

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 646

[Docket No. 900795-0195]

RIN 0648-AC96

Snapper-Grouper Fishery of the South Atlantic

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

ACTION: Proposed rule.

SUMMARY: NOAA issues this proposed rule to implement Amendment 2 to the Fishery Management Plan for the Snapper-Grouper Fishery of the South Atlantic Region (FMP). This proposed rule would prohibit the harvest of possession of jewfish in or from the Exclusive Economic Zone (EEZ) off the south Atlantic states. The intended effect of this rule is to reduce fishing mortality of jewfish so that the species may be protected and rebuilt.

DATES: Written comments must be received on or before September 10, 1990.

ADDRESSES: Requests for copies of Amendment 2, which includes a regulatory impact review/initial regulatory flexibility analysis/environmental assessment (RIR/IRFA/EA), should be sent to the South Atlantic Fishery Management Council (Council), 1 Southpark Circle, Southpark Building, Suite 306, Charleston, SC 29407-4699.

Comments on the proposed rule should be sent to Robert A. Sadler, Southeast Region, NMFS, 9450 Koger Boulevard, St. Petersburg, FL 33702.

FOR FURTHER INFORMATION CONTACT: Robert A. Sadler, 813-893-3722.

SUPPLEMENTARY INFORMATION: Snapper-grouper species are managed under the FMP prepared by the Council, and its implementing regulations at 50 CFR part 646, under the authority of the Magnuson Fishery Conservation and Management Act (Magnuson Act). Amendment 2 to the FMP proposes a ban on harvest or possession of jewfish in or from the EEZ and contains a definition of overfishing for jewfish and all other species in the management unit of the FMP, as required by 50 CFR 602.11(c).

Background

Commercial and recreational fishermen who target jewfish report that the species has been decreasing in abundance and is disappearing in some areas. State fishery management personnel report that jewfish no longer

occur in some areas previously inhabited by them off southeast Florida, Georgia, and South Carolina.

Jewfish are highly residential, that is, they remain associated with specific, high-profile reef and wreck structures and, thus, are easily targeted by anglers and divers. They are curious fish that will often approach divers. In some locations, they form spawning aggregations during the summer months when diving and angling pressures are the heaviest and, thus, are even more susceptible to harvest. In addition, they are slow-growing and late-maturing fish. All of these characteristics make them highly susceptible to overfishing, and they would not be expected to recover quickly from a collapse of the resource.

Jewfish are known to range throughout the Gulf of Mexico and off the south Atlantic states, but are concentrated off the west and southeast coasts of Florida. Based on preliminary data provided by the Florida Department of Natural Resources, analyses indicate that current fishing conditions will deplete the jewfish spawning-stock-biomass-per-recruit ratio to between 1 and 11 percent of the level obtainable under a no-fishing regime. This is substantially below a reasonable level to prevent continuing decline of the resource. More definitive data on the spawning stock biomass and other data on jewfish are not available. In view of the relative scarcity of jewfish, such data are not likely to become available, and, consequently, a definitive stock assessment cannot readily be accomplished.

The harvest of jewfish is prohibited in the 21 special management zones established under the FMP around artificial reefs off South Carolina, Georgia, and Florida. However, this level of protection is not sufficient to prevent further decline or rebuild the jewfish resource. To protect jewfish adequately and allow the depleted resource to rebuild, the Council (1) requested that an emergency rule be implemented as an interim measure and (2) proposed Amendment 2 to prohibit the harvest or possession of jewfish in or from the EEZ.

Effective February 1, 1990, Florida banned possession and sale of jewfish in or from its waters. NOAA banned harvest or possession of jewfish in or from the EEZ in the Gulf of Mexico by emergency rule (55 FR 8143; March 7 1990) for the period March 2, 1990, through May 31, 1990. The emergency rule was extended through August 29, 1990 (55 FR 23088; June 6, 1990). Amendment 2 to the Fishery Management Plan for the Reef Fish Fishery of the Gulf of Mexico (final rule published June 21, 1990, at 55 FR 25310)

will continue that ban in the Gulf of Mexico. NOAA banned harvest or possession of jewfish in or from the EEZ off the south Atlantic states by emergency rule (55 FR 18893; May 7, 1990) for the period of May 2, 1990, through July 31, 1990. As was the case in the Gulf of Mexico, the emergency rule in the south Atlantic was extended through October 29, 1990 (55 FR 28916, July 16, 1990). This proposed rule would continue that ban off the south Atlantic states, thereby complementing Florida's regulations and protecting jewfish throughout their range in the EEZ.

Additional information on jewfish and a discussion of the proposed definitions of overfishing are contained in Amendment 2, the availability of which was announced in the Federal Register on July 17, 1990 (55 FR 29075).

Classification

Section 304 (a)(1)(D)(ii) of the Magnuson Act, as amended by Pub. L. 99-659, requires the Secretary of Commerce (Secretary) to publish regulations proposed by a Council within 15 days of receipt of an FMP amendment and regulations. At this time, the Secretary has not determined that Amendment 2, which this proposed rule would implement, is consistent with the national standards, other provisions of the Magnuson Act, and other applicable law. The Secretary, in making that determination, will take into account the data, views, and comments received during the comment period.

This proposed rule is exempt from the procedures of E.O. 12291 under 50 section 8(a)(2) of that order. It is being reported to the Director, Office of Management and Budget, with an explanation of why it is not possible to follow the procedures of that order.

The Assistant Administrator for Fisheries, NOAA, has initially determined that this proposed rule is not a "major rule" requiring the preparation of a regulatory impact analysis under E.O. 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 U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Council prepared a regulatory impact review (RIR) that concludes that that this rule, if adopted, would have relatively minor negative short-run economic effects. The commercial

harvest sector would forego about \$3,500 in annual benefit. An undetermined amount of loss in consumer welfare would ensue if supply from other areas could not meet existing demand. In general, because the quantities and magnitudes of value and price changes are rather small, losses, are also correspondingly small. Welfare loss to the recreational sector could range from \$0.43 to \$1.54 per trip per angler. Long-run effects expected to result from rebuilding the resource are deemed to outweigh any short-run losses. A copy of the RIR may be obtained (see ADDRESSES).

The Council prepared an initial regulatory flexibility analysis (IRFA), as part of the RIR, that describes the effects this rule, if adopted, would have on small business entities. Closure of the fishery would affect a small number of commercial fishermen, mainly divers, in such a manner that roughly \$17,000 in ex-vessel revenue would be lost. This revenue is divided among the small number of commercial harvesters, and available evidence indicates that none of the harvesters depends on jewfish revenue for a significant percentage of his annual income. A small number of for-hire boats (essentially dive boats) would be affected similarly by the closure. Impacts on these small businesses would be limited to those that keep their catches for personal use, and are expected to be minimal. The for-hire customers who dive to observe or photograph jewfish in their natural habitat would benefit from the anticipated rebuilding of the resource. The long-range effects of prohibiting harvest would include a recovery of

jewfish, which may warrant future reopening of the fishery, and would be beneficial to participants. A copy of the IRFA may be obtained (see ADDRESSES).

The Council prepared an environmental assessment (EA) for Amendment 2 that discusses the impact of this rule on the environment. A copy of the EA may be obtained (see ADDRESSES) and comments on it are requested.

The Council has determined that this rule will be implemented in a manner that is consistent to the maximum extent practicable with the approved coastal zone management programs of Florida, South Carolina, and North Carolina. Georgia does not participate in the coastal zone management program. These determinations have been submitted for review by the responsible state agencies under section 307 of the Coastal Zone Management Act.

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

This proposed 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: July 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 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 § 646.6, in paragraph (l), the reference to “§ 646.24(b)(2) and (c)” is revised to read “§ 646.24(b) and (c)”, and paragraph (m) is revised to read as follows:

§ 646.6 Prohibitions.

* * * * *

(m) Harvest or possess a jewfish in or from the EEZ or fail to release a jewfish taken in the EEZ, as specified in § 646.20(c).

* * * * *

3. In § 646.20, a paragraph (c) is revised to read as follows:

§ 646.20 Harvest limitations.

* * * * *

(c) Jewfish may not be harvested or possessed in or from the EEZ. Jewfish taken in the EEZ incidentally by hook-and-line gear must be released immediately by cutting the line without removing the fish from the water.

4. In § 646.24, paragraph (b) is revised to read as follows:

§ 646.24 Area limitations.

* * * * *

(b) The use of fish traps and bottom longlines is prohibited in all of the SMZs specified in paragraph (a) of this section.

* * * * *

[FR Doc. 90-17937 Filed 7-27-90; 4:59 pm]

BILLING CODE 3510-22-00