these redeterminations and instruct U.S. Customs and Border Protection to assess countervailing duties on entries of the subject merchandise during the POR from Essar based on the revised assessment rates calculated by the Department.

This notice is issued and published in accordance with section 516A(e)(1) of the Tariff Act of 1930, as amended.

Dated: September 22, 2010.

Ronald K. Lorentzen,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 2010–24312 Filed 9–27–10; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[Docket No. 100604243–0430–02]

RIN 0648–XW88

Endangered and Threatened Wildlife; Notice of 90-Day Finding on a Petition To List Warsaw Grouper as Threatened or Endangered Under the Endangered Species Act (ESA)

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

ACTION: Notice of 90-day petition finding.

SUMMARY: We (NMFS) announce a 90-day finding on a petition to list warsaw grouper (*Epinephelus nigritus*) as threatened or endangered under the ESA. We find that the petition does not present substantial scientific or commercial information indicating that the petitioned action may be warranted.

ADDRESSES: Copies of the petition and related materials are available upon request from the Chief, Protected Resources Division, Southeast Regional Office, NMFS, 263 13th Avenue South, St. Petersburg, FL 33701, or online from the NMFS HQ Web site: *http://www.nmfs.noaa.gov/pr/species/fish/warsawgrouper.htm.*

FOR FURTHER INFORMATION CONTACT: Michael Barnette, NMFS Southeast Region, 727–551–5794, or Marta Nammack, NMFS Office of Protected Resources, 301–713–1401.

SUPPLEMENTARY INFORMATION:

Background

On March 3, 2010, we received a petition from the WildEarth Guardians to list warsaw grouper (*Epinephelus nigritus*) as threatened or endangered under the ESA. Copies of this petition are available from us (see **ADDRESSES,** above).

ESA Statutory and Regulatory Provisions and Evaluation Framework

Section 4(b)(3)(A) of the ESA of 1973, as amended (U.S.C. 1531 *et seq.*), requires, to the maximum extent practicable, that within 90 days of receipt of a petition to list a species as threatened or endangered, the Secretary of Commerce make a finding on whether that petition presents substantial scientific or commercial information indicating that the petitioned action may be warranted, and to promptly publish such finding in the **Federal Register** (16 U.S.C. 1533(b)(3)(A)). When it is found that substantial scientific or commercial information in a petition indicates the petitioned action may be warranted (a "positive 90-day finding"), we are required to promptly commence a review of the status of the species concerned during which we will conduct a comprehensive review of the best available scientific and commercial information. In such cases, within 1 year of receipt of the petition, we shall conclude the review with a finding as to whether, in fact, the petitioned action is warranted. Because the finding at the 12-month stage is based on a more thorough review of the available information, as compared to the narrow scope of review at the 90-day stage, a "may be warranted" finding does not prejudge the outcome of the status review.

Under the ESA, a listing determination may address a "species," which is defined to also include subspecies and, for any vertebrate species, a distinct population segment (DPS) that interbreeds when mature (16 U.S.C. 1532(16)). A species, subspecies, or DPS is "endangered" if it is in danger of extinction throughout all or a significant portion of its range, and "threatened" if it is likely to become endangered within the foreseeable future throughout all or a significant portion of its range (ESA sections 3(6) and 3(20), respectively, 16 U.S.C. 1532(6) and (20)). The ESA requires us to determine whether species are threatened or endangered because of any one or a combination of the following five section 4(a)(1) factors: (1) The present or threatened destruction, modification, or curtailment of habitat or range; (2) overutilization for commercial, recreational, scientific, or educational purposes; (3) disease or predation; (4) inadequacy of existing regulatory mechanisms; and (5) any other natural or manmade factors affecting the species' existence (16 U.S.C. 1533(a)(1)).

ESA-implementing regulations issued jointly by NMFS and the U.S. Fish and Wildlife Service (USFWS; 50 CFR 424.14(b)) define "substantial information" in the context of reviewing a petition to list, delist, or reclassify a species as the amount of information that would lead a reasonable person to believe that the measure proposed in the petition may be warranted. In evaluating whether substantial information is contained in a petition, the Secretary must consider whether the petition: (1) Clearly indicates the administrative measure recommended and gives the scientific and any common name of the species involved; (2) contains detailed narrative justification for the recommended measure, describing, based on available information, past and present numbers and distribution of the species involved and any threats faced by the species; (3) provides information regarding the status of the species over all or a significant portion of its range; and (4) is accompanied by the appropriate supporting documentation in the form of bibliographic references, reprints of pertinent publications, copies of reports or letters from authorities, and maps (50 CFR 424.14(b)(2)).

To make a 90-day finding on a petition to list a species, we evaluate whether the petition presents substantial scientific or commercial information indicating the subject species may meet the ESA's definition of either an endangered or a threatened species, and that such status may be the result of one or a combination of the factors listed under section 4(a)(1) of the ESA. Thus, we first evaluate whether the information presented in the petition, along with the information readily available in our files, indicates that the species at issue faces extinction risk that is cause for concern. Risk classifications of the petitioned species by other organizations or made under other statutes may be informative, but may not provide rationale for a positive 90-day finding; many times these classifications are generalized for a group of species, or only describe traits of species that could increase their vulnerability to extinction if they were being adversely impacted. We evaluate any information on specific demographic factors pertinent to evaluating extinction risk for the species at issue (*e.g.,* population abundance and trends, productivity, spatial structure, age structure, sex ratio, diversity, current and historical range, habitat integrity), and the potential contribution of identified demographic risks to

extinction risk for the species. We then evaluate the potential links between these demographic risks and the causative section 4(a)(1) factors. Information on threats should be specific to the species and should reasonably suggest that one or more of these factors may be operative threats that act or have acted on the species to the point that it may warrant protection under the ESA. Broad statements about generalized threats to the species, or identification of factors that could negatively impact a species, do not constitute substantial information that listing may be warranted. We look for information that indicates not just that a species is exposed to a factor, but that also indicates the species may be responding in a negative fashion, and then we assess the potential significance of that negative response.

For a 90-day finding, we evaluate the petitioner's request based upon the information in the petition and its references, and the information readily available in our files. We do not conduct additional research, we do not subject the petition to rigorous critical review, and we do not solicit information from parties outside the agency to help us in evaluating the petition. We will accept the petitioner's sources and characterizations of the information presented, if they appear to be based on accepted scientific principles, unless we have specific information in our files that indicates the petition's information is incorrect, unreliable, or otherwise irrelevant to the requested action. Conclusive information indicating the species may meet the ESA's requirements for listing is not required to make a positive 90-day finding. If the information is equivocal, but reliable information supports a conclusion that listing the species may be warranted, we defer to the information that supports the petition's position. Uncertainty or lack of specific information does not negate a positive 90-day finding, if the uncertainty or unknown information itself suggests an extinction risk of concern for the species at issue.

Warsaw Grouper Species Description

The warsaw grouper is a large member of the sea bass or serranid family distributed from North Carolina south into the Gulf of Mexico to the northern coast of South America (Parker and Mays, 1998). Warsaw grouper seem to be rare in the West Indies, with single records from Cuba, Haiti, and Trinidad; this rarity and their apparent absence from the western Caribbean shelf may be due to the dearth of deep-water fishing in this area (Heemstra and Randall, 1993).

Adults typically inhabit rough, irregular bottoms including steep cliffs and rocky ledges of the continental shelf break in waters 180 to 1,700 feet (55 to 525 m) deep, while juveniles may occasionally be found in shallower waters (Heemstra and Randall, 1993). Warsaw grouper is considered naturally rare, and specimens are most often caught incidentally in fisheries for snowy grouper and other deep-dwelling species (Huntsman *et al.,* 1990). Very little information is available about the reproduction of warsaw grouper; eggs and larvae are presumed to be pelagic. The occurrence of post-spawning females in November may indicate a late summer spawning period (Bullock and Smith, 1991). Warsaw grouper is a long-lived species (up to 41 years) and has a slow growth rate (Manooch and Mason, 1987), with an estimated age of sexual maturity between 4 (Ault *et al.,* 1998) and 9 years (Parker and Mays, 1998). While most serranid species are protogynous hermaphrodites, with individuals first maturing as females and only some large adults becoming males, this has not been verified in warsaw grouper. Maximum size is about 7.7 feet (235 cm) and about 440 pounds (200 kg). Prey items include fish and crustaceans.

Analysis of the Petition

First we evaluated whether the petition presented the information indicated in 50 CFR 424.14(b)(2). The petition clearly indicates the administrative measure recommended and gives the scientific and any common name of the species involved; contains detailed narrative justification for the recommended measure, describing the distribution of the species, as well as the threats faced by the species; and is accompanied by the appropriate supporting documentation in the form of bibliographic references, reprints of pertinent publications, copies of reports or letters from authorities, and maps. However, the petition does not include information on the past and present numbers of the species, or information regarding the status of the species over all or a significant portion of its range, other than conclusions and opinions. This latter information is also not available in our files, as we discuss in detail below.

The petition states that the warsaw grouper is imperiled, that it has declined and continues to decline, that the primary threat to the species is commercial fishing capture, including targeted capture and as bycatch, in gillnets, longlines, bottom trawls, and other fishing gear and activities, and that recreational fishers are likely contributing to the species' endangerment. The petition states that the species' biological constraints increase its susceptibility to adverse impacts from fishing, and that the species is inadequately protected by regulatory mechanisms from the threats it faces. Thus, the petition states that at least three of the five causal factors in section 4(a)(1) of the ESA are adversely affecting the continued existence of the warsaw grouper: overutilization in fisheries; inadequacy of existing regulatory mechanisms; and other natural or manmade factors, particularly the biological constraints of the species' life history.

Information on Extinction Risk

The petition cites classifications made by NMFS, the International Union for Conservation of Nature (IUCN), the American Fisheries Society (AFS), and NatureServe to support its assertion that warsaw grouper is imperiled. Warsaw grouper was added to our species of concern list on April 15, 2004 (69 FR 19975). Warsaw grouper had previously been included on our ESA candidate species list since 1999 (64 FR 33466, June 23, 1999). A species of concern is one about which we have some concerns regarding status and threats, but for which insufficient information is available to indicate a need to list the species under the ESA (71 FR 61022; October 17, 2006). Our rationale for including warsaw grouper on the species of concern list included a potential population decline and threats from fishing and bycatch. The IUCN classified warsaw grouper as critically endangered in 2006, a status assigned to species facing an extremely high risk of extinction in the wild, based on: "an observed, estimated, inferred or suspected population size reduction of ≥ 80% over the last 10 years or three generations, whichever is the longer, where the reduction or its causes may not have ceased or may not be understood or may not be reversible, based on actual or potential levels of exploitation," and "a population size reduction of ≥ 80%, projected or suspected to be met within the next 10 years or three generations, whichever is the longer (up to a maximum of 100 years), based on actual or potential levels of exploitation" *(http://www.iucnredlist.org/apps/redlist/details/7860/0)*. In apparent contradiction with this classification, the IUCN's supporting assessment for warsaw grouper states that its population trend is unknown and describes the status of warsaw grouper as "ambiguous." The IUCN explains the critically endangered status for warsaw

grouper instead of a lower status as justified in part: "(a) Because there is no good evidence of a change in condition since the last assessment was conducted; (b) there is no clear indication that management is being effective; and (c) a precautionary approach is being taken, given increasing fishing effort in offshore waters where the species occurs."

The AFS developed its extinction risk criteria for marine fishes in part as a reaction to IUCN's criteria, which the AFS Criteria Workshop stated "grossly overestimate the extinction risk for many if not most marine fish species" because marine fish exhibit a wide range of resilience to population declines based on life history parameters (Musick, 1999). The AFS (Musick *et al.,* 2000) classified warsaw grouper in the U.S. as "endangered," which they define as a species with a "high risk of extinction in the wild in the immediate future (years)," and states the species is "now very rare, only small individuals observed" (from Huntsman *et al.,* 1999). The AFS describes warsaw grouper's risk factors as: "Very low productivity," based on estimates of Brody growth coefficient and maximum age from taxa-specific literature used in Ault *et al.* (1998); rarity; protogynous hermaphroditism; and vulnerability to overfishing (Heemstra and Randall, 1993). Finally, the AFS states warsaw grouper is particularly vulnerable "to extraordinary mortality because of their life history constraints" such as the species' large size (Musick *et al.,* 2000).

NatureServe's vulnerable classification is given to species that are "at moderate risk of extinction or elimination due to a restricted range, relatively few populations, recent and widespread declines, or other factors," but NatureServe does not provide specific information on warsaw grouper's population size or trends.

In summary, none of the cited classifications, including our own species of concern listing or other information in our files, include a specific analysis of extinction risk for warsaw grouper, or an analysis of population size or trends, or other information directly addressing whether the species faces extinction risk that is cause for concern.

The petition describes a few demographic factors specific to warsaw grouper that could be indicative of its extinction risk, for which the petition provides some supporting information. These include a declining population trend, decrease in size of animals in the population, and rarity of males. The petition also asserts that small sizes of adult populations of warsaw groupers are contributing to the species' extinction risk, but no information to support this contention is provided. The petition makes reference to the generally understood natural rarity of the species (*e.g.,* citing results in Koenig *et al.* 2000). However, rarity alone is not an indication that warsaw grouper faces an extinction risk that is cause for concern. A species' rarity could be cause for concern if the species was distributed in small, isolated populations, or had a very restricted geographic range and was subject to specific habitat degradation. Neither of these conditions appears applicable to warsaw grouper. Rarity could also subject a species to heightened extinction risk if specific stressors are negatively affecting its status and trends. Therefore, we next evaluated whether information indicates warsaw grouper's population has declined or continues to decline, and if so whether this suggests extinction risk that is cause for concern.

Population decline can result in extinction risk that is cause for concern in certain circumstances, for instance if the decline is rapid and/or below a critical minimum population threshold and the species has low resilience for recovery from a decline (Musick, 1999). The petition states that fishing has likely resulted in a population decline of warsaw grouper, and uses commercial landings and recreational catch data to document the decline. Fishery landings and catch data may provide inferences about the population status and trends of a species, though such inferences may not be reliable in the absence of information regarding the level or distribution of fishery effort over time, changes in fishing practices, or changes in regulations that may affect catch independent of changes in a species' population.

The fisheries data described in the petition include a graph of weight of warsaw grouper landed in all South Atlantic fisheries combined from the late 1970s to the mid-1990s (from Parker and Mays, 1998), reduction in average weight of landed warsaw grouper, and conclusions from a study (Rudershausen *et al.,* 2008) documenting warsaw grouper were caught recreationally in North Carolina in the 1970s, but not in 2005–2006. Information in our files includes a number of reports, mostly associated with our fishery management actions under Magnuson Stevens Fishery Conservation and Management Act (MSFCMA), noting a decline in catch of warsaw grouper beginning around the mid to late 1970s through the late 1980s or early 1990s. Our species of concern listing similarly relied on the decline in landings in the late 1980s described in Parker and Mays (1998). As will be demonstrated below, we believe that warsaw grouper has always been too uncommonly captured in fisheries for data on landings or weight of fish landed to be a reliable indicator of population status and trends.

Parker and Mays' (1998) study objective was to assemble information on little known fish species of economic importance inhabiting deep reefs (100–300 m) along the south Atlantic coast of the U.S.; the information was needed to support management measures under the MSFCMA in the early 1990s that were triggered by considerable increases in the amount of effort exerted by commercial and recreational fisheries beginning in the mid-1970s. Parker and Mays (1998) describe a downward trend in commercial landings from 1973 through 1995, but the authors also describe the commercial landings information available to them at the time as limited; reliable information on effort was described as unavailable, catch was often not reported by species, and less common species including warsaw grouper are described as "not sufficiently abundant to be targeted or recorded in catches." This observation is also echoed by Potts (2001), who noted, "the species is not that common and never has been in the South Atlantic region as long as records have been collected."

The recreational fishing data discussed in Parker and Mays (1998) are NMFS' Marine Recreational Fisheries Statistics Survey (MRFSS) landings data and headboat landings data. The MRFSS includes telephone surveys of fishing effort and an access-site intercept survey of angler catch, which are then combined and extrapolated to obtain estimates of total catch, effort, and participation for marine recreational fisheries. Headboats are for-hire vessels that carry multiple recreational fishermen to fishing locations in Federal waters. Parker and Mays (1998) describe landings based on MRFSS data as highly variable, with an apparent large spike in 1985 and a subsequent steep decline. We believe the landings data from 1985 are unreliable as an indicator of trends in the warsaw grouper population numbers for a number of reasons. Notably, the 1985 MRFSS Atlantic landings were estimated to total 99,811 fish and 1.28 million pounds (581.5 metric tons (mt)), which is almost four times greater than the highest historical catch of warsaw grouper in the combined Atlantic and Gulf of Mexico commercial fishery (0.36 million pounds (162.6 mt) in 1965). The 1985 MRFSS landings estimates were

extrapolated from low survey effort and small numbers of anglers reporting catching warsaw grouper: 6 Anglers out of 5,426 surveyed in the South Atlantic region reported catching warsaw grouper. Likewise, the headboat data analyzed by Parker and Mays (1998) were also based on very few actual fish evaluated per year—the highest being 41 fish in 1984.

Landings data alone are not very useful in assessing the condition of a population as landings can fluctuate up and down for a variety of reasons. As mentioned above, information about fishing effort, fishing practices, and regulatory measures affecting catch is generally necessary to determine whether trends in fishery landings and catch are indicative of fish species' population status or trends. For example, decline in catch per unit of effort (CPUE) is a generally accepted indicator of decline in abundance of a target fish species. The petition does not discuss information on effort and regulations respecting catch and effort. Parker and Mays (1998) discuss in general terms a considerable increase in the number of commercial and recreational vessels fishing for reef fish off the South Atlantic coast beginning in the mid-1970s. As suggested in Parker and Mays (1998), and other more recent information in our files, warsaw grouper is too infrequently captured in fisheries to allow for reliable estimation of effort or other biological metrics useful in estimating population size and trends. The most recent attempt at assessing warsaw grouper's stock status, due to its MSFCMA classification of undergoing overfishing in the South Atlantic, concluded that commercial and recreational data available were insufficient to proceed with a stock assessment for the species due to data limitations, and specifically stated MRFSS data were insufficient to calculate CPUE indices across fishery sectors (SEDAR, 2004). As mentioned above, implemented regulatory measures have restricted catch or landings, and may have affected effort, beginning in the early 1990s. For example, a deep-water grouper commercial quota was established in 1990 for the Gulf of Mexico, and a one-fish per vessel per trip limit was imposed in 1994 for the South Atlantic (regulatory measures are discussed in detail below in analysis of overutilization). As such, these measures confound our use of landings data across the available time series as indicators of population status or trends, or extinction risk.

The other information presented in the petition as evidence of a population decline of warsaw grouper is Rudershausen *et al.* (2008). However, the single quote from the study contained in the petition is misleading. The petition quotes the study, stating, "while warsaw groupers were caught in the 1970s, they were not caught in 2005–2006." However, the petition neglects to mention that while no warsaw grouper were caught in 2005–2006, only one warsaw grouper was caught from the one study site in the 1970s that was resampled in 2005–2006 (Rudershausen *et al.,* 2008). Additionally, the petition fails to note the study's statement regarding "the total fishing effort in the 1970s was greater than 2005–2006, which could explain the absence of [this] species in the latter period."

The petition includes several examples of reduction in average weight of individual warsaw grouper landed in fisheries to support their assertion the species is imperiled, including weight data reported in Parker and Mays (1988). Declines in average weight of fish may result from excessive fishing pressure, and may be a cause for concern due to potential associated declines in fecundity, as well as population instability due to truncation of the age structure. Conversely, it may also occur due to the introduction of large numbers of new recruits into the population or if fishing effort is focused on areas predominated by younger, smaller individuals of a species (*e.g.,* shallower habitats closer to shore). Regardless, we believe data on landed weight of warsaw grouper in general is unreliable to support inferences of changes in the population status or trends and extinction risk for the species. As discussed above, the numbers of fish measured to describe trends in weight per fish in Parker and Mays (1998) were extremely low throughout the period studied, with a maximum of 58 fish sampled in the commercial fishery in 1988, and 41 fish sampled in the headboat fishery in 1984. These low sample sizes resulted in very large standard deviations in mean weights in many years. Based on the data analyzed, Parker and Mays (1998) describe a reduction in average weight of warsaw grouper caught by headboats over time, but an increasing average weight in commercially caught fish towards the end of the study period. Thus, these data are conflicting as an indicator of the status or trends in the warsaw grouper population. Additionally, since warsaw grouper is an uncommonly caught recreational species, weights are frequently unreported in the MRFSS database, so there is limited weight data to evaluate for indications of population-level trends. For example, MRFSS estimates 3,711 warsaw grouper were caught by Gulf of Mexico recreational fishers in 1989, but no poundage is reported for that year. Further, given the size of adult warsaw grouper and their deep reef habitats, the difficulty in landing larger individuals may bias weight data toward smaller, younger fish.

The petition references an observation of rarity of males in the warsaw grouper population as an indication of its extinction risk (Huntsman's pers. obs., from Chuen and Huntsman, 2006). Protogynous fish populations exhibit naturally-skewed sex ratios, since fish do not transition from females to male until they reach larger sizes or older ages. Fishing pressure can exacerbate this sex bias if older, larger male fish are disproportionately removed, potentially leading to reproductive failure, or by reducing the mean lifespan of the population and reducing the probability that females will survive long enough to become males (Heppell *et al.,* 2006). The seriousness of these phenomena in protogynous fish would depend in part on whether a species is plastic or inflexible in the size or age of sex transition, and whether transition is triggered by biological or social cues, or both (Heppell *et al.,* 2006). Protogynous hermaphroditism in warsaw grouper has not been confirmed. Moreover, we have no information that indicates the size or age at which warsaw grouper might transition from female to male, or what the cues for transition may be. Even if the species is protogynous, there is no data to evaluate current or historical sex ratios within the population to determine if fishing pressure is selectively removing males resulting in an active extinction risk.

We conclude that the petition and information in our files on demographic factors of warsaw grouper does not present substantial information to indicate the species may be facing an extinction risk level that is cause for concern. Even if fisheries landings data could be interpreted as evidencing a decline in warsaw grouper's population, that would seem to have been limited to the corresponding marked increase in commercial and recreational fishing effort for all reef fish off the southeastern U.S. beginning in the mid-1970s. Management measures designed to rebuild stocks of deep-water grouper in general, and warsaw grouper specifically, in the early 1990s resulted in immediate and drastic reductions in landings. There is no indication that a population decline that might have occurred in the 1970s and 1980s

resulted in depensation or other negative effects such as loss of age classes, truncation of age structure, absence of large individuals, or shift in sex ratio in the warsaw grouper population.

Information on Threats to the Species

We next evaluated whether the information in the petition and information in our files concerning the extent and severity of one or more of the ESA section 4(a)(1) factors suggests these impacts and threats may be posing a risk of extinction for warsaw grouper that is cause for concern.

Overutilization in Fisheries

The petition states that "the primary threat to the warsaw grouper is historic and continued overfishing." In support, the petition states the South Atlantic Fishery Management Council (SAFMC) considers warsaw grouper "overfished and undergoing overfishing (NMFS 2003)." The most recent Report to Congress on the Status of U.S. Fisheries (NMFS, 2008, 2009) lists warsaw grouper under SAFMC jurisdiction as undergoing overfishing; the species' status in the Gulf of Mexico is listed as unknown. A species undergoing overfishing is one where the current fishing mortality exceeds an identified mortality threshold, while an overfished species is one where the current biomass falls short of an identified stock threshold; typically, overfishing leads to a stock becoming overfished. These MSFCMA classifications do not necessarily indicate that a species may warrant listing as a threatened or endangered species, however, because these classifications do not have any per se relationship to a species' extinction risk. For example, our 2007 status review for the Atlantic white marlin (73 FR 843, January 4, 2008; *http://sero.nmfs.noaa.gov/pr/endangered%20species/pdf/2007_Atlantic_white_marlin_status_%20review.pdf*) explained in detail important distinctions between the terms "overfished" from the MSFCMA context, and "overutilization" as used in the ESA context. While a stock can be exploited to the point of diminishing returns where the objective is to sustain a harvest of the species, that over-exploitation in and of itself does not imply a continuing downward spiral for a population. A population may equilibrate at an abundance lower than that which would support a desired harvest level, but can still be stable at that level if fishing effort is stable.

The petition also expresses concern over potential bycatch mortality. The MSFCMA defines bycatch to mean fish harvested in a fishery, but which are not sold or kept for personal use, and includes economic discards and regulatory discards; it does not include fish released alive under a recreational catch and release fishery management program. According to SEDAR (2004), estimated release mortality rates for the commercial and recreational warsaw grouper fisheries are not available. There is no available information on post-release mortality rates of warsaw grouper, but bycatch mortality, including post-release mortality, is a potential concern for deep-water species due to the likelihood of barotrauma (*i.e.,* injury resulting from expansion of gasses in internal spaces as ambient pressure is reduced during ascent). The SAFMC has noted that under the existing discard logbook program, discards are self reported and involve a high degree of uncertainty, and they also suspect that the incidental bycatch of warsaw grouper may be responsible for the continued overfishing status of the species. However, bycatch may not be a significant issue for warsaw grouper due to its natural rarity, which likely prevents significant numbers (*i.e.,* beyond the one-fish per vessel limit) from being caught by anglers in the first place, to be subsequently released and subjected to potentially high bycatch mortality rates. Estimates for warsaw grouper discards in the South Atlantic commercial deep-water grouper fishery during all handline and bandit rig gear trips from August 2001 through July 2003 indicate a mean discard rate of 0.098 fish per trip (SEDAR, 2004), and thus a low level of bycatch. Available data indicate bycatch mortality, even with a 100 percent release mortality rate, is not an extinction threat to warsaw grouper because of low catch rates. For example, the estimated average annual warsaw grouper catch-per-trip on commercial South Atlantic deep-water grouper trips (1,674 average annual trips) from 1994–2002 was 0.10 (SEDAR, 2004). Additionally, the annual average of warsaw grouper discards from commercial, headboat, and MRFSS during 2005–2008 was estimated to be 80 fish (SAFMC, 2009). Thus, we believe these low catch and retention levels of warsaw grouper prevent bycatch mortality from producing an extinction risk of concern.

In summary, the petition and information in our files does not comprise substantial information indicating that overutilization may have, or may continue to be causing extinction risk of concern in warsaw grouper.

Inadequacy of Existing Regulatory Mechanisms

The petition states that existing regulatory mechanisms are inadequate to prevent endangerment or extinction of warsaw grouper, focusing on Federal fishing regulations. Specifically, the petition identifies the lack of minimum size, lack of possession limits, and a 726 mt overall deep-water grouper quota in the Gulf of Mexico, and the 1-fish per-vessel per-trip commercial and recreational limit in the South Atlantic that is inadequate given the number of fishers.

In Federal waters of the Gulf of Mexico, warsaw grouper is managed by the Gulf of Mexico Fishery Management Council (GMFMC) through their Reef Fish Fishery Management Plan (FMP). In 1990, Amendment 1 to the FMP established a 1.8 million pound (816 mt) commercial quota for deep-water groupers, which includes misty, snowy, yellowedge, speckled hind, and warsaw grouper, and also includes scamp after the shallow-water grouper quota is filled; since 2004, the deep-water grouper commercial quota has been set at 1.02 million pounds (463 mt). Available species-specific commercial landings reveals the Gulf of Mexico fishery has never exceeded 0.3 million pounds (140 mt) of warsaw grouper. Amendment 16B to the FMP, implemented on November 24, 1999, established a one-fish per vessel recreational bag limit for warsaw grouper, and a prohibition on sale of warsaw grouper when caught recreationally. According to MRFSS landing statistics, this management action reduced recreational landings to low levels, averaging approximately 1,300 fish or 23,000 pounds (10.4 mt) of warsaw grouper annually for the period 1999 through 2009, compared to approximately 8,000 fish or 85,000 pounds (38.6 mt) annually for the period 1988 through 1998. Additionally, the GMFMC's objective for lack of a minimum size in the Gulf of Mexico is to curb bycatch of this deep-water grouper species. Allowing commercial fishermen to retain warsaw grouper that may otherwise become regulatory discards due to size prevents these fish from being thrown back dead due to barotrauma and also excluded from landings statistics.

In Federal waters of the U.S. South Atlantic, warsaw grouper is managed by the SAFMC through their Snapper Grouper FMP. Amendment 6 to the FMP, effective on July 27, 1994, included a one-fish per vessel, per trip, commercial and recreational possession limit for warsaw grouper; a prohibition

on the sale of warsaw grouper; and established the *Oculina* Experimental Closed Area, which prohibited fishing for all snapper grouper species within this area (59 FR 27242). Since the implementation of Amendment 6 in 1994, commercial landings of warsaw grouper have annually averaged approximately 240 pounds (0.1 mt) through 2008. Prior to this action, commercial landings averaged approximately 17,000 pounds (7.7 mt) during the previous 14-year time frame, 1981 through 1994.

The petition, its references, and numerous sources have stated that establishment of large marine protected areas is likely to be the most effective measure for protection and conservation of warsaw grouper. Studies have found larger and more abundant grouper in closed areas than in similar, unprotected areas (Sedberry *et al.,* 1999). Yet, the petition fails to acknowledge that this objective has characterized Federal fishery management of warsaw grouper since the early 1990s. As discussed above, the *Oculina* Banks, a unique deep-water coral reef ecosystem off the South Atlantic coast of the U.S., was protected beginning in 1994 specifically to facilitate rebuilding of deep-water grouper stocks. Amendment 13A to the FMP, effective on April 26, 2004, extended the prohibition on fishing for or possessing snapper grouper species within the *Oculina* Experimental Closed Area for an indefinite period (69 FR 15731). On February 12, 2009, Amendment 14 to the FMP established eight marine protected areas in which fishing for or possession of South Atlantic snapper grouper species is prohibited (74 FR 1621). Similarly, several large closed areas have been established in the Gulf of Mexico, including the Madison and Swanson and Steamboat Lump marine reserves.

In summary, the petition and information in our files does not constitute substantial information indicating existing regulatory mechanisms are inadequate to prevent, or are contributing to, extinction risk for warsaw grouper that is cause for concern. To the contrary, available information suggests management actions have significantly reduced landings, thereby reducing risk of overutilization in both the Gulf of Mexico and South Atlantic. Furthermore, closures of large areas in the Gulf of Mexico and South Atlantic to fishing effort, including known reef habitats important to deep-water groupers, likely offer conservation benefits to the species.

Other Natural or Manmade Factors

The petition and several referenced studies state that warsaw grouper is vulnerable to increased risk of extinction, particularly from fishing pressure, due to biological constraints, including its large size, long lifespan, late age of sexual maturity, low rates of population increase, protogynous hermaphroditism, and formation of spawning aggregations that can be easily targeted by fishermen. Concerns about the inherent vulnerability of rare deep-water grouper species has been a recurring justification for Federal fishery management actions implemented under the MSFCMA. However, as discussed above, fishing pressure has been severely curtailed on this species. Moreover, neither the petition nor information in our files suggests that fishing pressure has resulted in changes in population metrics for the species that might be expected given its particular biological constraints. Additionally, the petition's inclusion of the species' vulnerability to fishing pressure during spawning aggregations is inaccurate. While some grouper species, such as goliath and black grouper, are known to form spawning aggregations, no published studies or other available information in our files document warsaw grouper aggregate to spawn.

The petition also lists potential small population size of adult warsaw grouper and human population growth as other natural or manmade factors contributing to warsaw grouper's vulnerability, but does not provide any supporting information to indicate these generalized concerns are actually negatively affecting warsaw grouper.

Therefore, we conclude that the petition and information in our files does not present substantial information to suggest that other natural or manmade factors, alone or in combination with other factors such as fishing pressure, may be causing extinction risk of concern in warsaw grouper.

Petition Finding

After reviewing the information contained in the petition, as well as information readily available in our files, we conclude the petition fails to present substantial scientific or commercial information indicating the petitioned action may be warranted.

References Cited

A complete list of all references is available upon request from the Protected Resources Division of the NMFS Southeast Regional Office (see **ADDRESSES**).

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

Dated: September 22, 2010.

Eric C. Schwaab,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

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DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 55–2010]

Foreign-Trade Zone 169—Manatee County, Florida; Extension of Subzone; Aso LLC (Adhesive Bandage Manufacturing); Sarasota County, FL

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Manatee County Port Authority, grantee of FTZ 169, requesting to indefinitely extend Subzone 169A, on behalf of Aso LLC (formerly Aso Corporation) (Aso), located in Sarasota County, Florida. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on September 23, 2010.

Subzone 169A (229 employees, total annual capacity of 2.2 billion bandage strips per year) was approved by the Board in 2000 for the manufacture of adhesive bandages under FTZ procedures (Board Order 1120, 65 FR 58508–58509, 9/29/2000) for a period of 4 years of activation, subject to extension upon review. Subzone 169A consists of one site (166,000 square feet of enclosed space on 38 acres) located at 300 Sarasota Center Blvd., within the International Trade Industrial Park, east of Sarasota (Sarasota County), Florida. Since approval, the subzone has been activated intermittently since the company has at times instead used various duty suspension provisions on adhesive tape. Aso is now requesting to indefinitely extend its subzone status with manufacturing authority to produce adhesive bandages (HTSUS 3005.10) using foreign-sourced adhesive tape (HTSUS 3919.10), representing some 22 percent of the final product value.

FTZ procedures would exempt Aso from customs duty payments on the foreign adhesive tape used in export production. The company anticipates that some 6 percent of the plant's shipments will be exported. On its domestic sales, Aso would be able to choose the duty rate during customs