

Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This proposed rule establishes the means to monitor the international trade in several native U.S. species and does not impose any new or changed restriction on the trade of legally acquired specimens. Based on current exports of these species, we estimate that the costs to implement this rule will be less than \$2,000,000 annually due to the costs associated with obtaining permits. Similarly, this proposed rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule:

- a. Does not have an annual effect on the economy of \$100 million or more.
- b. Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions.
- c. Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

This proposed rule does not impose an unfunded mandate of more than \$100 million per year or have a significant or unique effect on State, local, or tribal governments or the private sector because we, as the lead agency for CITES implementation in the United States, are responsible for the authorization of shipments of live wildlife, or their parts and products, that are subject to the requirements of CITES.

Under Executive Order 12630, this proposed rule does not have significant takings implications since there are no changes in what may be exported. The permit requirement will not alter the current criteria for exports of these specimens.

Under Executive Order 13132, this proposed rule does not have sufficient federalism implications to warrant the preparation of a federalism assessment because it will not have a substantial direct effect on the States, on the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government. Although this proposed rule will generate information that will be beneficial to State wildlife agencies, it is not anticipated that any State monitoring or control programs will need to be developed to fulfill the purpose of this proposed rule. We have consulted the States, through the International Association of Fish and Wildlife Agencies, on this proposed action.

Under Executive Order 12988, the Office of the Solicitor has determined that this proposed rule does not unduly burden the judicial system and meets the requirements of Sections 3(a) and 3(b)(2) of the Order.

This proposed rule does not contain new or revised information collection for which Office of Management and Budget approval is required under the Paperwork Reduction Act. The referenced information collection is covered by an existing OMB approval and has been assigned clearance No. 1018-0093, Form 3-200-27, with an expiration date of January 31, 2001; implementing regulations for the CITES documentation appear at 50 CFR 23. We may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

This proposed rule does not constitute a major Federal action significantly affecting the quality of the human environment. The action is categorically excluded under 516 DM 2, Appendix 1.10 in the Departmental Manual. A detailed statement under the National Environmental Policy Act of 1969 is not required.

Executive Order 12866 requires each agency to write regulations that are easy to understand. We invite your comments on how to make this proposed rule easier to understand, including answers to questions such as the following: (1) Are the requirements in the proposed rule clearly stated? (2) Does the proposed rule contain technical language that interferes with its clarity? What else could we do to make this proposed rule easier to understand? (3) Does the format of the proposed rule (grouping and order of the sections, use of headings, paragraphing, etc.) aid or reduce its clarity? (4) Is the description of the regulation in the **SUPPLEMENTARY INFORMATION** section of the preamble helpful in understanding the regulation?

EO 12866 provides for a 60-day comment period as a general practice. But, in this case, we believe that a 60-day comment period is unnecessary for the following reasons: (1) Since the proposed listings included species that were previously proposed for listing in Appendix II at the last COP, the Service has received substantial comments in the past, and (2) The Service has had preliminary discussions with various State wildlife agencies regarding the proposed listings. In addition, we believe that the listing of these species on Appendix III should correspond closely with the next COP, which will be held in April 2000.

Authors: This proposed rule was prepared by Dr. Susan Lieberman and Timothy VanNorman, Office of Scientific Authority, under authority of the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*).

This proposed rule, if adopted, would result in a final decision that would amend 50 CFR 23.23 by adding Alligator snapping turtle (*Macroclemys temminckii*) and all species of map turtles (*Graptemys* sp.) to Appendix III of CITES for the United States. After analysis of the comments on the proposed rule, we will publish our decision in the **Federal Register**. If adopted, we would submit the additions to the CITES Secretariat, who has 90 days for inclusion in Appendix III and formal notification to the CITES Party countries. Therefore, the effective date for implementing the amendment to 50 CFR 23 would be 90 days from publishing the final rule. However, we will contact the Secretariat prior to publishing the final rule, if adopted, to clarify the exact time period required by the Secretariat to implement the listing.

Dated: December 21, 1999.

**Donald J. Barry,**

*Assistant Secretary for Fish and Wildlife and Parks.*

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 622

[Docket No. 000120016-0016-01; I.D. 112299C]

RIN 0648-AM70

#### **Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Reef Fish Fishery of the Gulf of Mexico; Gag, Red Grouper, and Black Grouper Management Measures**

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

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

**SUMMARY:** NMFS issues proposed regulations to implement a regulatory amendment prepared by the Gulf of Mexico Fishery Management Council (Council) in accordance with framework procedures for adjusting management measures of the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico (FMP). These proposed

regulations would increase the commercial and recreational minimum size limits for gag and black grouper; prohibit the commercial harvest and the sale or purchase of gag, black grouper, and red grouper from February 15 to March 15 each year; and establish two areas in the eastern Gulf of Mexico that would be closed to all fishing (except fishing for highly migratory species). The intended effect of these proposed regulations is to protect the spawning aggregations for these species and to prevent overfishing.

**DATES:** Comments must be received no later than 5:00 p.m., eastern standard time, on February 10, 2000.

**ADDRESSES:** Written comments on the proposed rule must be sent to Dr. Roy E. Crabtree, Southeast Regional Office, NMFS, 9721 Executive Center Drive N., St. Petersburg, FL 33702. Comments also may be sent via fax to 727-570-5583. Comments will not be accepted if submitted via e-mail or Internet.

Requests for copies of the regulatory amendment, which includes an environmental assessment, a regulatory impact review (RIR), and an initial regulatory flexibility analysis (IRFA), and requests for copies of minority reports submitted by some Council members should be sent to the Gulf of Mexico Fishery Management Council, 3018 U.S. Highway 301 North, Suite 1000, Tampa, FL 33619-2266; telephone: 813-228-2815; fax: 813-225-7015; or e-mail: gulf.council@noaa.gov.

**FOR FURTHER INFORMATION CONTACT:** Dr. Roy E. Crabtree, telephone: 727-570-5305, fax: 727-570-5583, e-mail: roy.crabtree@noaa.gov.

**SUPPLEMENTARY INFORMATION:** The reef fish fishery in the exclusive economic zone (EEZ) of the Gulf of Mexico is managed under the FMP. The FMP was prepared by the Council and approved and implemented by NMFS under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) by regulations at 50 CFR part 622.

The Council has proposed adjusted management measures (regulatory amendment) for the Gulf gag and black grouper fisheries for NMFS' review, approval, and implementation. These measures were developed and submitted to NMFS under the FMP's framework procedure for annual adjustments in total allowable catch and related measures (framework procedure). This proposed rule would implement the measures contained in the Council's regulatory amendment.

**Background**

The actions proposed in this regulatory amendment are intended to prevent overfishing by reducing the recreational and commercial harvest of gag, black grouper, and red grouper, and to evaluate the effectiveness of area closures in protecting gag spawning aggregations and male gag. The 1998 and 1999 NMFS Reports to Congress on the Status of Fisheries of the United States listed gag as approaching an overfished condition. The Council included black grouper in the regulatory amendment as a precautionary measure and because the identification of gag and black grouper is often confused. The Council included red grouper in the prohibition-of-sale measure because a closed season for gag and black grouper only would result in commercial

fishermen targeting red grouper, with an incidental bycatch and related release mortality of gag and black grouper. Furthermore, the Council was concerned that a measure protecting only gag and black grouper would shift effort to red grouper and exacerbate problems with that stock; a recent NMFS stock assessment suggests that red grouper are overfished.

The proposed rule would (1) increase the recreational minimum size limits for gag and black grouper from 20 inches to 22 inches (50.8 cm to 55.9 cm) immediately and by 1 inch (2.5 cm) each subsequent year (effective dates 1 and 2 years, respectively, after the effective date of the final rule) until 24 inches (61.0 cm) is reached; (2) increase the commercial minimum size limit for gag and black grouper from 20 inches to 24 inches (50.8 cm to 61.0 cm); (3) prohibit the sale of gag, black grouper, and red grouper harvested from the Gulf EEZ from February 15 to March 15; and (4) establish two areas in the eastern Gulf (Madison and Swanson sites and Steamboat Lumps) that would be closed to all fishing, except fishing for highly migratory species—tunas, sharks, and billfishes. The Council has requested that NMFS' Highly Migratory Species Division (HMS Division), Office of Sustainable Fisheries, issue a compatible rule prohibiting fishing for all Atlantic highly migratory species in these two areas. The HMS Division is currently considering this request and expects to take appropriate action soon. The boundaries of the two proposed closed areas (219 square nautical miles (751 km<sup>2</sup>) total area) are as follows:

**Madison and Swanson Sites**

NW corner	29°17' N. lat., 85°50' W. long.
NE corner	29°17' N. lat., 85°38' W. long.
SW corner	29°06' N. lat., 85°50' W. long.
SE corner	29°06' N. lat., 85°38' W. long.

**Steamboat Lumps**

NW corner	28°14' N. lat., 84°48' W. long.
NE corner	28°14' N. lat., 84°37' W. long.
SW corner	28°03' N. lat., 84°48' W. long.
SE corner	28°03' N. lat., 84°37' W. long.

The proposed minimum size limits recommended by the Council are

intended to allow some female gag to reach sexual maturity and spawn before

being subjected to fishing mortality. Most gag mature at ages of 3 to 4 years

and a length of about 24 inches (61.0 cm). The regulatory amendment suggests that the immediate 22-inch (55.9-cm) recreational size limit would reduce recreational landings by as much as 16 percent, and the immediate 24-inch (61.0-cm) commercial size limit would reduce commercial landings by about 6 percent. The proposal to increase the recreational size limit to 24 inches (61.0 cm) 2 years after initial implementation of this rule could reduce recreational landings by as much as 36 percent compared with the current 20-inch (50.8-cm) size limit. It is likely that the reduction in recreational harvest in subsequent years will be moderated by the increasing availability of larger gag resulting from the previous increases in the minimum size limit.

The no-sale provision from February 15 to March 15 each year is expected to reduce the commercial gag and black grouper harvest by about 10 percent and the commercial red grouper harvest by about 7 percent; however, these estimates assume that commercial fishing effort will not shift in response to this measure. Comments by the NMFS Southeast Fisheries Science Center suggest that shifts in fishing effort (i.e., for example increased effort immediately before the closure) are likely to reduce the effectiveness of this measure.

In addition to its goal of reducing the harvest, the Council acted out of concern that male gag have been depleted and that action is needed to protect them. The best scientific available information suggests that the proportion of males in the population has decreased dramatically over the past 20 years. The Council heard conflicting scientific testimony regarding the need for establishing closed areas to protect male gag and considered several options. The Council's rationale for the proposed closed areas is to allow research on the effects of area closures on gag populations. The areas selected for closure are believed to be important spawning areas for gag, which spawn in dense aggregations that are particularly vulnerable to fishing. The Council believes that a closure of the two areas to only gag fishing probably would not have the intended effect because continued fishing for other reef fish species would result in a large bycatch of gag. Thus, the proposed closure applies to all fishing (except fishing for highly migratory species). The closed areas are in relatively deep water where the survival rate of discarded bycatch species would be low. The closure would extend for 4 years to allow NMFS and the Council to evaluate the utility of closed areas for grouper management.

The two closed areas are expected to reduce commercial landings of gag by about 2 percent, black grouper by about 1.5 percent, and red grouper by about 0.6 percent. If fishing effort shifts from the closed area into other areas, the actual reduction in landings would be less. The closed areas are expected to have little effect on recreational landings.

The NMFS Southeast Fisheries Science Center expressed the following concerns regarding the proposed closed areas: (1) Existing baseline data are inadequate to evaluate changes in gag populations that could be attributed to the closure; (2) the duration of the closure (4 years) is too short to expect measurable benefits and changes resulting from the closure; (3) no criteria are proposed with which to judge the "success" or "failure" of the closure; and (4) Gulf-wide conclusions about the efficacy of closed areas would necessitate an experimental design utilizing replicate closed areas and controls. NMFS seeks public comment regarding these concerns.

Council members opposing portions of the regulatory amendment submitted three minority reports. One minority report argued that (1) the proposed measures are insufficient to prevent overfishing and would place a greater share of the burden from the reduction in harvest on the recreational sector; (2) the 1-month closure of the commercial fishery was too short to be effective; (3) the closure of the two areas to all fishing unnecessarily restricts fishing for species other than reef fish; and (4) the closure should apply only to reef fish fishing and bottom fishing with gear capable of catching reef fish. Two other minority reports argued that: (1) the delay in increasing the recreational minimum size limit to 24 inches (61.0 cm) is unjustified and recommended an immediate increase to 24 inches (61.0 cm); (2) the measures in the regulatory amendment are not based upon the best available science, specifically referring to comments by a consultant hired by the commercial industry; (3) the 1-month closure of the commercial fishery only is unfair and that the recreational fishery should also be closed; and (4) the regulatory amendment fails to reduce bycatch in the recreational fishery. Copies of the minority reports are available (see **ADDRESSES**).

#### **Classification**

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) that describes the impact this proposed

rule, if adopted, would have on small entities as required by 5 U.S.C. § 604(a). A summary of the IRFA follows.

The Council determined that 340 commercial vessels and a small, but undetermined, number of for-hire vessels historically fishing in the EEZ of the Gulf of Mexico would be adversely affected by the action to close areas on a year-round basis. The typical commercial vessel participating in this fishery uses handline gear, has an average length of 38 ft (11.6 m), and generates average annual gross revenues of about \$50,000. The minimum size limit and the seasonal no-sale provision in combination would affect 754 commercial vessels and a substantial, but unknown, number of for-hire vessels. Since some vessels will be affected by all the actions, the numbers are not additive; to add them would result in double counting. Hence, the expectation is that at least 754 commercial vessels constituting over 62 percent of the commercial fleet and a substantial, but unknown, number of for-hire vessels will be affected. All of the businesses supported by these vessels are classified as small business entities, and a substantial number of small business entities would be affected by the proposed actions. The proposed measures would be expected to reduce annual gross revenues by more than 5 percent.

The Council proposed this rule because the gag stock is approaching an overfished condition and because the Magnuson-Stevens Act requires that the Council take action to prevent overfishing. The proposed management measures are intended to prevent fishing mortality from exceeding a rate that corresponds to a 20 percent static spawning potential ratio, which was the FMP's threshold for defining overfishing at the time the regulatory amendment was prepared. The Magnuson-Stevens Act, as amended, provides the legal basis for the rule.

In addition to the actions described in this proposed rule, the Council considered and rejected the following gag management alternatives: (1) Set a total allowable catch; (2) allocate a total allowable catch between recreational and commercial users; (3) set a separate bag limit; and (4) set a commercial trip limit. The Council rejected these alternatives in order to minimize adverse impacts on small business entities and because overfishing of gag and black grouper stocks could be prevented by the selected alternatives. A discussion of the alternatives considered by the Council follows.

The proposed alternative for the gag and black grouper minimum size limit

is an immediate increase in the commercial size limit from 20 to 24 inches (50.8 cm to 61.0 cm) and an immediate increase in the recreational minimum size limit from 20 to 22 inches (50.8 cm to 55.9 cm) followed by 1-inch (2.54-cm) increases for each of the next 2 years, at which time the recreational and commercial minimum size limits will be identical—24 inches (61.0 cm). The Council considered and rejected four alternatives to change the size limits for gag and black grouper, including the status quo 20-inch (50.8-cm) minimum size limit. The Council rejected the status quo size limit because the reduction in fishing mortality would not be sufficient to prevent overfishing. The other rejected alternatives would have increased the minimum size limit from 20 inches (50.8 cm) to 24 inches (61.0 cm), but the schedule of the increase varied. The short-term adverse economic impact of the size limit increase was greatest with an immediate increase to 24 inches (61.0 cm) and least with an increase of one 1 inch (2.54-cm) every 2 years. However, postponement of the size-limit increase will also delay fishing-mortality reductions, which are needed to prevent overfishing. The proposed alternative would provide an immediate and substantial reduction in fishing mortality while minimizing adverse economic impacts. The number of for-hire businesses expected to be affected by the size limits is unknown; these businesses tend to employ traditional charter fishing boats with offshore capability.

The Council considered and rejected three alternatives, including the status quo, to the proposed February 15 to March 15 prohibition of sale of gag, black grouper, and red grouper. The Council rejected the status quo because it would not reduce overfishing. Two other rejected alternatives would have prohibited sale of these species for longer periods (2 or 4 months) and would have resulted in greater adverse economic impacts. The Council rejected these alternatives based on its belief that the proposed alternative, combined with

the other proposed measures, would reduce fishing mortality sufficiently to prevent overfishing while minimizing the short-term negative impacts on small entities.

The Council considered several alternatives for the gag area closure, including proposals to close specific areas to commercial and recreational fishing during part or all of a 4-year period. The proposed alternative would prohibit recreational and commercial fishing for all species under the Council's FMPs for a 4-year period in two specific areas of the eastern Gulf where gag are known to be present. The Council requested that NMFS issue a compatible rule prohibiting fishing for highly migratory species in these two areas and establishing a marine reserve that would expire in 4 years unless, based on the effectiveness of this measure in protecting spawning aggregations and male gag, the Council and NMFS extended the measure. The Council considered and rejected four alternatives, including the status quo. Depending upon the size of the alternative reserve and the extent of fishing activity in that area, some of the rejected alternatives would have had more severe impacts on fishermen, and some would have had less severe impacts than the proposed alternative. Larger areas with extensive fishing activity would have greater adverse economic impacts but provide greater protection to spawning aggregations and male gag. To help mitigate the unavoidable negative economic impacts associated with the preferred alternative, the Council established the 4-year expiration date to ensure that the negative impacts would not continue if the objectives associated with the area closure were not being accomplished. The areas chosen for closure would provide the best cases for scientific study, would help prevent overfishing and protect spawning aggregations during the 4-year period while minimizing adverse impacts relative to some of the rejected alternatives.

No additional reporting, record keeping, or other compliance costs were

identified. No duplicative, overlapping, or conflicting Federal rules were identified.

A copy of the IRFA is available from the Council (see ADDRESSES).

**List of Subjects in 50 CFR Part 622**

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

Dated: January 20, 2000.

**Andrew A. Rosenberg,**  
Deputy Assistant Administrator for Fisheries,  
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. In § 622.34, add paragraph (k), reserved by the November 2, 1999, publication (64 FR 59125) and add paragraph (o) to read as follows:

**§ 622.34 Gulf EEZ seasonal and/or area closures.**

\* \* \* \* \*

(k) *Closure of the Madison and Swanson sites and Steamboat Lumps.* No person may fish within the Madison and Swanson sites or Steamboat Lumps for any species of fish except highly migratory species. This prohibition is effective through [the date 4 years after the effective date of the final rule that implements this paragraph]. For the purpose of this paragraph (k), fish means finfish, mollusks, crustaceans, and all other forms of marine animal and plant life other than marine mammals and birds. Highly migratory species means tuna species, marlin (*Tetrapturus spp.* and *Makaira spp.*), oceanic sharks, sailfishes (*Istiophorus spp.*), and swordfish (*Xiphias gladius*). The Madison and Swanson sites are bounded by rhumb lines connecting, in order, the following points:

Point	North lat.	West long.
A	29°17'	85°50'
B	29°17'	85°38'
C	29°06'	85°38'
D	29°06'	85°50'
A	29°17'	85°50'

Steamboat Lumps is bounded by rhumb lines connecting, in order, the following points:

Point	North lat.	West long.
A	28°14'	84°48'
B	28°14'	84°37'
C	28°03'	84°37'
D	28°03'	84°48'
A	28°14'	84°48'

\* \* \* \* \*

(o) *Seasonal closure of the commercial fishery for gag, red grouper, and black grouper.* From February 15 to March 15, each year, no person aboard a vessel for which a valid Federal commercial permit for Gulf reef fish has been issued may possess gag, red grouper, or black grouper in the Gulf, regardless of the area harvested. However, a person aboard a vessel for which the permit indicates both charter vessel/headboat for Gulf reef fish and commercial Gulf reef fish may continue to retain gag, red grouper, and black grouper under the bag and possession limit specified in § 622.39(b), provided the vessel is operating as a charter vessel or headboat. From February 15 until March 15, each year, the sale or purchase of gag, red grouper, or black grouper is prohibited as specified in § 622.45(c)(4).

3. In § 622.37, paragraph (d)(2)(ii) is revised and paragraph (d)(2)(iii) is added to read as follows:

**§ 622.37 Size limits.**

\* \* \* \* \*

- (d) \* \* \*
- (2) \* \* \*
- (ii) Red grouper and yellowfin grouper—20 inches (50.8 cm), TL.
- (iii) Black grouper and gag—(A) For a person not subject to the bag limit specified in § 622.39(b)(1)(ii)—24 inches (61.0 cm), TL.
- (B) For a person subject to the bag limit specified in § 622.39(b)(1)(ii)—(1) Effective [30 days after the date of publication of the final rule implementing paragraph (d)(2)(iii)(B)(1) of this section] to [the date 1 year after the effective date of the final rule]—22 inches (55.9 cm), TL.
- (2) Effective from [the date 1 year after the effective date of the final rule implementing paragraph (d)(2)(iii)(B)(1) of this section] to [the date 2 years after that effective date]—23 inches (58.4 cm), TL.
- (3) Effective on and after [the date 2 years after the effective date of the final

rule implementing paragraph (d)(2)(iii)(B)(1) of this section]—24 inches (61.0 cm), TL.

\* \* \* \* \*

4. In § 622.45, paragraph (c)(4) is added to read as follows:

**§ 622.45 Restrictions on sale/purchase.**

\* \* \* \* \*

- (c) \* \* \*
- (4) From February 15 until March 15, each year, no person may sell or purchase a gag, black grouper, or red grouper harvested from the Gulf EEZ. This prohibition on sale/purchase does not apply to gag, black grouper, or red grouper that were harvested, landed ashore, and sold prior to February 15 and were held in cold storage by a dealer or processor.

\* \* \* \* \*

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