

stations. Public comment is requested on the further initial regulatory flexibility analysis set out in full in the Commission's complete decision.

13. As required by section 603 of the Regulatory Flexibility Act, the Commission has prepared a Further Initial Regulatory Flexibility Analysis (FIRFA) of the expected impact on small entities of the proposals suggested in this document. Written public comments are requested on the FIRFA. These comments must be filed in accordance with the same filing deadlines as comments on the rest of the Notice, but they must have a separate and distinct heading designating them as responses to the Regulatory Flexibility Analysis. The Secretary shall send a copy of this Further Notice of Proposed Rule Making, including the Further Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with paragraph 603(a) of the Regulatory Flexibility Act (Pub. L. No. 96-354, 94 Stat. 1164, 5 U.S.C. 601 *et seq.*, (1981)).

Comment Instructions

14. Pursuant to applicable procedures set forth in §§ 1.415 and 1.419 of the Commission's Rules, 47 CFR 1.415 and 1.419, interested parties may file comments on or before November 19, 1990, and reply comments on or before December 19, 1990. All relevant and timely comments will be considered by the Commission before final action is taken in this proceeding.

Ex Parte Information

15. This is a non-restricted notice and comment rule making proceeding. See generally § 1.1200 *et seq.* of the Commission's Rules, 47 CFR 1.1200 *et seq.*, for rules governing permissible *ex parte* contacts.

Paperwork Reduction Act Statement

16. The proposal contained herein has been analyzed with respect to the Paperwork Reduction Act of 1980, and found to contain no new or modified form, information collection, and/or record keeping, labeling, disclosure, or record retention requirements; and will not increase or decrease burden hours imposed on the public.

17. Accordingly, the Commission adopts this *Further Notice of Proposed Rule Making* pursuant to the authority contained in sections 4 (i) and (j), 303(r) and 403 of the Communications Act of 1934 as amended.

List of Subjects in 47 CFR Part 73

Television broadcasting.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 646

[Docket No. 900798-0235]

RIN 0648-AD59

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 3 to the Fishery Management Plan for the Snapper-Grouper Fishery of the South Atlantic Region (FMP). This proposed rule would (1) add wreckfish to the management unit; (2) require permits to fish for wreckfish; (3) require catch and effort reports from selected, permitted vessels; (4) require that fish in the snapper-grouper fishery be made available for inspection, upon request, to an authorized officer; (5) require permitted vessels to display their official numbers; (6) establish a fishing year for wreckfish that commences on April 16; (7) make vessel operators responsible for ensuring that fish in the snapper-grouper fishery aboard their vessels comply with the minimum size limits and are maintained intact; (8) establish a trip limit for wreckfish of 10,000 pounds (4,536 kilograms); (9) prohibit the possession of dynamite aboard vessels in the snapper-grouper fishery; (10) exclude wreckfish from the calculations for determining when a vessel with a trawl aboard is in a directed fishery for fish in the snapper-grouper fishery; (11) establish a spawning-season closure for wreckfish from January 15 through April 15; (12) establish a wreckfish quota and provisions for closure of the fishery for wreckfish; (13) provide for annual modifications of specified wreckfish management measures; (14) prohibit interference with law enforcement functions under the Magnuson Fishery Conservation and Management Act (Magnuson Act); and (15) reorder the regulations and make other minor changes. The intended effects of this rule are to conserve and manage the wreckfish resource, to enhance enforcement of the snapper-grouper

regulations, to reorder and restate the regulations for clarity, and to conform the existing regulations with current usage.

DATES: Written comments must be received on or before October 18, 1990.

ADDRESSES: Requests for copies of Amendment 3, 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, South Carolina 29407-4699.

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

Comments on the information collection requirements that would be imposed by this rule should be sent to: Edward E. Burgess, NMFS, 9450 Koger Boulevard, St. Petersburg, Florida 33702; and Office of Information and Regulatory Affairs of the Office of Management and Budget, Washington, D.C. 20503 (Attention: Desk Officer for NOAA).

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 Act. Amendment 3 to the FMP proposes conservation and management measures for wreckfish, a definition of overfishing, as it relates to wreckfish, and a proposal to establish a control date of March 28, 1990, after which anyone entering the wreckfish fishery will not be assured of future participation.

Background

Relatively little is known about wreckfish. This species can reach 220 pounds (100 kilograms), but has an average weight of about 30 pounds (13.6 kilograms). Wreckfish are pelagic for the earlier years of their life and are often associated with floating debris during that time. Adults are abyssal and are generally distributed from Newfoundland to Argentina; however, fishable concentrations have been found only in a limited area of the Blake Plateau, approximately 100 nautical miles off the coasts of South Carolina and Georgia.

The fishing grounds have depths ranging between 248 and 330 fathoms (450 and 600 meters), and are characterized by a rocky ridge having a

vertical relief of over 27 fathoms (50 meters). The substrate in areas of the Blake Plateau exhibiting significant relief is generally composed of manganese-phosphate pavements, phosphorite slabs, and coral banks. Wreckfish concentrations occur primarily on the manganese-phosphate bottoms. Portions of the fishing grounds characterized by an unevenness of the ridge are relatively unproductive, and further limit the area suitable for fishing.

The fishery began in 1987, with two vessels landing wreckfish in South Carolina, and has since expanded to approximately 50 vessels. Fishermen who have been displaced from other heavily exploited or stressed fisheries, such as those for snapper-grouper, mackerel, shrimp, or swordfish, may enter the wreckfish fishery, add to the rapidly increasing amount of effort, and cause additional stress on the fishery.

Initial catch rates in the fishery were impressive, ranging between 10 and 12 thousand pounds (4.5-5.4 thousand kilograms) per 7-8 day trip. Catch rates for some of the more productive vessels now range upwards of 30,000 pounds (13,600 kilograms) for a 7-8 day trip. Several of the vessels operate with a very short interval between trips, resulting in disproportionately high shares of the total harvest.

The resource is harvested with modified "bandit" gear similar to that used on other members of the snapper-grouper complex. Bandit gear consists of heavy duty hydraulic reels spooled with 1/8-inch cable and a terminal rig of a large weight and 8-12 large circle hooks. The wreckfish harvest in 1987 was approximately 29,000 pounds (13,154 kilograms), and has increased exponentially in succeeding years. The 1989 harvest level was 2 million pounds (907,194 kilograms) and that amount has been substantially exceeded in 1990. Landings through July, 1990, were 4.23 million pounds (1.9 million kilograms).

The geographically limited extent of the fishing grounds, the biological characteristics of wreckfish, the rapid increase in participation in the fishery, and lack of regulation make the fishery vulnerable to rapid depletion, and necessitate immediate action to prevent a resource collapse.

Accordingly, the Council requested and the Secretary of Commerce (Secretary) implemented an emergency rule to (1) Add wreckfish to the management unit of the FMP; (2) establish a fishing year for wreckfish beginning April 16, 1990; (3) establish a wreckfish quota of 2 million pounds (907,194 kilograms) for the 1990/1991 fishing year; (4) close the wreckfish fishery when the quota is reached; (5)

establish a wreckfish trip limit of 10,000 pounds (4,536 kilograms) per vessel; and (6) exclude wreckfish from the calculations for determining when a vessel with a trawl aboard is in a directed fishery for fish in the snapper-grouper fishery. The emergency rule was published on August 8, 1990 (55 FR 32257), and is effective through November 1, 1990. The 2 million-pound quota, effective since April 16, was reached on August 8, 1990, and the fishery was closed for the period August 9, 1990, through November 1, 1990 (55 FR 32635; August 10, 1990). The emergency rule and the closure may be extended for an additional period of not more than 90 days.

In addition to the management measures contained in the emergency rule, Amendment 3 would (1) Require permits to fish for wreckfish; (2) require catch and effort reports from selected, permitted vessels; (3) establish a spawning-season closure for wreckfish from January 15 through April 15; (4) provide for annual specification or modification of the wreckfish maximum sustainable yield (MSY), total allowable catch (TAC), quota, trip limit, fishing year, spawning-season closure, fishing year, and permit requirements; and (5) define overfishing for wreckfish.

The rationale for the management measures in the emergency rule were included in the preamble to that rule and are not repeated here.

Additional Management Measures

Data on the wreckfish fishery are very limited. A permit system would identify the universe of fishermen from whom information could be collected on catch, effort, and size and age composition of wreckfish, all of which are important in monitoring the biological status of the fishery and its level of exploitation. The combination of a permit system and mandatory reporting by selected, permitted vessels would insure accuracy and completeness of the information collected.

Fishermen have observed that wreckfish caught during the January through April period are in spawning condition. Preliminary research results provided by the South Carolina Wildlife and Marine Resources Division support the conclusion of a January through April spawning season. Fishermen have also stated that wreckfish bite baited hooks very aggressively during the spawning period. A spawning-season closure would help protect the wreckfish resource from recruitment failure and was strongly supported during the public hearing process.

To avoid long delays in making adjustments and to take advantage of

data as it becomes available, Amendment 3 would establish a procedure for modifying certain wreckfish management measures, as follows:

1. The Councils would appoint an assessment group (Group) that would assess the condition of the wreckfish resource in the management unit on an annual basis. The Group would present a report of its assessment and recommendations to the Council.

2. The Council would consider the report of the Group and hold public hearings to discuss the Group's report at a time and place of the Council's choosing. The Council could convene the Advisory Panel and the Scientific and Statistical Committee to provide advice prior to taking final action. After receiving public input, the Council would make findings on the need for changes.

3. If changes were needed in MSY, TAC, quota, trip limit, fishing year, spawning-season closure, or criteria for permits, the Council would advise the Director, Southeast Region, NMFS (Regional Director) in writing of its recommendations, accompanied by the Group's report, relevant background material, draft regulations, and a summary of public comments. This report would be submitted each year by such date as agreed upon by the Council.

4. The Regional Director would review the Council's recommendations, supporting rationale, public comments, and other relevant information. In the event the Regional Director rejected the recommendations, he would provide written reasons for the rejection to the Council and existing regulations would remain in effect until the issue was resolved.

5. If the Regional Director initially concurred that the Council's recommendations were consistent with the goals and objectives of the FMP, the national standards, and other applicable law, he would recommend that the Secretary publish notice in the Federal Register of the proposed changes with a minimum of 15 days for public comment. After review of the public comments and final determinations of consistency with the goals and objectives of the FMP, the national standards, and other applicable law, the approved changes would be published as a final rule.

6. Appropriate adjustments that could be implemented by the Secretary via proposed and final rules under this procedure would be:

(a) Initial specification of MSY and subsequent adjustment of the best estimate of MSY.

(b) Setting of TAC for wreckfish, not exceeding 8 million pounds (3.629 million kilograms).

(c) Modification of the quota or trip limit.

(d) Modification of the fishing year and/or the spawning-season closure by not more than one month.

(e) Modification of the criteria for obtaining a permit.

Based on the Council's intent to protect the long-term production of the resource, Amendment 3 would define "overfished" and "overfishing," as they relate to wreckfish, as follows:

1. Wreckfish are overfished when the stock is below the level of 30 percent of the spawning stock biomass per recruit that would occur in the absence of fishing.

2. When wreckfish are overfished, overfishing is defined as harvesting at a rate that is not consistent with a program that has been established to rebuild the stock or stock complex to the 30 percent spawning stock biomass per recruit level.

3. When wreckfish are not overfished, overfishing is defined as harvesting at a rate that, if continued, would lead to a state of the stock or stock complex that would not allow a harvest of at least optimum yield on a continuing basis.

Additional information on the wreckfish fishery, the proposed management measures, and the definition of overfishing, as it relates to wreckfish, is contained in Amendment 3, the availability of which was announced in the *Federal Register* on August 14, 1990 (55 FR 33143). For a document establishing a control date of March 28, 1990, after which anyone entering the wreckfish fishery may not be assured of future participation, see a notice published elsewhere in this issue.

Additional Changes

In addition to the changes to the existing regulations necessary to implement Amendment 3, NOAA proposes other changes to facilitate enforcement and to clarify the regulations and conform them to current usage.

In addition to the requirement that fishermen and dealers make fish in the snapper-grouper fishery available to authorized statistical reporting agents, such fish would be required to be made available to authorized officers. This addition would enhance enforcement.

A permitted vessel in the wreckfish fishery would be required to display prominently its official number, i.e., its Coast Guard documentation number or state registration number. Such display would assist enforcement of the vessel trip limit, the prohibition of transfer at

sea of wreckfish, and the quota closure provisions.

A general prohibition on interference with law enforcement functions under the Magnuson Act would significantly enhance enforcement.

A specification of an operator's responsibility for compliance aboard his vessel with the minimum size limits and the requirement that fish subject to a minimum size be maintained intact would clarify that responsibility and would be in accord with the definition of "operator" at 50 CFR 620.2, which includes the phrase "in charge of that vessel."

To enforce effectively the prohibition on use of explosives, this proposed rule would prohibit the possession of dynamite or a similar explosive substance aboard a vessel in the snapper-grouper fishery. NOAA is not aware of any legitimate use of dynamite or a similar explosive substance aboard a vessel in that fishery.

Other minor changes are proposed to reorder and restate the regulations for clarity and to conform them with current usage.

Endangered Species Impacts

Pursuant to section 7 of the Endangered Species Act of 1973, a biological assessment was prepared on Amendment 3 that concludes that implementation of the amendment would not adversely affect any populations of endangered or threatened species. The Regional Director concurs with that conclusion.

Classification

Section 304(a)(1)(D)(ii) of the Magnuson Act, as amended by Public Law 99-659, requires the 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 3, 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 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) for Amendment 3 that concludes that this rule, if adopted, would have overall net economic benefits, which are summarized as follows: Adding wreckfish to the snapper-grouper management unit; requiring an annual permit to fish for, land, or sell wreckfish; and requiring vessel reports of catch and effort information would have no significant short-term economic effects on participants in the fishery. The criteria for obtaining a permit could be met by documentation of prior sale of wreckfish or by orders or invoices for specific fishing gear, such gear being a prerequisite for entry into the fishery in any case. The information to be reported by selected, permitted vessels is information that is readily available. Potential long-term economic benefits would come from having better data, with resulting improved management of the fishery. There would be short- and long-term costs in administering and enforcing the management regime. Estimates of those costs are not available.

The long-term benefits from the quota, trip limit, and closure provisions, combined, are expected to far outweigh the short-term losses to fishermen that may result from those proposed management measures. Some short-term losses to consumers are expected because wreckfish landings will probably be smaller than they would have been without those proposed measures. These short-term losses will probably be felt as higher prices to consumers at the retail level, but these losses will be more than compensated for in the long term if the proposed management measures are successful in ensuring a sustainable yield from the wreckfish resource.

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, summarized as

follows. The number of vessels (small entities) that would be affected by this rule is uncertain, and there is a broad range of cost/price variabilities that may result from this rule. Nevertheless, it is expected that small entities may suffer short-term losses that will be outweighed by long-term benefits. A copy of the IRFA may be obtained (see ADDRESSES).

The Council prepared an environmental assessment (EA) that discusses the impact on the environment as a result of this rule. 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 contains two new collections of information subject to the Paperwork Reduction Act, namely, applications for annual vessel permits and catch and effort reports from selected, permitted vessels. Requests to make these collections have been submitted to the Office of Management and Budget (OMB) for approval. The public reporting burdens for these collections of information are estimated to average 15 and 6 minutes per response, respectively, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. This proposed rule restates, for clarity, the application procedure for obtaining a vessel and gear identification number and color code, applicable to a vessel from which a fish trap is deployed, and redesignates that paragraph as § 646.6(b)(1). That collection of information was previously approved under OMB control number 0648-0205. The public reporting burden for that collection of information was estimated to average 15 minutes per response including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Comments and suggestions regarding these burden estimates or any other aspect of these collections of information, including suggestions for reducing the burdens, to Edward E. Burgess, NMFS, and to the

Office of Information and Regulatory Affairs, Office of Management and Budget (see ADDRESSES).

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: September 17, 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 § 646.2, in the definition of Fish in the snapper-grouper fishery, after the listing of Snappers—Lutjanidae, a new family and species are added; and a new definition of Trip is added in alphabetical order to read as follows:

§ 646.2 Definitions.

* * * * *

Fish in the snapper-grouper fishery means the following species:

* * * * *

Temperate basses—Percichthyidae

Wreckfish—*Polyprion americanus*

* * * * *

Trip means a fishing trip, regardless of number of days duration, that begins with departure from a dock, berth, beach, seawall, or ramp and that terminates with return to a dock, berth, beach, seawall, or ramp.

§§ 646.4–646.8 [Redesignated as §§ 646.5–646.9]

3. Sections 646.4 through 646.8 are redesignated as §§ 646.5 through 646.9, and a new § 646.4 is added to read as follows:

§ 646.4 Permits.

(a) *Applicability.* To fish for wreckfish in the EEZ, land wreckfish from the EEZ, or sell wreckfish in or from the EEZ, an owner or operator of a vessel must obtain an annual vessel permit.

(b) *Application for permit.* (1) An application for an annual vessel permit must be submitted and signed by the owner or operator of the vessel. The application must be submitted to the Regional Director at least 60 days prior to the date on which the applicant

desires to have the permit made effective.

(2) A permit applicant must provide the following information:

(i) A copy of the vessel's U.S. Coast Guard certificate of documentation or, if not documented, a copy of the vessel's state registration certificate;

(ii) The vessel's name, official number, length, home port, and engine horsepower;

(iii) Name, mailing address including zip code, and telephone number of the owner of the vessel;

(iv) Name, mailing address including ZIP code, and telephone number of the applicant, if other than the owner;

(v) Social security number and date of birth of the applicant and the owner;

(vi) Documentation that wreckfish caught by the vessel were sold during the 12 months preceding the application or, in lieu thereof, documentation that equipment required specifically for use in the wreckfish fishery was on order or purchased for the vessel during the 12 months preceding the application; and

(vii) Any other information concerning vessel and gear characteristics requested by the Regional Director.

(3) Any change in the information specified in paragraph (b)(2) of this section must be submitted in writing to the Regional Director by the permit holder within 30 days of any such change. The permit is void if any change in the information is not reported.

(c) *Issuance.* (1) The Regional Director will issue a permit at any time during the fishing year to an applicant if:

(i) The application is complete; and
(ii) The applicant has complied with all applicable reporting requirements of § 646.5 during the 12 months immediately preceding the application.

(2) Upon receipt of an incomplete application, or an application from a person who has not complied with all applicable reporting requirements of § 646.5 during the 12 months immediately preceding the application, the Regional Director will notify the applicant of the deficiency. If the applicant fails to correct the deficiency within 30 days of the Regional Director's notification, the application will be considered abandoned.

(d) *Duration.* A permit remains valid for the remainder of the fishing year for which it is issued unless revoked, suspended, or modified pursuant to subpart D of 15 CFR part 904.

(e) *Transfer.* A permit issued under this section is not transferable or assignable. A person purchasing a vessel with an annual vessel permit must apply for a permit in accordance with the provisions of paragraph (b) of

this section. The application must be accompanied by a copy of an executed (signed) bill of sale.

(f) *Display.* A permit issued under this section must be carried on board the permitted vessel at all times and such vessel must be identified as provided for in § 640.6. The operator of a fishing vessel must present the permit for inspection upon request of an authorized officer.

(g) *Sanctions and denials.* Procedures governing enforcement related permit sanctions and denials are found at subpart D of 15 CFR part 904.

(h) *Alteration.* A permit that is altered, erased, or mutilated is invalid.

(i) *Replacement.* A replacement permit may be issued. An application for

a replacement permit will not be considered a new application.

4. Newly redesignated § 646.5 is revised to read as follows:

§ 646.5 Recordkeeping and reporting.

(a) *Permitted vessels.* The owner or operator of a vessel for which a permit has been issued under § 646.4(a), and that is selected by the Science and Research Director, must maintain a fishing record for each fishing trip on a form available from the Science and Research Director. These forms must be submitted on a monthly basis (or more frequently, if requested by the Science and Research Director) so as to be received not later than the 7th day of the end of the reporting period. If no fishing occurred during a month, a report so

stating must be submitted on one of the forms. If fishing occurred, the following information must be reported for each trip:

- (1) Name and official number of vessel;
- (2) Date(s) of trip and fishing location(s) by statistical area(s) (see Figure 1);
- (3) Pounds of catch of wreckfish;
- (4) Type and quantity of gear fished;
- (5) Duration (hours) of vessel fishing effort;
- (6) Port of landing;
- (7) Name of dealer;
- (8) Condition of fish landed (whole or gutted); and
- (9) Average depth of fishing effort in feet.

BILLING CODE 3510-22-M