

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 646

[Docket No.]

Snapper-Grouper Fishery of the South Atlantic

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

ACTION: Proposed rule.

SUMMARY: NOAA proposes to designate one artificial reef (AR) off the coast of Dade County, Florida as a special management zone (SMZ) in which specific fishing gear and harvest limitations would apply. The intended effect is to promote orderly use of the fishery resources on the AR, to reduce potential user-group conflicts, and to maintain the intended socioeconomic benefits of the AR to the maximum extent practicable.

DATES: Comments on the proposed rule must be received on or before (insert date 30 days after date of publication in the FEDERAL REGISTER).

ADDRESSES: Comments on the proposed rule and requests for copies of the draft regulatory impact review should be sent to Rodney C. Dalton, Southeast Region, National Marine Fisheries Service, 9450 Roger Boulevard, St. Petersburg, Florida 33702.

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

SUPPLEMENTAL 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 and fish attraction devices (FADs) as SMZs, in which specific gear and harvest limitations would apply.

An AR or FAD creates fishing opportunities that would not otherwise exist and an AR may increase biological production. The cost of their construction and maintenance can be substantial and their intended socioeconomic benefits (e.g., recreational fishing or tournaments) can be reduced or eliminated if highly efficient fishing gear and fishing practices are not restrained. Therefore, designation of an AR as a SMZ acts as an incentive for the construction of an AR or FAD.

Dade County (Florida), holder of a permit from the Corps of Engineers to construct the ARs, requested the Council to establish

a SMZ around one AR located in the exclusive economic zone (EEZ) off the southeast coast of Florida. Dade County requested that the following limitations be applied in this SMZ: (1) prohibit fish traps, (2) prohibit bottom longlines, and (3) prohibit power-assisted spearguns and powerheads. Dade County expressed concern about the fish traps and bottom longlines that are in the immediate area of the AR.

In accordance with the FMP, the Council evaluated Dade County's request, considering the FMP's criteria of (1) fairness and equity, (2) promotion of conservation, (3) prevention of excessive shares, (4) ensure SMZs are consistent with the objectives of the FMP, the Magnuson Act and other applicable law, and (5) consider the natural bottom in and surrounding potential SMZs and impacts on historical uses. The Council also considered possible conflicts among fishermen.

Fairness and Equity - Approximately 5 boats from the Ft. Lauderdale area fish within the area surrounding the site in question. One boat generates 100% of their annual income from fish traps in the general area around and including Site "H"; the others fish lobsters and also trap in the Jupiter area. Approximately 440 traps are fished in this general area. Catch records supplied by fishermen for years 1978 through 1985 allow us to estimate a commercial catch of 167,331 pounds. No actual information exists on the number of bottom longlines used in this general area.

Recreation usage data indicates that, based on a 1985 survey, 19,281 fishing days and 14,028 diving days occurred at Site "H". The 1985 survey also collected some information about catches but did not provide species specific estimates nor did it differentiate between fish caught and kept versus released. This information was used by Council staff, and an assumed 3 or 4 anglers per boat, to estimate a recreational catch from Site "H" of between 333,176 and 444,234 pounds.

Granting a special management zone would still permit trap fishing and even permit opportunities for trap fishermen to fish the same stocks fished by recreational fishermen because most target fishes probably migrate outside the SMZ at some point in their life history where they presumably are vulnerable to the trap fishery. Also, it seems fair that those who pay a major portion of expenses for artificial reefs should have some say as to how they are used, especially if one assumes that fish populations around artificial reefs would not exist without the artificial reefs. This latter assertion has not been scientifically validated however. Fairness can also be achieved by allowing prohibited gear types around certain artificial reefs or perhaps new reefs could be built and designated only for such prohibited gear types as has been done in Japan.

To resolve user group conflicts, the Snapper-Grouper Fishery Management Plan prohibited fish trapping inside 100' south of Fowey Rocks Light. This was considered a "fair and equitable" resolution (although effectively a unilateral concession). Granting exclusive access in additional areas outside 100' should be evaluated in relation to the existing conditions that were considered fair and equitable. State waters, Biscayne National Monument and John Pennekamp Coral Reef State Park already preclude trapping and bottom longlining. Additional reef sites could be established anywhere inside 100' or outside 300' without "competition" from

trappers. The Council concluded that prohibiting fish traps within Site "H" would not have a significant negative impact on the affected fishermen because it only represents about 3% of the 28 square nautical mile area available for fish trapping.

Special management zone designation could be considered consistent with the Fishery Management Plan objective to "promote orderly use of the resource" but there is limited information provided that indicates any of the gear types has created a problem; however, in theory it is known that these gear types can create problems around artificial reefs.

Promotion of Conservation - SMZs around artificial reefs may promote conservation of fish stocks by allowing a refugia from trap fishing and bottom longlines. These areas could promote growth and spawning of stocks assuming that hook and line fishing is not as effective for harvesting as fish traps and bottom longlines. However, artificial reefs may increase exploitation if they substantially concentrate fish.

Given the paucity of information available, it is difficult to address conservation in the biological sense, but the national standard guidelines indicate that this criterion can also be met by "encouraging a rational, more easily managed use of the resource" or by "optimizing yield in terms of ... economics or social benefits of the product." The proposal could be viewed as satisfying these conditions and thus promoting conservation.

Prevention of Excessive Shares - The Council concluded that fish trap and bottom longline fishing has the potential to remove more than their fair share of the stock and that granting a special management zone will alleviate this inequity. Further, that prohibiting these gear types and spearfishing does not result in the allocation of an excessive share to the permitted gear. As noted above, Site "H" represents about 3% of the 28 square nautical mile area available for trapping.

Consistency with FMP Objectives, the Magnuson Act and Other Applicable Law - The Council has concluded that this request, as modified, is consistent with the objectives of the Fishery Management Plan, the Magnuson Act and other applicable law.

Natural Bottom In and Surrounding This Area - Site "H" is located on a relatively narrow continental shelf and includes natural hard bottom areas within the permitted site. The Council recognizes this and has concluded that the SMZ should be approved even though natural bottom is included within the SMZ area.

Historical Uses - Commercial fishing has been conducted off the shelf waters of southern Florida at least since the late 1800's. Although small quantities of fish traps had been fished off south Florida since at least 1919, the number of traps fished only increased substantially after 1976 when U.S. fishermen could no longer fish Bahamian waters. Significant commercial use of wire fish-traps and bottom longlines in Florida has been a more recent activity beginning in the mid 1970's and late 1970's respectively. Information from affected individuals indicated one began fishing in this general area in 1946 and one began in 1978. According to the permittee, work on artificial reef Site "H" began in 1971.

After due consideration of the evaluation criteria, supporting data, comments during public hearings, committee meetings, and Council meetings, as well as other relevant information, the Council recommended and the Director, Southeast Region, NMFS,

concur with proposing the establishment of the requested SMZ with modifications to prohibit all spearfishing (power-assisted spearguns, power heads, Hawaiian sling & spear, pole-spear, etc.) and prohibit the possession or harvest of jewfish by any type of gear.

Requests for Comments

Because establishment of this SMZ would prohibit certain gear and activities within the proposed boundaries, thus altering usage of approximately 2.0 square nautical miles of ocean bottom, the public is asked to pay particular attention to possible impacts of the action on historical users of the area and to the potential changes in fishing opportunities for recreational and commercial fishermen and divers within this SMZ.

Classification

The Assistant Administrator for Fisheries, NOAA, determined that this proposed 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.

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

The Assistant Administrator initially determined that this proposed rule is not a major rule requiring a regulatory impact analysis under Executive Order 12291. This proposed rule, if adopted, 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 United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. The Council prepared a draft regulatory impact review (RIR) which concludes that this rule will have the following economic effects.

A 1985 survey of Site "H" indicated that 28% of respondents fished on at least one of the offshore artificial reefs; the estimated number of days fishing at Site "H" was 19,281 in 1985. Approximately 14% of the sample engaged in sport diving on the artificial reefs; the estimated number of diving days at Site "H" was 14,028 in 1985. In addition, Site "H" was more popular for sport diving than all other artificial or natural sites except for the South Reef zone. The researcher estimated the annual economic value of an additional site as \$75,000 to recreational boat owners who use the reef system.

The area of Site "H" impacted by the SMZ makes up approximately 3% of the 28 square nautical mile area available for trap fishing. Assigning the same 3% share to the 167,331 pounds of reef fish landed from and around Dade County's Site "H" artificial reef means that roughly 5,020 pounds can be attributed to the area impacted by the SMZ.

Valuing these landings by an average price of \$2.00 per pound, the total revenue attributable to Site "H" is \$10,040 per year.

Recalling that producer surplus or profit is not the same as total revenue, costs of production must be subtracted. Direct estimates of the costs of production for the trap fishery off Dade County, Florida are not available. A rough estimate, however, can be made by applying the same profit as a percentage of total revenue for small scale vessels (42-47 feet) that was determined in a study of the costs and returns of commercial snapper grouper fishing in the Gulf of Mexico. Profit was 37% of total revenue in that study. That profit margin is not unlike other profit margins for small scale fishing operations throughout the United States. Applying that percentage to fish trap effort in this case, we can estimate profit or net producer benefit from the \$10,040 revenues of approximately \$3,715 per year. This \$3,715 is a reasonable upper limit estimate of forfeited producer surplus as a result of the creation of the SMZ.

One must also account for consumer surplus generated from that 5,020 pounds of fish landed commercially. Conceptually, that consumer surplus is the difference between what consumers were willing to pay for each pound of the 5,020 pounds of commercially caught reef fish and what they actually paid for those fish. One would need an estimated demand function to estimate consumer surplus accurately. One way to attempt to measure this consumer surplus is to look at how consumers would be affected if that quantity of fish were no longer available on the market. If retail prices would increase dramatically if that quantity of fish were no longer available, then consumer surplus losses would be great. In this case, if this small quantity of fish were no longer available, it would most likely be replaced by domestic production or imports. From this, one can figure that Site "H" landings have value in terms of consumer surplus, but because they are only a small component of total landings, their consumer surplus value is not exceptionally large.

In addition to this, one would have to include any change in profit for bottom longliners and commercial spearfishermen who were using the site prior to the creation of the SMZ. An estimate of commercial landings by these gears is not available so no attempt to give the upper bound of those losses will be made here. Because of the small degree to which those gears are used on Site "H", losses are not expected to be large.

Lastly, the loss of consumer surplus to recreational spearfishermen would have to be accounted for. In the Dade County study 6,130 recreational spearfishing days occur annually at a site, and these result in between 22,804 and 45,607 pounds of fish taken annually by recreational spearfishermen. This study, however, did not estimate the consumer surplus generated by this recreational spearfishing experience so we cannot quantify this loss.

Prohibiting the take, possession, or retention of jewfish within this SMZ does not impose a significant burden. The species is an important but rather infrequent inhabitant of this artificial reef. Jewfish in this area are not sufficiently abundant to support any significant, sustained commercial fishing. Although the restrictions preclude the opportunity for any individual to harvest jewfish, this was always a limited activity. The consensus of the permittee and the Council was that the continuing aesthetic benefit to many users created by protecting this unique species greatly

exceeded the "cost" of preventing the harvest of jewfish.

It is expected that additional federal enforcement costs resulting from this proposed action will be minimal. Copies of the draft RIR are available (see **ADDRESS**).

The General Counsel of the Department of Commerce certified to the Small Business Administration that this proposed rule, if adopted, will not have a significant economic impact on a substantial number of small entities because its impact would be limited currently to a very few individuals who have used gear proposed to be prohibited in the new SMZ. The best available information indicates that five boats fish with traps in the general area and there are unverifiable reports of a few individuals using bottom longlines on a part-time basis. These individuals comprise an insignificant percentage of the small business entities involved in the snapper-grouper fishery. Further, the SMZ constitutes an extremely small portion of the available fishing grounds (about 3%).

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

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 proposed rule does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under Executive Order 12612.

List of Subjects in 50 CFR Part 646

Fisheries, Fishing.

Dated:

William W. Fox Jr.,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

For reasons set forth in the preamble, 50 CFR Part 646 is proposed to be 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.

December 12, 1989

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 (22) of this section, the use of spearfishing gear is prohibited.

* * * * *

BILLING CODE 3510-22-M

