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Synopsis

As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507), the FCC is notifying the public that it received approval from OMB on February 20, 2004, for the collection(s) of information contained in the Commission's voluntary reporting requirements in 47 CFR 64.604(a)(1) and (a)(3). The OMB Control Number is 3060-1053. The annual reporting burden for the collection(s) of information, including the time for gathering and maintaining the collection of information, is estimated to be: 1 respondent, and average of 8 hours per response per annum, for a total hour burden of 8 hours, and no annual cost. Under 5 CFR 1320, an agency may not conduct or sponsor a collection of information unless it displays a current valid OMB Control Number.

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The foregoing notice is required by the Paperwork Reduction Act of 1995, Pub. L. 104-13, October 1, 1995, 44 U.S.C. 3507.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 04-6821 Filed 3-25-04; 8:45 am]

BILLING CODE 6712-01-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 031107275-4082-02; I.D. 102803A]

RIN 0648-AP03

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Snapper-Grouper Fishery off the Southern Atlantic States; Amendment 13A

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 13A to the Fishery Management Plan for the Snapper-Grouper Fishery of the South Atlantic Region (FMP). This final rule extends the current prohibitions on fishing for South Atlantic snapper-grouper in the experimental closed area and on retaining such species in or from the area. The experimental closed area constitutes a portion of the Oculina Bank Habitat Area of Particular Concern (HAPC), which is in the exclusive economic zone (EEZ) in the Atlantic Ocean off Ft. Pierce, FL. The intended effect is to continue the benefits of the closed area, namely, enhanced stock stability and increased recruitment of South Atlantic snapper-grouper by providing an area where deepwater snapper-grouper species can grow and reproduce without being subjected to fishing mortality.

DATES: This final rule is effective April 26, 2004.

ADDRESSES: Copies of the final regulatory flexibility analysis (FRFA) are available from the Southeast Regional Office, NMFS, 9721 Executive Center Drive N., St. Petersburg, FL 33702.

FOR FURTHER INFORMATION CONTACT: Julie Weeder, telephone: 727-570-5753, fax: 727-570-5583, e-mail: Julie.Weeder@noaa.gov.

SUPPLEMENTARY INFORMATION: The snapper-grouper fishery off the southern Atlantic states is managed under the FMP. The FMP was prepared by the South Atlantic Fishery Management Council (Council) and is implemented under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) by regulations at 50 CFR part 622.

In Amendment 6 to the FMP, the Council proposed prohibitions on

fishing for South Atlantic snapper-grouper in what is currently known as the experimental closed area and on retaining such species in or from the area. NMFS approved these prohibitions, and they became effective June 27, 1994 (59 FR 27242, May 26, 1994). In addition, in the experimental closed area, any South Atlantic snapper-grouper taken incidentally by hook-and-line gear must be released immediately by cutting the line without removing the fish from the water.

The experimental closed area is slightly less than 92 square nautical miles in the EEZ offshore from Ft. Pierce to Sebastian Inlet, FL. The geographical coordinates are specified at 50 CFR 622.35(c)(2). The experimental closed area constitutes a portion of the southern part of the Oculina Bank HAPC. In the entire HAPC no person may: (1) use a bottom longline, bottom trawl, dredge, pot, or trap; (2) if aboard a fishing vessel, anchor, use an anchor and chain, or use a grapple and chain; or (3) fish for rock shrimp or possess rock shrimp in or from the area on board a fishing vessel.

The preambles for both the proposed and final rules for Amendment 6 stated that the measures applicable to the experimental closed area “* * * will ‘sunset’ after 10 years if not reauthorized by the Council.” (59 FR 9721, March 1, 1994 and 59 FR 27242, May 26, 1994, respectively).

As stated above, measures applicable to the experimental closed area were intended to enhance stock stability and increase recruitment of South Atlantic snapper-grouper by providing an area where deepwater snapper-grouper species could grow and reproduce without being subjected to fishing mortality. They were based on the Council’s concern that traditional fishery management measures, such as minimum size limits and quotas, might not be sufficient to protect fully the snapper-grouper resources. The Council believed the measures would provide protection for overfished species in the management unit while minimizing adverse impacts upon user groups.

Based on limited information, there appear to be some encouraging signs of positive biological impacts from the initial 9-year prohibition of fishing for snapper-grouper species within the experimental closed area since it was established in 1994. A study conducted in 2001 found that, in the few areas where habitat remained intact, there were more and larger groupers than observed in a 1995 study, and male gag and scamp were also common. The observation of male gag and scamp is particularly of interest because size, age,

and proportion of males of these species have declined both in the Gulf of Mexico and South Atlantic regions. Other encouraging signs include the observation of juvenile speckled hind, which is a candidate species for listing under the Endangered Species Act. However, some species in the management unit remain overfished and continued protection is required.

This final rule will continue the current measures applicable to the experimental closed area indefinitely; no changes to regulatory text are required. The current measures at 50 CFR 622.35(c)(2) read as follows:

"(2) Experimental closed area. Within the Oculina Bank HAPC, the experimental closed area is bounded on the north by 27°53' N. lat., on the south by 27°30' N. lat., on the east by 79°56' W. long., and on the west by 80°00' W. long. No person may fish for South Atlantic snapper-grouper in the experimental closed area, and no person may retain South Atlantic snapper-grouper in or from the area. In the experimental closed area, any South Atlantic snapper-grouper taken incidentally by hook-and-line gear must be released immediately by cutting the line without removing the fish from the water."

The Council will review the configuration and size of the experimental closed area within 3 years of the publication date of this final rule and will re-evaluate all measures applicable to the area after 10 years.

The Council believes these actions provide the most biological, social, and economic benefits while allowing for adaptive management. Extending the prohibition on fishing for snapper-grouper species in the experimental closed area for an indefinite period will continue to protect snapper-grouper populations and protect *Oculina* coral and associated habitat. Such extension will also provide a hedge against the scientific uncertainty associated with the status of snapper-grouper species and reduce the possibility that these populations may fall below sustainable levels. Economically it is expected that the long-term benefits, such as "insurance" against the uncertainty of stock assessments and the non-use benefits of extending the prohibitions on snapper-grouper fishing in the closed area, outweigh the short-term benefits of opening the area to harvest. These measures are also expected to provide the most long-term positive impacts because they allow for adaptive management which can be seen as an assurance to the public that the area will be monitored and reviewed. Should the Council find after the 3-year review on

size and configuration that the boundaries of the area are not appropriate, they can be changed at that time. In addition, the 10-year re-evaluation period will assure the public that the area will not be closed and forgotten. Additional background and rationale for the measures discussed above are contained in Amendment 13A.

NMFS approved Amendment 13A on February 4, 2004. NMFS published a proposed rule to implement Amendment 13A and requested comments on the proposed rule through January 9, 2004 (68 FR 66069, November 25, 2003).

Comments and Responses

NMFS received eight letters from the public during the comment periods on Amendment 13A and the proposed rule. The comments are summarized below along with the responses from NMFS.

Comment 1: The Oculina Bank Experimental Closed Area (OECA) is a failed experiment in fisheries management because there was not adequate policing. The OECA should be opened immediately and indefinitely.

Response: Scientific studies suggest that there has been some success with the OECA, and that a continued closure is appropriate. Signs of recovery of snapper-grouper species in the OECA are encouraging. A recent study showed that there were more and larger groupers in the area compared to 1995, and male gag and scamp were also observed. Finally, researchers observed juvenile speckled hind, a candidate species for the endangered species list. Opening the area would result in the loss of any gains accrued in the last 10 years, and short-term gains from increased catches would be outweighed by negative impacts to snapper-grouper populations. Enforcement activity for the OECA has recently increased. In 2003, NOAA Enforcement assigned a NOAA Enforcement special agent whose responsibility was to monitor fishing activity in the Oculina Bank area and coordinate law enforcement efforts.

Comment 2: Two additional options should have been considered but were not: reducing the size of the area, and instituting a seasonal closure during spawning months for certain fish.

Response: The Council considered both of these options during the scoping process. Neither a reduction in size of the current closed area, nor a time-limited spawning closure, would be expected to provide the degree of protection required to buffer snapper-grouper stocks against the scientific uncertainty associated with management of these species. The

current size of the OECA is based on the best available scientific information, which includes, but is not limited to, the distribution of the *Oculina* coral and the deepwater snapper-grouper species associated with it. If the size of the OECA were reduced, some corals now located inside the boundaries of the present closed area would be susceptible to damage from hook-and-line gear and/or anchoring of vessels. Seasonal closures would not protect the density, sex ratio, or age, size, and community structure of fishes found in the OECA, because of harvests made in the open season. Fishing effort applied outside the closed season could remove the largest, oldest individuals with the best genetic makeup and greatest reproductive potential.

Comment 3: While the closure of the OECA as described in the preferred alternative is a step in the right direction, the OECA should be permanently (not indefinitely) closed. Some writers said it should be closed until scientists show that it is no longer necessary. One writer suggested that 3 years was not long enough to evaluate success in the area, and the site should be given adequate time before evaluation. Others suggested that regular reviews should occur, but there should be no scheduled time limitations or deadlines for review.

Response: Indefinite closure allows for adaptive management, which ensures that the area will be actively managed. Using adaptive management and the 10-year re-evaluation period, the public is assured that the area will be evaluated within prescribed timeframes and will not be re-opened prematurely. The evaluation scheduled for 3 years from the publication date of the final rule is meant to determine whether the size and shape of the OECA are appropriate, i.e., whether the configuration and location provide adequate protection for growth and reproduction of the target species, not whether fishes and corals in the area have recovered due to the closure. The deadlines set for reviews do not in themselves provide for action to change the FMP. Opening the OECA or changing the size or configuration of the area would require additional action by the Council and would necessitate analysis of the existing scientific data on the efficacy of the OECA. Any scientific reasoning for opening the OECA would be rigorously reviewed as part of that process.

Comment 4: (a) Quotas on all fish stocks in the OECA should be cut by 40 percent in 2004 and by 10 percent each successive year; (b) No fishing for snapper-grouper species should be

allowed in the area, even incidental catch; (c) The size of the OECA should be doubled; (d) More marine sanctuaries should be established under the direction of the Caribbean Fisheries Management Council; and (e) The ban on anchoring in the OECA should be extended to include non-fishing vessels.

Response: (a) The Council is currently developing Amendment 13B to the FMP. This amendment will include options to restrict harvests of overfished species of the snapper-grouper complex throughout the South Atlantic. If such restrictions are implemented, they will be based on the best available scientific information. Quotas, along with seasonal closures and size limits, are frequently used management tools that help to ensure sustainability of species in the snapper-grouper management unit. (b) Incidental bycatch is non-directed and cannot be completely avoided, unless fishing for all species (including non-snapper-grouper species) is prohibited. Current regulations require cutting the line on incidentally hooked snapper-grouper species caught in the OECA without removing them from the water. Such responsible and ethical fishing practices provide the best possible chance for survival of these fishes. (c) The size and configuration of the OECA will be re-evaluated 3 years after the publication date of this final rule. (d) Marine sanctuaries in the United States are established pursuant to the National Marine Sanctuary Act, and not pursuant to the Magnuson-Stevens Act. (e) This amendment was prepared and will be implemented under the authority of the Magnuson-Stevens Act, which regulates fishing.

Comment 5: Adequate enforcement is needed to ensure the security of the OECA, and more funding should be devoted to this end. Additional funding is needed to monitor the efficacy of the closure of the OECA.

Response: Since this amendment was developed, enforcement efforts in the OECA have been enhanced significantly. For example, the Council stressed the importance of enforcement of the OECA; NOAA General Counsel revised its penalty schedule and increased civil administrative penalties; and a NOAA Enforcement special agent was assigned to the area and is responsible for coordinating patrols of the OECA and cooperating with partners to charge violators. Furthermore, the Florida Fish and Wildlife Conservation Commission purchased a 65-ft (20-m) offshore patrol vessel through the Joint Enforcement Agreement Fund from NOAA Enforcement. One of the missions of this enforcement vessel is to patrol the Oculina Bank and OECA. An

Evaluation Plan, with needed research and monitoring studies and an enforcement/outreach program, is to be developed within 1 year of implementation of this amendment, using the expertise of the Council's Law Enforcement, Habitat, Coral, and Snapper-Grouper Advisory Panels. NMFS and the Council agree that continued research and monitoring of the OECA is important for measuring progress.

Comment 6: The Oculina Habitat Area of Particular Concern (HAPC) should be extended to include recently discovered *Oculina* thickets that lie just outside the HAPC.

Response: Amendment 13A states that, in 3 years, the size and configuration of the OECA will be re-evaluated using the best available information.

Comment 7: An integrated management plan for the OECA and HAPC should be developed that incorporates regulatory actions, research and monitoring activities, enforcement needs, and outreach and education programs.

Response: An Evaluation Plan, with needed research and monitoring studies and an enforcement/outreach program, is to be developed within 1 year of implementation of this amendment, using the expertise of the Council's Law Enforcement, Habitat, Coral, and Snapper-Grouper Advisory Panels.

Classification

The Administrator, Southeast Region, NMFS, determined that Amendment 13A is necessary for the conservation and management of the South Atlantic snapper-grouper fishery and that it is consistent with the national standards of the Magnuson-Stevens Act and other applicable laws.

This final rule has been determined to be not significant for purposes of Executive Order 12866.

NMFS prepared an FRFA, based on the Regulatory Impact Review, that describes the economic impacts that this final rule will have on small business entities. A summary of the FRFA follows:

Amendment 6 to the FMP, implemented in May 1994, established harvest and possession prohibitions for snapper-grouper species in the Oculina Experimental Closed Area. These prohibitions are scheduled to sunset in June 2004. This final rule will extend these prohibitions for an indefinite period of time for the purpose of continuing protection of snapper-grouper species, and reducing the possibility that these populations may fall below sustainable levels. Further, by

restricting the ability to harvest fish from the area, the rule is also expected to provide protection to the Oculina coral in the area. The Magnuson-Stevens Act, as amended, provides the statutory basis for the rule.

No public comments were received concerning the IRFA. Therefore, no changes were made in the final rule as a result of public comments.

The final rule does not impose any reporting or recordkeeping requirements.

There are two general classes of small entities that will be directly affected by the rule, commercial fishing vessels and for-hire fishing vessels. The Small Business Administration defines a small business that engages in commercial fishing as a firm that is independently owned and operated, is not dominant in its field of operation, and has annual receipts up to \$3.5 million per year. The revenue benchmark for a small business that engages in for-hire fishing is a firm that has annual receipts up to \$6.0 million per year.

There were 1,174 commercial vessels that participated in the snapper-grouper fishery in the South Atlantic during 2002. Of these vessels, 120 were homeported in the area of interest, where the "area of interest" is defined as those home port locations on the Florida Atlantic coast from Cape Canaveral south to West Palm Beach and are in the closest geographic proximity to the area covered by the rule. Commercial vessels operating in the snapper-grouper fishery in this area are estimated to have average annual gross and net incomes of approximately \$39,745 and \$12,388, respectively. Based on this income profile, it is assumed that all commercial fishing entities that will be affected by the rule are small entities.

For the for-hire sector, 1,221 snapper-grouper for-hire permits were issued to vessels in the southern Atlantic states in 2002. Of this total, 94 permits were issued to for-hire vessels in the area of interest. These vessels comprise two types of business operations, charterboats, which are smaller vessels designed to carry six or fewer passengers that book trips on a vessel basis, and headboats, which are larger vessels that book passage on an individual angler basis. The average gross and net revenues in 1997 for charterboats operating off the Atlantic coast of Florida are estimated at \$57,000 and \$15,000, respectively (2001 dollars), while that of headboats are estimated at \$155,000 and \$69,000, respectively (2001 dollars). Based on these gross revenue profiles, all for-hire vessels that

will be affected by the rule are assumed to be small entities.

The number of commercial and for-hire vessels that would fish in the closed area should the area reopen is not known. During the public comment period on the proposed rule, no one expressed an intent or desire to fish in the area should it reopen. However, all entities in the area of interest have the potential to enter the area. All such entities will be covered by the final rule, and all said entities are small entities.

The final rule is not expected to alter present fishing practices. All entities can continue to fish in the location, manner and frequency that they currently operate. Therefore, the final rule should not affect the profitability of identified vessels.

Five alternatives to the final rule were considered. One alternative differs from the rule only in that it lacks a specific schedule for re-evaluation of the rule. Three alternatives also lack a re-evaluation schedule and differ from the rule in the duration of the prohibition. No impacts have been identified associated with the presence or absence of a prescribed re-evaluation schedule. These four alternatives, therefore, are expected to have the same effect on the affected entities as the final rule. None of these four alternatives would restrict current fishing practices in any way and, therefore, would not impose any new operational costs and would not adversely impact current harvests. Thus, current profits of participants in this fishery are not expected to be reduced. The only impact any of these four alternatives may induce would be the elimination of potential, but not certain, increased short-term profits that might be derived from fishing activity directed into the *Oculina* area, should sunset have been allowed to occur. The fifth alternative, the no-action alternative, would allow for sunset of the prohibition. This alternative, and the three alternatives that specify shorter prohibition duration than the final rule, would allow potential, but not certain, short-term increases in profits to occur if participants re-enter the area.

However, if snapper-grouper populations become depleted as a result of directed effort inside the area, any short-term gains would dissipate. Further, these potential short-term profits are expected to be less than the benefits that will accrue to continued protection of the resource and area. The benefits of continued protection are expected to exceed any potential short-term profits that would materialize from fishing in the *Oculina* area no matter how long the prohibition continues. However, it is the Council's intent to

achieve long term continued protection and those alternatives which limit the duration of the prohibition will not meet this intent. The final rule, therefore, is not expected to induce any significant economic impacts on small entities, best suits management needs, and meet the Council's intent.

Copies of the FRFA are available upon request (see **ADDRESSES**).

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

Dated: March 19, 2004.

Rebecca Lent,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

[FR Doc. 04-6723 Filed 3-25-04; 8:45 am]

BILLING CODE 3510-22-S

appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The 2004 Pacific cod TAC specified in the 2004 final harvest specification for groundfish of the BSAI (69 FR 9242, February 27, 2004) allocated 32,791 metric tons to catcher vessels using trawl gear in the BSAI for the period 1200 hrs, A.l.t., January 1, 2004, through 1200 hrs, A.l.t., April 1, 2004. See § 679.20(c)(3)(iii), § 679.20(c)(5), and § 679.20(a)(7)(i)(A) and (B).

In accordance with § 679.20(d)(1)(i), the Administrator, Alaska Region, NMFS, has determined that the A season allocation of the 2004 Pacific cod TAC specified for catcher vessels using trawl gear in the BSAI will soon be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 32,391 mt, and is setting aside the remaining 400 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance will be reached. Consequently, NMFS is prohibiting directed fishing for Pacific cod by catcher vessels using trawl gear in the BSAI.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA, (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent the Agency from responding to the most recent fisheries data in a timely fashion and would delay the closure the A season allocation of Pacific cod specified for catcher vessels using trawl gear in the BSAI.

The AA also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is required by § 679.20 and is exempt from review under Executive Order 12866.

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