50 CFR Part 646

[Docket No. 940246-4137; I.D. 013194B]

RIN 0648-AE51

Snapper-Grouper Fishery of the South Atlantic

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

ACTION: Final rule.

SUMMARY: NMFS issues this final rule to implement Amendment 6 to the Fishery Management Plan for the Snapper-Grouper Fishery of the South Atlantic (FMP). Amendment 6 establishes management measures necessary to conserve overfished stocks of snowy grouper, golden tilefish, speckled hind, and warsaw grouper in the South Atlantic exclusive economic zone (EEZ). The intended effects of this rule are to rebuild the snapper-grouper resources and to clarify the regulations implementing the FMP.

EFFECTIVE DATE: June 27, 1994, except for § 646.25, which is effective June 6, 1994.

ADDRESSES: Copies of Regulatory Impact Review, Regulatory Flexibility Analysis and Environmental Assessment are available from the South Atlantic Fishery Management Council, 1 Southpark Circle, suite 306, Charleston, SC 29407-4699; FAX 803-769-4520.

FOR FURTHER INFORMATION CONTACT: Peter J. Eldridge, 813-893-3161.

SUPPLEMENTARY INFORMATION: Snapper-grouper species off the southern Atlantic states are managed under the FMP. The FMP was prepared by the South Atlantic Fishery Management Council (Council) and is implemented through regulations at 50 CFR part 646 under the authority of the Magnuson Fishery Conservation and Management Act (Magnuson Act).

Detailed description, background, and rationale for the management measures in Amendment 6 and the additional measures proposed by NMFS were included in the proposed rule (59 FR 9721, March 1, 1994) and are not repeated here.

Comments and Responses

Eighteen comments were received during the public comment period. Most of the comments concerned the proposed closure of the Oculina Bank habitat area of particular concern (HAPC) to fishing for species in the snapper-grouper management unit.

Comment: Five commercial fishermen opposed the closure of the HAPC to fishing for snapper-grouper species. They stated that the closure would reduce income to fishermen and reduce the supply of locally caught fish to wholesale and retail dealers. They also stated that the closure of the HAPC to bottom fishing could result in a shift of fishing effort to adjacent areas and result in overfishing of species in the open areas. They concluded that the action would result in a negative economic impact for the Fort Pierce area, which is adjacent to the HAPC.

Response: In general, the Council and NMFS agree that some fishing income could be lost and a reduction may occur in the flow of locally caught fish to commercial channels. Also, some fishing effort may shift to open areas. A minor negative economic impact on local communities may occur. Fishermen may target other species within the HAPC and fish in other nearby areas; however, quantitative data do not exist to estimate these potential impacts. The HAPC is not a major fishing area for snapper-grouper species and commercial landings from that area have never been sufficient to supply local demand. The closure will not create a shortage of seafood in the Fort Pierce area. Some fishing effort may shift to open areas; however, there are sufficient management measures in place and under development to regulate any additional fishing effort.

Presently, 13 species in the snapper-grouper fishery management unit are overfished and 14 others, with similar life history characteristics, are thought to be overfished. The Council is concerned that traditional fishery management measures, such as minimum size limits and quotas, may not be sufficient to protect fully the snapper-grouper resource. The Council considered establishing marine reserves in the EEZ off the southern Atlantic states but deferred action after considering public opposition and lack of information on benefits derived from marine reserves. This HAPC closure is a management experiment to determine the consequences of establishing a marine reserve. This measure will "sunset" after 10 years if not reauthorized by the Council. NMFS is to report to the Council on the effectiveness of the closure as soon as data are available, but no later than the end of 2000. The HAPC area was selected because it is relatively small compared to the total area that may be fished, will have a relatively small impact on fishermen, is already familiar to the industry, and is already subject to certain fishing restrictions under regulations implementing the Fishery Management Plan for Coral and Coral Reefs of the Gulf of Mexico and the South Atlantic and the FMP (see 50 CFR parts 638 and 646). The Council believes, and NMFS agrees, that the benefits derived from this management experiment will exceed the temporary costs to some fishermen.

Comment: Five recreational fishermen and two sports fishing clubs opposed closure of the HAPC because it may result in reduced catches. They claimed that recreational anglers might not come to the Fort Pierce area to fish, which would be detrimental to the local economy. Also, they stated that fishing effort would shift to open areas and result in overfishing.

Response: The Council and NMFS agree that some reductions in catch may occur and some anglers may switch to other fishing grounds within and outside of the Fort Pierce area. Resulting impacts on the local economy are uncertain, but are not expected to be significant. Since anglers can still target pelagic species such as mackerels, billfish, and sharks in the HAPC and surrounding areas, the impacts on overall catch rates should not be major. No significant net change in domestic economic activity will result if anglers switch to other fishing grounds located in U.S. waters. The majority of recreational anglers do not possess vessels of sufficient size to fish the HAPC. As stated earlier, the Council and NMFS agree that there may be some temporary, relatively minor negative impacts. In this context, if fish become abundant in the HAPC as expected, some will move into adjacent open areas where they will be available to fishermen. Also, total recruitment may

be increased, which would result in higher catches in open areas due to the increased abundance of spawners in the HAPC. The Council believes, and NMFS agrees, that the benefits derived from this management experiment will exceed the temporary costs to some fishermen. If this experiment does not produce desired benefits, the fishing restrictions will be reconsidered.

Comment: The Deputy Executive Director of the Council commented that the proposed rule does not prohibit anchoring in the HAPC, contrary to Amendment 6.

Response: Amendment 6 includes a prohibition on anchoring in the HAPC as an aid to enforcement of the prohibition on fishing in the HAPC for snapper-grouper species. Under the Magnuson Act, the scope of these regulations may not extend to a *per se* anchoring prohibition in the HAPC, or to non-fishing vessels. The Council did not intend to prohibit fishing in the HAPC for fish other than snapper-grouper species. Accordingly, a prohibition on the combination of fishing and anchoring in the HAPC more effectively meets the intent of the Council. NMFS is not aware of any fishing that would be conducted while anchored in the HAPC other than fishing for snapper-grouper species. Accordingly, the proposed rule and this final rule establish a rebuttable presumption that fishing while anchored in the HAPC constitutes fishing for snapper-grouper species, which is prohibited. Further, snapper-grouper species taken in the HAPC may not be retained. Thus, a vessel fishing in the HAPC, whether or not anchored, may not possess snapper-grouper species.

NMFS believes this final rule meets the intent of the Council regarding anchoring in the HAPC, to the extent allowable under the Magnuson Act.

Comment: Two fishermen stated that anchoring in the HAPC should not be prohibited because of safety reasons.

Response: NMFS agrees; this final rule merely establishes a rebuttable presumption that a vessel fishing while at anchor in the HAPC is fishing for snapper-grouper.

Comment: One fisherman stated that the HAPC coordinates were not published in the public hearing draft of Amendment 6; therefore, no one knew where the area was proposed to be situated. He concluded that this resulted in reduced public comment during public hearings.

Response: The coordinates of the HAPC were published on page 25 of the public hearing draft under Action 9. Figure 3 of the same document showed the location of the HAPC, including major cities in the immediate area. Each participant at the public hearings received a copy of Figure 3. Final Amendment 6 and the proposed rule provide similar information. Moreover, the coordinates of the HAPC have been established in Federal regulations since July 23, 1984 (50 CFR 638.22(c)). Appendix E (Summary of Public Comments) in Amendment 6 shows that five comments favored closing the HAPC to fishing, while seven comments opposed it. The above information indicates that the public had adequate notice concerning the location of the HAPC during the public hearing and proposed rule stages.

Comment: One fisherman stated that a plan for scientific study of fish stocks in the HAPC was lacking and this was a violation of the Magnuson Act.

Response: Basic research needs are listed and updated periodically for each fishery management plan in the southeastern United States. In addition, NMFS and Council staff prepare annual research plans for each fishery management plan. Research pertaining to the HAPC will be addressed by the NMFS Science and Research Director and incorporated into the annual research plans. NMFS must present the results of the research to the Council no later than the end of the year 2000. Finally, sections III. B. and III. C. of FMP Amendment 4 also specifically provide for fishery data collection and periodic scientific assessment of the condition of managed snapper and grouper stocks; these particular FMP provisions fulfill sections 303(a) (3) and (5) of the Magnuson Act requiring the evaluation of the condition of fish stocks. In summary, the Council and NMFS are meeting research needs indicated in this instance and are in compliance with the Magnuson Act.

Comment: Two commercial fishermen opposed the quotas for snowy grouper and golden tilefish because they believed that the quotas would discriminate against fishermen with smaller vessels, especially those that fished in the Florida Keys. A representative of a commercial fishing organization opposed the quotas because he felt they were not needed.

Response: Both snowy grouper and golden tilefish are overfished. Therefore, regulatory guidelines require stock rebuilding programs. The Council and NMFS believe that fishing pressure must be reduced to rebuild these species. The use of commercial quotas is an acceptable and traditional method to reduce fishing pressure. The Council has chosen to implement quota reductions over a 3-year period to minimize the economic impact upon commercial fishermen. Also, the Council recognizes that some snowy grouper and golden tilefish would likely be taken as bycatch by fishermen targeting other species. Consequently, the Council is reserving a portion of the annual snowy grouper and golden tilefish quotas as a bycatch allowance. Fishermen will be allowed a trip limit (allowance) of 300 pounds (lb) (136 kilograms (kg)) after initial quotas are reached. Since fishermen in the Florida Keys with smaller vessels rarely catch 300 lb (136 kg) of either species in a trip, their catches should not be affected by either quota.

Comment: Two fishermen in the Florida Keys, who represented fishermen with smaller vessels, supported trip limits for snowy grouper and golden tilefish. A representative of a commercial fishing organization located in the Florida Keys did not think trip limits would adversely affect the members of that organization.

Response: NMFS agrees that the commercial trip limits for snowy grouper and golden tilefish, together with the bycatch allowance (300 lb (136 kg)) that applies after the fishing year quotas are filled, should not adversely affect fishermen with smaller vessels.

Comment: Three commercial fishermen and a representative of a commercial fishing organization were opposed to the prohibition on sale of warsaw grouper and speckled hind. They stated that harvest of warsaw grouper and speckled hind is rare, and these species would not survive release because of the depth of capture. One of the fishermen stated that it would not be practical to donate these fish to a charitable organization. The representative of the commercial fishing organization stated that the prohibition on sale would create confusion in the market and result in law enforcement difficulties.

Response: Warsaw grouper and speckled hind are rare and overfished. The Council recognizes that most harvest of warsaw and speckled hind is bycatch and that survival of released individuals is low. However, the Council is following stock rebuilding guidelines with regard to these species. The Council received public testimony that some fishermen may target these species at certain times during the year. The Council proposed the prohibition on sale to reduce directed fishing mortality, but allowed retention of one warsaw and one speckled hind per vessel per trip to minimize waste. Fishermen are encouraged to donate these fish to "good causes," such as charitable organizations. Many marine

species in the United States are subject to restrictions on sale, either seasonally or geographically. Both the market and law enforcement agencies have adjusted accounting procedures and other practices to implement such restrictions.

Partial Disapproval of Amendment 6

On May 5, 1994, the Regional Director, Southeast Region, NMFS (Regional Director), partially disapproved Amendment 6. Specifically, the Regional Director disapproved Action 12 of the amendment, which would have required all permitted vessels to maintain and submit vessel logbooks. The Regional Director believes that the methods of obtaining necessary management data and the appropriate sampling system for such data are determinations properly made by NMFS.

The regulations at 50 CFR 646.5(a) require vessel logbooks to be maintained and submitted by all vessels fishing for wreckfish and for other permitted vessels selected by the Science and Research Director, Southeast Fisheries Science Center, NMFS. Currently all permitted vessels are selected to maintain and submit logbooks.

Vessel logbooks provide catch and effort data, which the Council believes are needed for quota monitoring, stock assessments, catch histories, and indications of shifts in fishing effort. NMFS agrees that catch and effort data via logbooks are needed for all of these purposes except for quota monitoring. In the snapper-grouper fishery, NMFS has chosen to use dealer reports for quota monitoring rather than vessel logbooks. These collections of information have been approved previously under Office of Management and Budget control numbers 0648–0016 (logbooks) and 0648–0013 (dealer reports). NMFS agrees with the Council that good and sufficient reasons continue to exist for the current requirement that all permitted vessels maintain and submit vessel logbooks. Accordingly, NMFS intends to continue to select all permitted vessels to maintain and submit logbooks. When NMFS believes that the 100-percent level of submission is no longer required, it will reduce the percentage of vessels required to maintain and submit logbooks, without the necessity of amending the FMP.

Changes From the Proposed Rule

As a consequence of the partial disapproval of Amendment 6, discussed above, the proposed change to § 646.5(a)(1) is not included in this final rule and the proposed change to § 646.5(d) introductory text is modified.

Classification

The Regional Director determined that Amendment 6 is necessary for the conservation and management of the snapper-grouper fishery and that it is consistent with the national standards, other provisions of the Magnuson Act, and other applicable law, with the exception of the measure that would have required all permitted vessels to maintain and submit vessel logbooks.

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

The Council prepared an initial regulatory flexibility analysis (initial RFA) for this action. The initial RFA has been adopted as final without change. The final RFA concludes that this final rule may have a significant economic impact on a substantial number of small entities, as summarized in the proposed rule.

The commercial vessel trip limits established in § 646.25 of this final rule are intended to prolong the commercial seasons for snowy grouper and golden tilefish under the newly established commercial quotas. Prolonging the seasons will have considerable economic benefits for the fisheries. Delay in implementing these trip limits will reduce significantly the potential benefits. However, immediate implementation might adversely affect commercial fishermen when this final rule is published because they may be at sea. Accordingly, to maximize the potential economic benefits of the trip limits without undue adverse effect on fishermen now on fishing trips, the Assistant Administrator for Fisheries, NOAA, finds for good cause under section 553(d)(3) of the Administrative Procedure Act that the effective date of § 646.25 should not be delayed beyond 10 days from the date of publication of this final rule.

List of Subjects in 50 CFR Part 646

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: May 20, 1994.

Charles Karnella,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out 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 § 646.1, paragraph (b) is revised to read as follows:

§ 646.1 Purpose and scope.

* * * * *

(b) This part governs conservation and management of fish in the snapper-grouper fishery in or from the South Atlantic EEZ, except that §§ 646.5 and 646.24 also apply to such fish in or from adjoining state waters.

§ 646.2 [Amended]

3. In § 646.2, in the definition for "Fish in the snapper-grouper fishery", under the family designation "Tilefishes—Malacanthidae", the listing for "Tilefish (Golden)" is revised to read "Golden tilefish"; and the family designation "Triggerfishes—Balistidae" is revised to read "Leatherjackets—Balistidae"; and in the definition for "Sea bass pot", in paragraph (3) introductory text, the parenthetical phrase "(see Figure 3)" is revised to read "(see Figure 2)".

§ 646.4 [Amended]

4. In § 646.4, in paragraph (b)(2)(vi)(A), the word "and" is added after the concluding semi-colon; in paragraph (b)(2)(vi)(B), the concluding word "and" is removed; and paragraph (b)(2)(vi)(C) is removed.

5. In § 646.5, paragraphs (d) introductory text and (d)(4) are revised to read as follows:

§ 646.5 Recordkeeping and reporting.

* * * * *

(d) *Commercial vessel, charter vessel and headboat inventory.* A person described under paragraphs (a) or (b) of this section who is not selected to report must provide the following information when interviewed by the Science and Research Director:

* * * * *

(4) Fishing areas;

* * * * *

6. In § 646.7, paragraph (kk) is revised; paragraph (mm) is redesignated as paragraph (ss); and new paragraphs (mm) through (rr) are added to read as follows:

§ 646.7 Prohibitions.

* * * * *

(kk) Transfer at sea—

(1) Warsaw grouper or speckled hind, as specified in § 646.21(j)(6);

(2) Fish in the snapper-grouper fishery subject to a bag limit, as specified in § 646.23(f); or

(3) Snowy grouper or golden tilefish, as specified in § 646.25(e).

* * * * *

(mm) Fish for fish in the snapper-grouper fishery in the Oculina Bank

habitat area of particular concern (HAPC), retain such fish in or from the Oculina Bank HAPC, or fail to release immediately such fish taken in the Oculina Bank HAPC by hook-and-line gear, as specified in § 646.26(d)(2).

(nn) Possess a warsaw grouper or speckled hind in excess of the vessel trip limit, as specified in § 646.21 (j)(1) or (j)(2).

(oo) Sell, purchase, trade, or barter, or attempt to sell, purchase, trade, or barter, a warsaw grouper or speckled hind, as specified in § 646.21(j)(3).

(pp) Exceed a commercial trip limit for snowy grouper or golden tilefish, as specified in § 646.25 (a) or (b).

(qq) Sell, purchase, trade, or barter, or attempt to sell, purchase, trade, or barter, snowy grouper or golden tilefish in excess of an applicable trip limit, as specified in § 646.25(f).

(rr) Make any false statement, oral or written, to an authorized officer concerning the taking, catching, harvesting, landing, purchase, sale, possession, or transfer of a fish in the snapper-grouper fishery.

* * * * *

7. Section 646.20 is revised to read as follows:

§ 646.20 Fishing years.

(a) The fishing year for wreckfish begins on April 16 and ends on April 15.

(b) The fishing year for fish in the snapper-grouper fishery other than wreckfish begins on January 1 and ends on December 31.

8. In § 646.21, a new paragraph (j) is added to read as follows:

§ 646.21 Harvest limitations.

* * * * *

(j) *Warsaw grouper and speckled hind.* (1) The possession of warsaw grouper in or from the EEZ is limited to one per vessel per trip.

(2) The possession of speckled hind in or from the EEZ is limited to one per vessel per trip.

(3) A warsaw grouper or a speckled hind in or from the EEZ may not be sold, purchased, traded, or bartered, or attempted to be sold, purchased, traded, or bartered.

(4) A person who fishes in the EEZ may not combine a possession limit specified in paragraph (j)(1) or (j)(2) of this section with a bag or possession limit applicable to state waters.

(5) The operator of a vessel that fishes in the EEZ is responsible for the possession limit applicable to that vessel.

(6) A warsaw grouper or speckled hind taken in the EEZ may not be transferred at sea, regardless of where such transfer takes place; a warsaw grouper or speckled hind may not be transferred at sea in the EEZ, regardless of where such warsaw grouper or speckled hind was taken.

9. In § 646.23, a new paragraph (a)(4) is added and paragraph (b)(3) is revised to read as follows:

§ 646.23 Bag and possession limits.

(a) * * *

(4) Special limitations on possession of warsaw grouper and speckled hind apply. (See § 646.21(j).)

(b) * * *

(3) Groupers, excluding jewfish and Nassau grouper, and tilefishes, combined—5.

* * * * *

10. Section 646.24 is revised to read as follows:

§ 646.24 Commercial quotas.

Persons who are not subject to the bag limits are subject to the following quotas. (See § 646.23(a)(1) for applicability of the bag limits.)

(a) *Wreckfish* (whole weight)—2 million pounds (907,185 kg) each fishing year.

(b) *Snowy grouper* (gutted weight, that is, eviscerated but otherwise whole)—

(1) 540,314 pounds (245,082 kg) in the fishing year that commences January 1, 1994.

(2) 442,448 pounds (200,691 kg) in the fishing year that commences January 1, 1995.

(3) 344,508 pounds (156,266 kg) in the fishing year that commences January 1, 1996.

(c) *Golden tilefish* (gutted weight, that is, eviscerated but otherwise whole)—

(1) 1,475,795 pounds (669,409 kg) in the fishing year that commences January 1, 1994.

(2) 1,238,818 pounds (561,918 kg) in the fishing year that commences January 1, 1995.

(3) 1,001,663 pounds (454,347 kg) in the fishing year that commences January 1, 1996.

§§ 646.27 and 646.25 [Redesignated as §§ 646.28 and 646.27]

11. Section 646.27 is redesignated as § 646.28; § 646.25 is redesignated as § 646.27; and a new § 646.25 is added to read as follows:

§ 646.25 Commercial trip limits.

Persons who are not subject to the bag limits and who fish in the EEZ on a trip are subject to the following vessel trip limits. (See § 646.23(a)(1) for applicability of the bag limits.)

(a) *Snowy grouper* (whole weight or gutted weight, that is, eviscerated but otherwise whole).

(1) Until the fishing year quota specified in § 646.24(b) is reached, 2,500 pounds (1,134 kg).

(2) After the fishing year quota specified in § 646.24(b) is reached, 300 pounds (136 kg).

(b) *Golden tilefish* (whole weight or gutted weight, that is, eviscerated but otherwise whole).

(1) Until the fishing year quota specified in § 646.24(c) is reached, 5,000 pounds (2,268 kg).

(2) After the fishing year quota specified in § 646.24(c) is reached, 300 pounds (136 kg).

(c) *Reduction of trip limits.* When a commercial quota specified in § 646.24(b) or (c) is reached, or is projected to be reached, the Assistant Administrator will file a notice to that effect with the Office of the Federal Register. On and after the effective date of such notice, for the remainder of the fishing year, the appropriate trip limit applies.

(d) A person who fishes in the EEZ may not combine a trip limit under this section with any trip or possession limit applicable to state waters.

(e) A snowy grouper or golden tilefish taken in the EEZ may not be transferred at sea, regardless of where such transfer takes place; a snowy grouper or golden tilefish may not be transferred at sea in the EEZ, regardless of where such snowy grouper or golden tilefish was taken.

(f) Snowy grouper or golden tilefish in excess of an applicable trip limit specified in paragraph (a) or (b) of this section may not be sold, purchased, traded, or bartered, or attempted to be sold, purchased, traded, or bartered.

12. In § 646.26, a new paragraph (d) is added to read as follows:

§ 646.26 Area limitations.

* * * * *

(d) *Habitat area of particular concern (HAPC).* (1) The Oculina Bank, which is a coral HAPC under § 638.23(c) of this chapter, is bounded on the north by 27°53′N. latitude, on the south by 27°30′N. latitude, on the east by 79°56′W. longitude, and on the west by 80°00′W. longitude.

(2) No fishing for fish in the snapper-grouper fishery may be conducted in the Oculina Bank HAPC; such fish may not be retained in or from the Oculina Bank HAPC. Fish in the snapper-grouper fishery taken incidentally in the Oculina Bank HAPC by hook-and-line gear must be released immediately by cutting the line without removing the fish from the water. It is a rebuttable presumption that fishing aboard a vessel that is anchored in the HAPC constitutes

fishing for fish in the snapper-grouper fishery.

(3) See § 638.23(c) of this chapter for prohibitions on fishing with bottom longlines, traps, pots, dredges, and bottom trawls in the Oculina Bank HAPC.

Figure 3 to Part 646 [Redesignated as Figure 2 to Part 646]

13. Figure 2 to part 646 is removed and Figure 3 to part 646 is redesignated as Figure 2 to part 646.

[FR Doc. 94–12897 Filed 5–25–94; 8:45 am]

BILLING CODE 3510–22–P