

shall be confined to hospitals or other healthcare facilities.

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## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

#### 50 CFR Part 17

RIN 1018-AD20

#### Endangered and Threatened Wildlife and Plants; Proposed Special Rule for the Conservation of the Northern Spotted Owl on Non-Federal Lands

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Reopening of the comment period for the proposed special rule.

**SUMMARY:** On February 17, 1995, the Fish and Wildlife Service (Service) published a proposed special rule in the Federal Register (60 FR 9484, February 17, 1995) pursuant to section 4(d) of the Endangered Species Act (Act), to replace the blanket prohibitions against incidental take of spotted owls with a narrower, more tailor-made set of standards that reduce prohibitions applicable to timber harvest and related activities on specified non-Federal forest lands in Washington and California. The comment period was scheduled to end on January 26, 1996. The intent of this document is to reopen the comment period to March 1, 1996.

**DATES:** The comment period for written comments is reopened until March 1, 1996.

**ADDRESSES:** Comments and materials concerning this proposed rule should be sent to Mr. Michael J. Spear, Regional Director, Region 1, U.S. Fish and Wildlife Service, 911 N.E. 11th Avenue, Portland, Oregon 97232-4181.

**FOR FURTHER INFORMATION CONTACT:** Mr. Curt Smith, Assistant Regional Director, North Pacific Coast Ecoregion, 3704 Griffin Lane SE, Suite 102, Olympia, Washington 98501 (360/534-9330); or Mr. Ron Crete, Manager, Habitat Protection and Restoration, Office of Technical Support-Forest Resources, P.O. Box 3623, Portland, Oregon 97204-3623 (503/326-6700).

#### SUPPLEMENTARY INFORMATION:

##### Background

The implementing regulations for threatened wildlife generally incorporate the prohibitions of section 9 of the Endangered Species Act of 1973, as amended (Act), for endangered wildlife, except when a "special rule"

promulgated pursuant to section 4(d) of the Act has been issued with respect to a particular threatened species. At the time the northern spotted owl, *Strix occidentalis caurina*, was listed as a threatened species in 1990, the Service did not promulgate a special section 4(d) rule and therefore, all of the section 9 prohibitions, including the "take" prohibitions, became applicable to the species. To replace the blanket prohibitions against take of spotted owls, the Service published a proposed special rule, 50 CFR Part 17, on February 17, 1995, in the Federal Register, pursuant to section 4(d) of the Act, which proposes a narrower, more tailor-made set of standards that reduce prohibitions applicable to timber harvest and related activities on specified non-Federal forest lands in Washington and California.

#### List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, and Transportation.

Authority: The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*)

Dated: January 25, 1996.

Curt Smith,

*Acting Regional Director, U.S. Fish and Wildlife Service, Region 1, Portland, Oregon.*

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 641

[Docket No. 960123012-6012-01; I.D. 011995A]

RIN 0648-AF78

#### Reef Fish Fishery of the Gulf of Mexico; Red Grouper Size Limits

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

**ACTION:** Proposed rule; request for comments.

**SUMMARY:** In accordance with the Gulf of Mexico Fishery Management Council's (Council) proposed regulatory amendment under the framework procedure for adjusting management measures of the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico (FMP), NMFS proposes to change the minimum allowable size

of red grouper, currently 20 inches (50.8 cm), to 18 inches (45.7 cm) for persons not subject to the bag limit. The intended effect of this rule is to facilitate harvest of the annual commercial quota for the shallow-water grouper complex, thereby achieving optimum yield.

**DATES:** Written comments must be received on or before March 1, 1996.

**ADDRESSES:** Comments on the proposed rule should be sent to Michael E. Justen or Robert Sadler, Southeast Region, NMFS, 9721 Executive Center Drive N., St. Petersburg, FL 33702.

Requests for copies of the regulatory amendment, which includes an environmental assessment and a regulatory impact review, and for copies of a minority report submitted by five members of the Council, should be sent to the Gulf of Mexico Fishery Management Council, 5401 W. Kennedy Boulevard, Suite 331, Tampa, FL 33609-2486.

**FOR FURTHER INFORMATION CONTACT:** Michael E. Justen or Robert Sadler, 813-570-5305.

**SUPPLEMENTARY INFORMATION:** The reef fish fishery of the Gulf of Mexico is managed under the FMP. The FMP was prepared by the Council and is implemented by regulations at 50 CFR part 641.

#### Proposed Management Measures

The 9.8-million lb (4.4-million kg) shallow-water grouper quota for the commercial fishery has not been taken in recent years. The shallow-water grouper complex includes red grouper, which historically (1986-91) comprised 62 percent of the commercial catch before the current minimum size limit became effective on February 21, 1990. Grouper fishermen testifying to the Council requested the proposed reduction in the minimum allowable size of red grouper from 20 inches (50.8 cm) to 18 inches (45.7 cm) for persons not subject to the bag limit to facilitate the harvest of the quota. These fishermen also noted that wastage occurred in the fishery from discarding dead 18- and 19-inch fish and from using undersized grouper for bait. Utilization of undersized grouper for bait is illegal since § 641.7(f) prohibits the possession of fish smaller than the minimum size limit. Most of these hidden sources of fishing mortality would be counted against the quota under an 18-inch minimum size limit, thereby providing a more accurate estimate of fishing mortality.

The Council reviewed a red grouper stock assessment completed in September 1994 by the Southeast Fisheries Science Center, NMFS,

indicating that the spawning potential ratio (SPR) is above the 20 percent level, the threshold below which the stock would be considered overfished. At its November 1994 meeting, the Council voted to reduce the commercial and recreational minimum size limit for red grouper to 18 inches (45.7 cm) and subsequently submitted a regulatory amendment to NMFS for review, approval, and implementation. NMFS informed the Council that the regulatory amendment would be held in abeyance until the Council considered new scientific information regarding the effects of the proposed change in size limits on the stock.

The Council accepted public comment on the new scientific information and the red grouper size limit issue in two hearings on March 9, 1995, and also at its March 13–16, 1995, meeting. After considering the public testimony and recommendations of its Stock Assessment Panel (SAP), and Scientific and Statistical Committee (SSC), the Council approved a red grouper minimum size of 20 inches (50.8 cm) for the recreational sector and 18 inches (45.7 cm) for commercial sector. The Council subsequently submitted a revised regulatory amendment (first revised) to NMFS for review, approval, and implementation.

On April 12, 1995, NMFS rejected the revised regulatory amendment primarily because of the uncertainty of the impacts the reduced commercial size limit would have on the long-term productivity of the stock. Given uncertainties at that time with the available scientific information about the condition of the red grouper resource, NMFS informed the Council that approval of the measure would pose an unacceptable risk of allowing overfishing.

The Council voted at its meeting of July 17–20, 1995, in Key West, Florida, to submit to NMFS another revised regulatory amendment (second revised) proposing the change in the commercial minimum size limit. The Council's action was based on its review of new scientific information available since NMFS' disapproval of the first revised regulatory amendment. Also, the Council's action was based on a review of the new information by its Scientific and Statistical Committee (SSC) and Reef fish Stock Assessment Panel. After considering the new information, the SSC withdrew its previous opposition to the 18-inch size limit for the commercial fishery.

For the second revised regulatory amendment that this rule would implement, the Council determined that the less restrictive commercial size limit

of 18 inches (45.7 cm) is needed to achieve harvest of red grouper at the optimum yield level on an annual basis while ensuring that the SPR remains above 20 percent. In addition, the Council expects that movement of fishing effort to nearshore waters, where smaller red grouper are more common, will reduce operating costs in the fishery.

The Council's recommended changes are within the scope of the management measures that may be adjusted under the FMP's framework procedure referred to at 50 CFR 641.28; accordingly, the Council's proposal is published herein for comment. Consistent with the framework procedures, the Director, Southeast Region, NMFS, will make a final decision regarding whether the proposed action is consistent with the objectives of the FMP, the National Standards and other provisions of the Magnuson Fishery Conservation and Management Act, and other applicable law after considering the public comment received on the proposed rule and regulatory amendment. If this decision is affirmative, he will approve the regulatory amendment and forward an implementing final rule for publication in the Federal Register.

#### Comments Requested

Since the Council adopted the first revised regulatory amendment in March 1995, NMFS has received more than 200 comments from recreational and commercial fishermen, representatives of environmental interests groups, and interested members of the public expressing their views about the proposed minimum size reduction for the Gulf of Mexico commercial red grouper fishery. This rule invites additional public comments on the Council's proposal. On July 20, 1995, the Council took final action to adopt the second revised regulatory amendment. Those parties who have provided NMFS with comments since July 20, 1995, on the appropriate commercial minimum size limit for red grouper need not repeat their comments during the comment period on this rule. NMFS will consider these earlier comments in taking final action on the Council's proposal.

While NMFS is inviting comments on all relevant aspects of the reduced commercial fishery minimum size limit, comments are specifically invited on the following concerns that reflect issues raised by public comments to date: (1) What are the long- and short-term economic and social effects of the proposed rule on the commercial and recreational fishing sectors? (2) What are the possible conflicts between the

commercial and recreational fishing sectors that may result from having different size limits for each sector, particularly where the smaller size limit for the commercial fishery may result in its harvesting more of the resource than in the past? (3) Is use of an 18-inch (45.7-cm) minimum size limit for the commercial fishery consistent with the Magnuson Act's National Standards and with the FMP's management objectives, particularly with FMP Objective 4 that calls for minimizing conflicts between user groups of the resource and with Objective 2 (under FMP Amendment 8) that calls for avoiding, to the extent practicable, the derby-type fishing season? (4) What are the associated difficulties with enforcing different minimum size limits for the commercial and recreational sectors and different commercial fishery size limits for Federal and adjacent state waters (i.e., 18 inches in the EEZ and 20 inches in Florida's waters)? NMFS is particularly interested in any data or other reliable information that would substantiate public views regarding the expected impacts of this proposal.

#### Minority Report

A minority report signed by five Council members raises numerous objections and concerns about: (1) Difficulties of enforcing different red grouper size limits for Federal and state waters; (2) adverse impacts in the marketplace based on the expected increased rate of red grouper landings; and (3) inconsistency with several of the Magnuson Act's National Standards and with the FMP's management objectives. Copies of the minority report are available (see ADDRESSES). If issued, a final rule will respond to: (1) Comments received by NMFS since July 20, 1995, on the appropriate minimum commercial size limit for red grouper, (2) the minority report, and (3) comments received by NMFS during the comment period on this proposed rule and regulatory amendment.

#### Additional Measure Proposed by NMFS

Section 641.4(a)(1)(i) specifies that a vessel permit is required as a prerequisite to selling reef fish. NMFS proposes a revision of the prohibition at § 641.7(s) regarding the sale of fish without a vessel permit to provide a specific reference to § 641.4(a)(1)(i) in this regard.

#### Classification

This proposed rule has been determined to be not significant under E.O. 12866.

The Assistant General Counsel for Legislation and Regulation of the

Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities, because it would not reduce annual gross revenues, increase production costs or Federal compliance costs, or force small business entities to cease operation. As a result, a regulatory flexibility analysis was not prepared.

#### List of Subjects in 50 CFR Part 641

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: January 25, 1996.

Gary Matlock,

*Program Management Officer, National Marine Fisheries Service.*

For the reasons set out in the preamble, 50 CFR part 641 is proposed to be amended as follows:

### **PART 641—REEF FISH FISHERY OF THE GULF OF MEXICO**

1. The authority citation for part 641 continues to read as follows:

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

2. In § 641.7, paragraph (s) is revised to read as follows:

#### **§ 641.7 Prohibitions.**

\* \* \* \* \*

(s) Purchase, barter, trade, or sell, or attempt to purchase, barter, trade, or sell, a reef fish harvested aboard a vessel for which a valid permit has not been issued, as specified in § 641.4(a)(1)(i), or possessed under the bag limits, as specified in § 641.24(g).

\* \* \* \* \*

3. In § 641.21, paragraphs (a)(2) through (a)(6) are revised and paragraph (a)(7) is added to read as follows:

#### **§ 641.21 Harvest limitations.**

(a) \* \* \*

(2) Gray, mutton, and yellowtail snappers—12 inches (30.5 cm) total length.

(3) Lane and vermilion snappers—8 inches (20.3 cm) total length.

(4) Red grouper—20 inches (50.8 cm) total length for a fish taken by a person subject to the bag limit specified in § 641.24(b)(3) and 18 inches (45.7 cm) total length for a fish taken by a person not subject to the bag limit.

(5) Nassau, yellowfin, and black groupers and gag—20 inches (50.8 cm) total length.

(6) Greater amberjack—28 inches (71.1 cm) fork length for a fish taken by a person subject to the bag limit specified in § 641.24(b)(4) and 36 inches (91.4 cm) fork length, for a fish taken by a person not subject to the bag limit.

(7) Black sea bass—8 inches (20.3 cm) total length.

\* \* \* \* \*

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