south along said highway to Perma, thence along the north and west side of Flathead River upstream from Perma to Sloan's Bridge, thence north from Sloan's Bridge along Sloan Road to its intersection with Round Butte Road, thence east along said road to Ronan, the point of beginning. Lands outside those boundaries will close to Canada goose hunting at sunset on December 30, 1990.

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Dated: September 24, 1990.

Bruce Blanchard,

Acting Director, Fish and Wildlife Service.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 646

[Docket No. 900939-0239]

RIN 0648-AC97

Snapper-Grouper Fishery of the South Atlantic

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Final rule.

SUMMARY: NOAA establishes a special management zone (SMZ) covering 2 square nautical miles (3.86 km²), around an artificial reef (AR) at Key Biscayne Artificial Reef Site (Site H), which is located in the Exclusive Economic Zone off Dade County, Florida. Within the SMZ, fish trapping, bottom longlining, spearfishing, and harvesting of jewfish are prohibited. The intended effect is to promote orderly use of the fishery resources on and around the AR, to reduce potential user-group conflicts, to maintain the intended socioeconomic benefits of the AR to the maximum extent practicable, and to maintain and promote conservation.

EFFECTIVE DATE: November 2, 1990.

FOR FURTHER INFORMATION CONTACT: Rodney C. Dalton, 813-893-3722.

SUPPLEMENTARY INFORMATION: Snapper-grouper species are managed under the Fishery Management Plan for the Snapper-Grouper Fishery of the South Atlantic Region (FMP), prepared by the South Atlantic Fishery Management Council (Council) and its implementing regulations at 50 CFR part 646, under the authority of the Magnuson Fishery Conservation and Management Act (Magnuson Act). The FMP provides for designation of ARs as SMZs following Council recommendation to the Director, Southeast Region, NMFS.

An AR creates fishing opportunities that would not otherwise exist and may increase biological production. The cost of constructing and maintaining an AR may be substantial and the intended socioeconomic benefits (e.g., recreational fishing, tournaments, or sport diving) can be reduced or eliminated if highly efficient fishing gear and fishing practices are not restrained. Therefore, the possibility of establishing

an SMZ around an AR can act as an incentive for the construction of an AR.

A description of Site H, the background on the proposal for designation of Site H as an SMZ, the management measures proposed for Site H, the procedural requirements of the FMP for designation of an AR as an SMZ, the criteria required by the FMP to be evaluated for designation of an AR as an SMZ, and evaluation of those criteria were contained in the proposed rule (55 FR 28066, July 9, 1990) and are not repeated here.

Comments and Responses

Eleven written comments were received on the proposed rule. Three fish-trap fishermen and one private citizen objected to implementation of the rule. Three recreational fishermen, an editor of an outdoor magazine, the Assistant County Manager for Dade County, Florida, a sportfishing organization, and a sportfishing club commented in support of the proposed rule. Responses to critical comments by category follow.

National Standard 4

All of the commenters objecting to the proposed rule stated that establishment of the SMZ would violate one or more of the national standard 4 requirements that allocations be fair and equitable, reasonably calculated to promote conservation, and designed to avoid any entity acquiring excessive shares of fishing privileges.

Comment: Several commenters stated that trap fishermen have been severely restricted and are now confined to a fishing area of only 28 square nautical miles (96 km²); whereas, recreational fishermen have no geographical limitations. They suggested that the loss of an additional 2.9 percent of their available fishing area due to implementation of the SMZ would not result in a "fair and equitable" allocation as required by national standard 4.

Response: NOAA disagrees. The issue is not the degree of regulation but whether or not the additional regulation is justified. Most of the existing restrictions on fish trapping were imposed by NOAA and Florida as necessary and appropriate management measures. Regarding the proposed action, the national standard guidelines state that an allocation may impose a hardship on one group if it is outweighed by the total benefits received by others. The Council concluded that the loss of 2.9 percent of the available trapping area would be offset by benefits

accruing to the other groups using this popular site. NOAA concurs.

Comment: Four commenters cited the fact that some artificial reef materials had been placed on "live bottom," resulting in damage to the area. They suggested that this violates the national standard 4 requirement that allocations promote conservation.

Response: NOAA disagrees. Neither NOAA nor the Council condones placement of reef materials on "live bottom" areas. However, these materials were placed years prior to consideration of this site as an SMZ. The proposed action that is being evaluated is the establishment of various restrictions within the reef site. This action will reduce fishing mortality at the site somewhat and will contribute to conserving the fishery resources. Further, establishment of the SMZ will contribute to the more rational use of the resource, which according to the national standard guidelines, also promotes conservation.

Comment: Several commenters stated that the recreational harvest of fish from the Site H was estimated to be 330,000—440,000 pounds (150,000—200,000 kilograms) annually, compared to only 5,020 pounds (2,277 kilograms) annually for trap fishermen. They indicated that this imbalance demonstrated that the recreational sector was harvesting an "excessive share" in violation of national standard 4.

Response: NOAA disagrees. The data cited are somewhat misleading, because the recreational estimate included all species of fish, as well as fish that were released; whereas, the estimated trap harvest included only snapper-grouper species that were retained. However, there is little doubt that the recreational sector harvests more of the resource than does the existing trap fishery in that area. This does not necessarily constitute an "excessive share" in the context of national standard 4. The "excessive share" criterion was designed to avoid monopolistic effects, resulting from allocations, on a fishery-wide basis, not to micromanage the distribution of fishing privileges within every small geographic area. This criterion does not guarantee fishing privileges to every sector of a fishery regardless of circumstances. The concept of an "excessive share" must be evaluated in relation to the justification for the allocation. NOAA believes that the Council has presented an acceptable rationale to support the proposed allocation and that the action does not violate the "excessive share" criterion.

National Standard 6

Comment: One commenter suggested that the loss of 2.9 percent of an already severely limited fishing area would violate national standard 6.

Response: National standard 6 requires that management measures account for variations and contingencies in fisheries. It is intended to assure that fishery management plans allow for uncertainties in fisheries and incorporate suitable buffers to ensure conservation. NOAA believes that the issue of loss of fishing area is more pertinent to national standard 4 and has addressed the comment accordingly.

Consumer Interests

Comment: One individual stated that establishment of the SMZ would decrease commercial access to national fishery resources and increase costs to consumers.

Response: The proposed action only restricts use of certain types of fishing gear within a 2-square nautical mile (6.86-km²) area. The area remains accessible to commercial fishermen using allowable fishing gear. Because of this continued access and the small portion of the overall snapper-grouper fishery that is affected, NOAA does not believe that there will be a measurable impact on consumers.

Prohibition of All Commercial Fishing

Comment: One of the individuals supporting the proposed rule suggested that all commercial fishing be prohibited in the SMZ and that commercial fishermen should build their own ARs.

Response: The procedures in the FMP for establishing SMZs allow for prohibition or restriction of types of gear that are incompatible with the intended uses of the SMZ. Prohibition of fishing by user-group categories is not authorized. The opportunity to establish an SMZ is available to anyone, including commercial fishermen, who possesses a Corps of Engineers permit for an AR site or fish attracting device.

Conflict with National Artificial Reef Plan

Comment: One commenter claimed that establishment of the SMZ would conflict with the National Artificial Reef Plan and referenced the guidelines for AR construction in that plan.

Response: The construction of the AR occurred years prior to the request for an SMZ and is not the focus of this regulatory action. The gear restrictions proposed within the SMZ are intended to reduce fishing mortality and potential user conflicts. The proposed action is

not in conflict with the tenets of the National Artificial Reef Plan.

Legal Opinions

Comment: Several commenters questioned the legality of approving Site H as an SMZ based upon an opinion offered by a NOAA lawyer in 1986 that such action was not defensible.

Response: The key issue then and now remains whether the designation represents a fair and equitable balancing of the various interests of different users of the resources in the area. Since 1986, surveys documenting the recreational usage of the area have become available, and a prohibition of all spearfishing is now proposed. These factors must now be considered in weighing whether the benefits to be derived from designation will outweigh, on the whole, the detriments and costs to certain users. Unlike recreational user information, commercial landings data and trap location information have not improved since 1986. In the absence of landings data and trap location information specific to Site H supplied by fishermen, such information can only be approximated by extrapolating from trap landings data from the vicinity. That process suggests Site H is a small percentage of the area presently fished by the fish trappers and that only approximately 3 percent of total trap landings are attributable to Site H. Furthermore, information suggests that the larger impacts will be on spearfishermen who catch approximately four to nine times the amount of fish caught by trap fishermen from Site H. Accordingly, the balancing of these factors does not reveal potential inconsistencies with the national standards of the Magnuson Act.

Classification

The Assistant Administrator for Fisheries, NOAA (Assistant Administrator), determined that this rule is necessary for the conservation and management of the snapper-grouper fishery and that it is consistent with the Magnuson Act and other applicable law.

The Assistant Administrator determined that this proposed rule is not a "major rule" requiring a regulatory impact analysis under E.O. 12291. This rule is not likely to result in an annual effect on the economy of \$100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, state, or local government agencies, or geographic regions; or a significant adverse effect on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with

foreign-based enterprises in domestic or export markets. The Council prepared a regulatory impact review (RIR) for this action. A summary of the economic effects was included in the proposed rule and is not repeated here.

The General Counsel of the Department of Commerce certified to the Small Business Administration that this rule will not have a significant economic impact on a substantial number of small entities. The basis for this determination was included in the proposed rule and is not repeated here.

These measures are part of a Federal action for which an environmental impact statement (EIS) was prepared. The final EIS for the FMP was filed with the Environmental Protection Agency and the notice of availability was published on August 19, 1983 (48 FR 37702).

The Council determined that this rule does not directly affect the coastal zone of any state with an approved coastal zone management program. A letter was

sent to Florida, the only state involved, advising of this determination.

This rule does not contain a collection-of-information requirement for purposes of the Paperwork Reduction Act.

This rule does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under E.O. 12612.

List of Subjects in 50 CFR Part 646

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: September 27, 1990.

Michael F. Tillman,

*Acting Assistant Administrator for Fisheries,
National Marine Fisheries Service.*

For the reasons set forth in the preamble, 50 CFR part 646 is amended as follows:

PART 646—SNAPPER-GROUPER FISHERY OF THE SOUTH ATLANTIC

1. The authority citation for part 646 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 646.24, a new paragraph (a)(22) is added and paragraph (c)(3) is revised to read as follows:

§ 646.24 Area Limitations.

(a) * * *

(22) *Key Biscayne/Artificial Reef—H:*
The area is bounded on the north by 25°42.82'N. latitude; on the south by 25°41.32'N. latitude; on the east by 80°04.22'W. longitude; and on the west by 80°05.53'W. longitude.

* * * * *

(c) * * *

(3) In the SMZs specified in paragraphs (a)(20) and (a)(22) of this section, the use of spearfishing gear is prohibited.

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