DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 990722200–9200–01; I.D. 060899D]

RIN 0648–AG88

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Coral Reef Resources of Puerto Rico and the U.S. Virgin Islands; Amendment 1

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS issues this proposed rule to implement Amendment 1 to the Fishery Management Plan for Corals and Reef Associated Plants and Invertebrates of Puerto Rico and the U.S. Virgin Islands (FMP). This rule proposes to establish a marine conservation district (MCD) of approximately 16 square nautical miles (mi2)(41 km2) in the Exclusive Economic Zone (EEZ), southwest of St. Thomas, U.S. Virgin Islands (USVI), in an area known as "Hind Bank." Within the MCD, fishing for any species and anchoring by fishing vessels would be prohibited. The intended effect is to protect important marine resources.

DATES: Written comments must be received on or before September 17, 1999.

ADDRESSES: Comments on the proposed rule must be sent to the Southeast Regional Office, NMFS, 9721 Executive Center Drive N., St. Petersburg, FL 33702.

Requests for copies of Amendment 1, which includes a regulatory impact review (RIR), an initial regulatory flexibility analysis (IRFA), and a final supplemental environmental impact statement (FSEIS), should be sent to the Caribbean Fishery Management Council (Council), 268 Munoz Rivera Avenue, Suite 1108, San Juan, PR 00918-2577.

FOR FURTHER INFORMATION CONTACT: Michael Barnette, 727-570-5305.

SUPPLEMENTARY INFORMATION: The fishery for coral reef resources and related fisheries off Puerto Rico and the U.S. Virgin Islands are managed under the FMP. The FMP was prepared by the Council, and was approved and implemented by NMFS, under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), through final regulations at 50 CFR part 622.

This proposed rule would implement Amendment 1 and establish a MCD of approximately 16 mi2 (41 km2) in the EEZ off the USVI southwest of St. Thomas, in an area known as "Hind Bank." The purpose of the MCD is to protect coral reef resources, reef fish stocks, and their habitats. Fishing and anchoring of fishing vessels would be prohibited within the MCD. The ban on anchoring of fishing vessels would aid in enforcement of the fishing prohibition and protect the reefs from direct physical damage from anchoring.

Caribbean coral reefs are under considerable ecological stress as a result of the effects of coastal development and deforestation (sedimentation, pollution, dredging) and fishing (gear impacts and overfishing effects). The FMP currently prohibits the taking of corals and live rock in the EEZ and limits the type of gear used to collect live reef invertebrates and algae for aquariums.

The FMP was recently amended by a generic essential fish habitat (EFH) amendment (Generic EFH Amendment) that addressed EFH requirements for all the Council's FMPs. The Generic EFH Amendment designated U.S. Caribbean coral and coral reef areas as EFH. NMFS approved these EFH designations under the Generic EFH Amendment for 17 selected species and corals (15 reef fish species, spiny lobster, and queen conch), and published a notice of agency decision in the **Federal Register** (64 FR 14884; March 29, 1999). Amendment 1 is intended to protect coral reef resources and associated species, and EFH within the MCD.

Amendment 1 would specifically address fishing effects on reefs by

establishing a "no take" MCD in a coral reef area known as Hind Bank southwest of St. Thomas, USVI. The dominant coral on Hind Bank is the boulder star coral, *Montastrea annularis*. Observed colonies are roughly 1 m in diameter. Based on recorded growth rates of approximately 0.4–1.2 cm/year, these colonies are at least 100 years old. At about 20 fathoms (36 m), the bottom topography of Hind Bank consists of a series of coral ridges (each approximately 100 m wide) interspersed with sandy depressions.

Fisheries in the U.S. Caribbean are multi-species, multi-gear, and primarily artisanal. Studies show declines in catch rates and relative abundance of groupers, snappers, triggerfish, angelfish, parrotfish, and grunts in USVI trap fisheries. Jewfish (*Epinephelus itajara*), Nassau grouper (*E. striatus*), and queen conch (*Strombus gigas*) have been designated by NMFS as overfished under the provisions of the Magnuson-Stevens Act (NMFS' Report to Congress - Status of Fisheries of the United States, October 1998). Red hind, *Epinephelus guttatus*, the dominant commercial reef fish species in the U.S. Caribbean, is showing signs of a significantly skewed sex ratio, and declines in catch-per-unit-effort and average size.

Since 1991, Hind Bank has been closed to fishing from January through March under the regulations implementing the FMP to protect red hind spawning aggregations. A 1997 scientific research report to the Council indicated that this closure was having a positive effect in terms of increased red hind abundance and size.

In addition to red hind, other species thought to aggregate on Hind Bank for spawning include yellowfin grouper, *Mycteroperca venenosa*; yellowtail snapper, *Ocyurus chrysurus*; stoplight parrotfish, *Sparisoma viride*; creole wrasse, *Clepticus parrae*; and the creole-fish, *Paranthias furcifer*. Hind Bank was once a spawning site for Nassau grouper, but few individuals have been seen in the area in recent years. The MCD is intended to protect these other aggregating species.

Amendment 1 would extend the current seasonal Hind Bank closure year-round. The Council considered the possibility of allowing some fishing within MCDs to accommodate handline fishermen taking snappers, pelagics, and highly migratory species (HMS). However, the Council determined that any fishing activities in the MCD could adversely affect spawning aggregations, degrade the reef ecosystem, and complicate enforcement.

The Council specifically intends that the MCD fishing restrictions apply to all fisheries, including the HMS fisheries, including those fisheries for tunas, billfishes, and sharks. During the public comment periods on Amendment 1 and this proposed rule, NMFS will use its HMS Fax Network to ensure that all affected HMS fishermen are informed of the MCD proposal.

There is considerable literature on the benefits of marine reserves or "no-take" MCDs. They are designed to protect older, larger fish and, thereby, protect critical spawning stock biomass, intra-specific genetic diversity, population age-structure, recruitment supply, and ecosystem balance. Specific expected benefits include (1) establishment of a refuge and replenishment area to ensure continued abundance and diversity of reef resources, (2) protection of critical spawning stock and recruits from overfishing, (3) physical protection of the coral reef structures, and (4) "spillover" effects to surrounding areas. Regarding "spillover" effects, MCDs are expected to be a source of adults and larvae for adjacent areas and may be effective in addressing the problem of recruitment overfishing, especially in sedentary species. MCDs are believed to be important in maintaining the high abundance of many reef fish species worldwide. For example, existing marine reserves in the Netherland Antilles and Barbados show increasing population biomass and size of sampled reef fish.

During 1995–96, 25 commercial fishermen reported landings, primarily from trap fishing for finfish and spiny lobsters, from the general area southwest of St. Thomas (EEZ waters only). This area accounted for 14 percent of the trips and 31 percent of the total commercial catch (about 390,000 lb (176,901 kg)) in the USVI. Handline fishermen in this area accounted for only 4 percent of the trips and 8 percent of the total catch. There are no comparable data for the recreational sector. There are approximately 10 charter fishing operations in the St. Thomas-St. John area; however, these boats reportedly fish the "dropoff" south of St. John, rather than off St. Thomas.

Additional background and rationale for the measures discussed above are contained in Amendment 1, the availability of which was announced in the **Federal Register** on June 21, 1999 (64 FR 33041).

Classification

At this time, NMFS has not determined that the amendment that this rule would implement is consistent with the national standards of the Magnuson-Stevens Act and other applicable laws. NMFS, in making that determination, will take into account the data, views, and comments received during the comment period on Amendment 1.

This proposed rule has been determined to be not significant for purposes of E.O. 12866.

The Council prepared an initial regulatory flexibility analysis (IRFA) for Amendment 1 as required by the Regulatory Flexibility Act (RFA). The IRFA describes the economic impacts this proposed rule, if adopted, would have on small entities. A summary of the IRFA follows.

The IRFA concluded that a substantial number of small entities would be affected because 20 to 30 entities would be displaced and another 100 would be indirectly affected by the displaced group. The total would be well over 20 percent of the entities that fish in the general area. The IRFA concluded that there may not be a negative gross revenue impact of more than 5 percent and that there would not be a 5-percent increase in compliance costs. It was also determined that there would be no annual compliance costs and no differential small versus large business impacts and that capital costs would not change significantly. However, it was determined that an unknown number of the 20 to 30 directly displaced small entities may cease operations if the proposed rule is implemented. Additionally, the action is of major public interest, and represents a unique and fundamental change in fishery management approaches used in the Southeast.

The proposed MCD is intended to conserve coral and associated habitats, maintain marine biodiversity, and provide for the conservation and management of economically important species. The Magnuson-Stevens Act provides the legal basis for the rule. The rule would apply to approximately 121 licensed fishermen, most of whom operate small outboard skiffs. These fishermen report average annual ex-vessel revenues of $12,000 and report catches of a wide variety of species associated with coral habitats. These fishermen take roughly 35 to 60 trips annually in the vicinity of the proposed reserve, but a much smaller number of trips wholly within the reserve. The rule contains no new reporting requirements and no duplicative, overlapping, or conflicting Federal rules were identified. The Council considered the status quo alternative, as well as three alternative marine reserves differing in size and location to the marine reserve proposed. Additionally, a range of no-take restrictions were considered for

each reserve. The Council deemed that restrictive no-take regulations were appropriate in all cases. The Council concluded that exceptions would make compliance enforcement more difficult and prevent attainment of the major FMP objective to protect important marine resources. The Council rejected the status quo because of its failure to meet the FMP objective of increasing net national benefits. The Council rejected one of the three alternative marine reserves considered on the basis that insufficient information was available to determine whether the FMP objective could be met. For this rejected alternative, the users would still be negatively impacted in the short-run with no assurance of long-term gains. The Council rejected the other two alternative marine reserves because those alternatives, while providing for a greater level of net economic benefits, had a greater short-term cost to the users. Although both of these reserves were deemed capable of meeting the FMP objective and providing for a long-term increase in net national benefits, the preferred alternative was selected on the basis of having the least amount of short-term negative impact. Copies of the RIR/IRFA are available (see ADDRESSES).

The Council prepared a FSEIS for the FMP that was filed with the Environmental Protection Agency for public review and comment. A notice of its availability for public comment for 30 days will be published in the **Federal Register** on July 30, 1999. According to the FSEIS, the elimination of consumptive uses within the MCD will provide a refuge and replenishment area for reef resources and ensure continued abundance and species diversity. The MCD will provide insurance against recruitment failure and simplify enforcement. The general public understands and supports the concept of MCDs. Although commercial and recreational fishers could experience increased costs of further restrictions on their activities within the MCD, they and non-consumptive users will realize long-term benefits resulting from the maintenance of healthy and diverse coral ecosystems.

Changes Proposed by NMFS

NMFS proposes to restructure § 622.33, for the convenience of the reader, to distinguish more clearly between seasonal and year-round closures.

List of Subjects in 50 CFR Part 622

Fisheries, Fishing, Puerto Rico, Reporting and recordkeeping requirements, Virgin Islands.

Dated: July 28, 1999

Andrew A. Rosenberg,

Deputy Assistant Administrator, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 622 is proposed to be amended as follows:

PART 622—FISHERIES OF THE CARIBBEAN, GULF, AND SOUTH ATLANTIC

1. The authority citation for part 622 continues to read as follows:

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

2. Section 622.33 is revised to read as follows:

§ 622.33 Caribbean EEZ seasonal and/or area closures.

(a) *Seasonal closures*—(1) *Mutton snapper spawning aggregation area.* From March 1 through June 30, each year, fishing is prohibited in that part of the following area that is in the EEZ. The area is bounded by rhumb lines joining the following points in the order listed.

Point	North lat.	West long.
A	17°37.8'	64°53.0'
B	17°39.0'	64°53.0'
C	17°39.0'	64°50.5'
D	17°38.1'	64°50.5'
E	17°37.8'	64°52.5'
A	17°37.8'	64°53.0'

(2) *Red hind spawning aggregation areas.* From December 1 through February 28, each year, fishing is prohibited in those parts of the following areas that are in the EEZ. Each area is bounded by rhumb lines connecting, in order, the points listed.

(i) *East of St. Croix.*

Point	North lat.	West long.
A	17°50.2'	64°27.9'
B	17°50.1'	64°26.1'
C	17°49.2'	64°25.8'
D	17°48.6'	64°25.8'
E	17°48.1'	64°26.1'
F	17°47.5'	64°26.9'
A	17°50.2'	64°27.9'

(ii) *West of Puerto Rico*—(A) *Bajo de Cico.*

Point	North lat.	West long.
A	18°15.7'	67°26.4'
B	18°15.7'	67°23.2'
C	18°12.7'	67°23.4'
D	18°12.7'	67°26.4'
A	18°15.7'	67°26.4'

(B) *Tourmaline Bank.*

Point	North lat.	West long.
A	18°11.2'	67°22.4'
B	18°11.2'	67°19.2'
C	18°08.2'	67°19.2'
D	18°08.2'	67°22.4'
A	18°11.2'	67°22.4'

(C) *Abrir La Sierra Bank.*

Point	North lat.	West long.
A	18°06.5'	67°26.9'
B	18°06.5'	67°23.9'
C	18°03.5'	67°23.9'
D	18°03.5'	67°26.9'
A	18°06.5'	67°26.9'

(3) *Queen conch closure.* From July 1 through September 30, each year, no person may fish for queen conch in the Caribbean EEZ and no person may possess on board a fishing vessel a queen conch in or from the Caribbean EEZ.

(b) *Year-round area closures.* (1) *Hind Bank Marine Conservation District (MCD).* The following activities are prohibited within the Hind Bank MCD: Fishing for any species, except for scientific research activity, exempted fishing, and exempted educational activity as provided in § 600.745 of this chapter; and anchoring by fishing vessels. The Hind Bank MCD is bounded by rhumb lines connecting, in order, the points listed.

Point	North lat.	West long.
A	18°13.2'	65°06.0'
B	18°13.2'	64°59.0'
C	18°11.8'	64°59.0'
D	18°10.7'	65°06.0'
A	18°13.2'	65°06.0'

(2) [Reserved]

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