

to the Spiny Lobster FMP, and Amendment 4 to the Coral, Coral Reefs, and Live/Hard Bottom Habitat FMP.

Amendment 4 contains a proposed measure to expand the boundaries of the current Oculina Bank HAPC and to create two satellite Oculina Bank HAPCs. In accordance with the Magnuson-Stevens Act, NMFS is evaluating the proposed rule for this measure to determine whether it is consistent with the EFH Amendment, the Coral FMP, the Magnuson-Stevens Act, and other applicable law. If that determination is affirmative, NMFS will publish it in the **Federal Register** for public review and comment.

Comments received by May 4, 1999, whether specifically directed to the Comprehensive Amendment or to the proposed rule, will be considered by NMFS in its decision to approve, disapprove, or partially approve the Comprehensive Amendment. Comments received after that date will not be considered by NMFS in this decision. All comments received by NMFS on the Comprehensive Amendment or on the proposed rule during their respective comment periods will be summarized and addressed in the preamble of the final rule.

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

Dated: March 1, 1999.

Gary C. Matlock,

*Director, Office of Sustainable Fisheries,
National Marine Fisheries Service.*

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 981229328-8328-01; I.D. 120998C]

RIN 0648-AK31

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Reef Fish Fishery of the Gulf of Mexico; Amendment 16A

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

ACTION: Proposed rule, request for comments.

SUMMARY: NMFS issues this proposed rule to implement Amendment 16A to the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico (FMP). This proposed rule

would prohibit the use of fish traps in the exclusive economic zone (EEZ) of the Gulf of Mexico south of 25°03' N. lat. after February 7, 2001; prohibit possession of reef fish exhibiting trap rash on board a vessel that does not have a valid fish trap endorsement; and require fish trap vessel owners or operators to provide trip initiation and trip termination reports and comply with an annual vessel/gear inspection requirement. In addition, Amendment 16A proposes that NMFS develop a system design, protocol, and implementation schedule for a fish trap vessel monitoring system (VMS). The intended effects of this rule are to enhance enforceability of fish trap measures and conserve and manage the reef fish resources of the Gulf of Mexico.

DATES: Written comments must be received on or before April 19, 1999.

ADDRESSES: Comments on the proposed rule or on the initial regulatory flexibility analysis (IRFA) must be sent to Robert Sadler, Southeast Regional Office, NMFS, 9721 Executive Center Drive N., St. Petersburg, FL 33702.

Comments regarding the collection-of-information requirements contained in this rule must be sent to Edward E. Burgess, Southeast Regional Office, NMFS, 9721 Executive Center Drive N., St. Petersburg, FL 33702, and to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20503 (Attention: NOAA Desk Officer).

Requests for copies of Amendment 16A, which includes an environmental assessment, a regulatory impact review (RIR), and an IRFA, and requests for copies of a minority report submitted by two Council members should be sent to the Gulf of Mexico Fishery Management Council, Suite 1000, 3018 U.S. Highway 301 North, Tampa, FL, 33619; Phone: 813-228-2815; Fax: 813-225-7015.

FOR FURTHER INFORMATION CONTACT: Robert Sadler, 727-570-5305.

SUPPLEMENTARY INFORMATION: The reef fish fishery of the Gulf of Mexico is managed under the FMP. The FMP was prepared by the Gulf of Mexico 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.

Accelerated Area Phaseout of Fish Traps

A 10-year phaseout of the fish trap fishery ending February 7, 2007, was implemented under Amendment 14 (62 FR 13983, March 25, 1997). Amendment 16A proposes a shorter phaseout period

(ending February 7, 2001) for an area in Federal waters south of Cape Sable, FL (25.05° N. lat.) at the southernmost point of the Florida peninsula. This measure is based on Council concerns about increased trap fishing pressure, continuing fish trap violations, and ineffective fish trap vessel monitoring. Opponents of fish traps report user group conflicts and problems with excessive trap fishing pressure in an area south of 25.05° N. lat. Law enforcement agencies reported continued difficulties in detecting and monitoring fish trap use and requested additional fish trap vessel monitoring, reporting, and inspection requirements for the entire fish trap fishery.

Testimony to the Council at its March 1998 meeting included allegations of continuing problems with fish trap gear in the Florida Keys area since implementation of the 10-year phaseout. Several commenters in favor of an accelerated fish trap phaseout stated that the continued use of the gear in the Gulf EEZ of the Florida Keys will contribute to bycatch problems, user group conflicts, and illegal trap use in adjacent state waters. Public testimony also indicated that deployment of fish traps in the Gulf EEZ adjacent to the Florida Keys during the 10-year period will continue to cause physical habitat damage to the coral reef community. Following public testimony, the Council proposed accelerating the phaseout, from 10 years to 4 years (ending February 7, 2001), in the Florida Keys. Fish trap use would be prohibited in the designated area after February 7, 2001.

In the area off the Florida Keys, the accelerated phaseout will negatively impact those fish trap fishermen who had anticipated a 10-year phaseout period and invested in fish trap gear or endorsements. It would also negatively impact fish trap fishermen in the Florida Keys by requiring them to travel to a point north of 25.05° N. lat. to deploy their traps. However, the Council anticipates that an accelerated fish trap phaseout may reduce fishing pressure on reef fish in the area south of 25.05° N. lat.

Proposed Restrictions on the Possession of Reef Fish

The Council is proposing to prohibit the possession of reef fish exhibiting the condition of trap rash (i.e., physical damage to fish caused by the fish rubbing or scraping against, running into, butting, or biting the wire mesh used to construct wire fish traps) on vessels without valid fish trap endorsements. This trap rash management measure is based on information that some vessels that land

reef fish with trap rash do not have valid fish trap endorsements and continually deploy fish traps at sea in violation of the requirement that traps be returned to port at the end of each trip. Persons on these vessels do not possess fish traps on board longer than the time required to empty the traps before returning them to the water. As a result, law enforcement officials cannot prosecute these fishermen due to lack of evidence of illegal trap deployment. In response, the Council proposed to prohibit the possession of reef fish exhibiting the condition of trap rash on board any vessel, except for vessels possessing a valid fish trap endorsement, as this condition is *prima facie* evidence of illegal trap use. The Council rejected recommendations for reef fish trip limits on vessels fishing stone crab and spiny lobster traps, because the Council concluded that, by putting the burden on the fishermen to prove that they were legal fish trappers if they possessed reef fish with trap rash, the trap rash provision would be more enforceable than reef fish trip limits. NMFS fishery scientists conducting research at sea have detected the trap rash condition on reef fish remaining in illegally deployed fish traps. The severity of the trap rash condition increases with the time a fish spends in a wire trap. NMFS has reviewed this information and found no evidence that trap rash could result from a source other than fish trap use. As a result, illegal fish trap use is indicated by possession of reef fish with the trap rash condition aboard vessels without a fish trap endorsement.

Fish Trap Vessel Monitoring System (VMS)

The Council considered an electronic VMS for fish trap vessels as a means to monitor regulated fish trap vessels and detect unlawful fish trapping activity. NMFS currently is evaluating a device that uses cellular telephone technology and, in addition to reporting vessel location, can be configured to sense various operational aspects of vessels in a fishery such as engine speed and operation of fishing gear (e.g., winches).

The VMS costs are estimated in Amendment 16A to be relatively small (approximately \$1,000 for equipment, plus \$500 installation cost per vessel) in comparison to the costs of fish trap operations, including acquiring a fish trap endorsement. Most fish trappers who commented on this measure to the Council supported establishing a VMS and accepting the associated VMS costs, if necessary, to allow themselves to continue trap fishing through February

7, 2007 (the time period established under Amendment 14 to the FMP).

The Council was unwilling to proceed with requiring VMS for fish trap vessels without knowledge of the detailed cost of the system or confirmation by NMFS that the system is viable. The Council has asked NMFS to complete its evaluation of VMS system purchase/installation costs and to test systems on fish trap vessels. Once this evaluation is complete, NMFS will present the system design, costs, and implementation schedule to the Council for its approval prior to implementation. If the Council approves the VMS at that time, NMFS will take the necessary steps to implement this action, if it is deemed appropriate.

Additional Fish Trap Vessel Inspection and Reporting Requirements

Amendment 16A proposes a 1-month fish trap/vessel inspection period and a requirement for fish trappers to report trip initiation and trip termination times. The inspections will establish a baseline to assure that all fish trap gear is in compliance with fish trap construction and tagging requirements and that all participants are familiar with the Federal regulations governing their fishery.

The proposed rule specifies that each fish trap vessel owner or operator will contact NMFS by telephone to schedule the inspection during an assigned 1-month period. On the inspection date, the owner or operator must make all fish trap gear with attached trap tags and buoys and all applicable permits available for inspection at a land-based site. Vessels must also be made available for inspection. Vessels may continue to use fish traps during the 1-month period until the inspection is initiated. An owner or operator may resume fishing upon completion of the inspection and a determination that all fish trap gear, permits, and vessels are in compliance. However, an owner or operator who fails to comply with the inspection requirements may not use or possess fish traps in the Gulf EEZ until the required inspection or reinspection has been completed and all fish trap gear, permits, and vessels are determined to be in compliance. (See Changes Proposed by NMFS.)

The proposed rule also requires trip initiation and termination reports submitted by telephone, through the use of a 24-hour toll-free number for each fishing trip on which a fish trap will be used or possessed.

Council Minority Report on Amendment 16A

A minority report signed by two Council members opposes Amendment 16A and specifically raises concerns on the accelerated phase out of fish traps off the Florida Keys. The minority report contends that Amendment 16A is inconsistent with several Magnuson-Stevens Act national standards. Copies of the minority report may be obtained from the Council (see ADDRESSES).

Availability of and Comments on Amendment 16A

Additional background and rationale for the measures discussed above are contained in Amendment 16A, the availability of which was announced in the **Federal Register** on December 18, 1998 (63 FR 70093). Written comments on Amendment 16A were solicited and must have been received by February 16, 1999, to be considered in the approval/disapproval decision on Amendment 16A. Comments received after that date will not be considered in the approval/disapproval decision. All comments received on Amendment 16A or on this proposed rule during their respective comment periods will be addressed in the preamble to the final rule.

Changes Proposed by NMFS

To improve compliance in the fishery, the Council proposed a 1-month period for vessel inspections and user group education preceding implementation of the trip initiation and termination reporting requirements contained in Amendment 16A. The Council's objective is to establish a baseline for ensuring that all fish trap gear used in the Gulf of Mexico is in compliance with fish trap regulations. To achieve that objective, NMFS is proposing to implement the vessel inspection and user group education concept. However, NMFS finds that the need to monitor compliance in the fishery will continue and, therefore, proposes to continue the inspection and education period on an annual basis. Because NMFS proposes that the inspections occur annually, delaying implementation of the new reporting requirement is impractical. As a result, NMFS also proposes to implement the trip initiation and trip termination reporting requirement upon effectiveness of the final rule.

Pursuant to section 311 of the Magnuson-Stevens Act, NMFS-authorized officers possess the authority to inspect any vessel subject to the Magnuson-Stevens Act without notice, at any time. However, for consistency with the Council's proposal in

Amendment 16A, NMFS is proposing in this rule to provide advance notice for the proposed annual inspections. Notice of annual inspections conducted under this measure would be through the use of appointments, as contemplated in Amendment 16A's initial inspection.

The amendment states that the Regional Administrator, Southeast Region, NMFS (RA) will publish notification of the 1-month fish trap inspection period in the **Federal Register**. NMFS proposes, in lieu of that requirement, that the RA provide written notification to each owner of a vessel that has a valid fish trap endorsement. NMFS believes that direct notification of owners would be more effective.

NMFS solicits public comment on these proposed changes.

Classification

At this time, NMFS has not determined that the amendment that this rule would implement is consistent with the national standards of the Magnuson-Stevens Act and other applicable laws. NMFS, in making that determination, will take into account the data, views, and comments received during the comment period on Amendment 16A.

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

The Council prepared an IRFA, based on the RIR, that concludes that Amendment 16A and this proposed rule, if adopted, would have significant economic impacts on a substantial number of small entities. A summary of the IRFA follows.

The rule is proposed to address fish trap fishing violations in south Florida and to provide more effective monitoring and reporting for all fish trapping operations. The Magnuson-Stevens Act provides the legal basis for the rule, and no duplicative, overlapping, or conflicting Federal rules were identified.

It was determined that 86 commercial fish trapping businesses and an undetermined number of spiny lobster and stone crab fishermen, all of which qualify as small business entities, would be affected by the rule. Of the 86 fish trapping businesses, 12 have home ports in the Keys and can expect a greater than 5-percent decrease in revenues if it becomes illegal to use fish traps in the specified south Florida area in 2 years. The action that would limit possession of Gulf reef fish exhibiting trap rash to those vessels with a fish trap endorsement is expected to reduce revenues of some stone crab and spiny lobster fishermen. All the revenue losses

are characterized as long-term with no offsetting benefits to the small businesses identified. All 86 vessels would incur additional compliance costs (annualized capital, operating and reporting costs).

Assuming that a VMS system is imposed in 1999 through a subsequent rulemaking, the 86 firms would incur a capital cost for installation estimated at \$1500 per vessel plus undetermined annual costs of maintenance and cellular phone reporting of VMS data. The 86 firms would incur costs of reporting before and after each trip before a VMS system was put into effect and would also incur costs associated with having all gear inspected. The IRFA made no determination regarding the number of small business entities that could be forced to cease business operations if the proposals go into effect.

Alternatives are identified for the four proposed actions. In all cases, the status quo provides the least adverse impact on small entities, but the status quo was rejected as being incapable of addressing the issue of fish trap violations. The other rejected alternative to a 2-year phaseout of trapping in south Florida was a 2-year phaseout of all fish trapping; it would have a much greater negative impact. The VMS preferred alternative was for a design study of a VMS system to be followed by implementation under a separate rulemaking. One alternative recommended implementing the VMS system directly. This alternative was rejected because of the implied costs and the need for the design to be completed.

The proposed action regarding trip limits for vessels with reef fish permits that are fishing spiny lobster and stone crab maintains the status quo of no trip limits for possession of reef fish, but it requires vessels to have a fish trap endorsement if there are fish exhibiting trap rash on board. Other trip limit alternatives would institute various trip limits. However, they were rejected because the Council concluded that the trap rash provision would resolve enforcement problems better by putting the burden on the fishermen to prove that they were legal fish trappers if they possessed fish with trap rash.

For the action recommending additional reporting requirements, there were two alternatives that were both rejected on the basis of creating greater negative impacts than the preferred alternative without an offsetting improvement in the reporting process. The status quo was rejected because of the need to manage the fishery better

through improved information gathering.

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

Notwithstanding any other provision of law, no person is required to respond to, nor shall a person be subject to, a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act (PRA) unless that collection of information displays a currently valid OMB control number.

This rule contains two new collection-of-information requirements subject to the PRA—namely, a requirement for fish trap vessel operators to provide, via toll-free telephone calls, trip initiation and trip termination reports and an annual requirement for fish trap owners/operators to schedule, via telephone call, an appointment with NMFS enforcement to allow inspection of fish trap gear, fish trap permits and tags, and vessels. These collection-of-information requirements have been submitted to OMB for approval. The public reporting burdens for the telephone calls for the trip initiation and termination reports, and for scheduling the fish trap inspection are estimated at 5 minutes each per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collections of information.

Public comment is sought regarding: Whether these proposed collections of information are necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; the accuracy of the burden estimates; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collections of information, including through the use of automated collection techniques or other forms of information technology. Send comments on these, or any other aspects of the collections of information, to NMFS and OMB (see **ADDRESSES**).

List of Subjects in 50 CFR Part 622

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

Dated: March 1, 1999.

Andrew A. Rosenberg, Ph.D.,

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 § 622.5, paragraph (a)(1)(ii)(B) is added and reserved, and paragraph (a)(1)(ii)(A) is added to read as follows:

§ 622.5 Recordkeeping and reporting.

* * * * *

(a) * * *

(1) * * *

(ii) * * *

(A) *Fish traps.* In addition to the other reporting requirements in paragraph (a)(1)(ii) of this section, the owner or operator of a vessel for which a fish trap endorsement has been issued, as required under § 622.4(a)(2)(i), must comply with the following requirements.

(1) *Annual inspection.* Each year, the RD will establish a 1-month period for mandatory inspection of all fish trap gear, permits, and vessels. The RD will provide written notification of the inspection period to each owner of a vessel for which a fish trap endorsement has been issued as required under § 622.4(a)(2)(i). Each such owner or operator must contact the Special Agent-in-Charge, NMFS, Office of Enforcement, Southeast Region, St. Petersburg, FL (SAC) or his designee by telephone (727-570-5344) to schedule an inspection during the 1-month period. Requests for inspection must be made between 8:00 a.m. and 4:30 p.m. Monday through Friday and must be made at least 72 hours in advance of the desired inspection date. Inspections will be conducted Monday through Friday between 8:00 a.m. and 4:30 p.m. only. On the inspection date, the owner or operator must make all fish trap gear with attached trap tags and buoys and all applicable permits available for inspection on land. Vessels must also be made available for inspection as directed by the SAC or his designee.

Upon completion of the inspection and a determination that all fish trap gear, permits, and vessels are in compliance, an owner or operator may resume fishing with the lawful gear. However, an owner or operator who fails to comply with the inspection requirements during the 1-month inspection period or during any other random inspection may not use or possess a fish trap in the Gulf EEZ until the required inspection or reinspection, as directed by the SAC, has been completed and all fish trap gear, permits, and vessels are determined to be in compliance with all applicable regulations.

(2) *Trip reports.* For each fishing trip on which a fish trap will be used or possessed, an owner or operator of a vessel for which a fish trap endorsement has been issued, as required under § 622.4(a)(2)(i), must submit a trip initiation report and a trip termination report to the SAC or his designee, by telephone, using a 24-hour toll-free number that will be provided in the final rule.

(i) *Trip initiation report.* The trip initiation report must be submitted before beginning the trip and must include: vessel name; official number; number of traps to be deployed; sequence of trap tag numbers; date, time, and point of departure; and intended time and date of trip termination.

(ii) *Trip termination report.* The trip termination report must be submitted immediately upon returning to port and prior to any offloading of catch or fish traps. The trip termination report must include: vessel name; official number; name and address of dealer where catch will be offloaded and sold; the time offloading will begin; notification of any lost traps; and notification of any traps left deployed for any reason.

(B) [Reserved]

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3. In § 622.7, paragraph (d) is revised to read as follows:

§ 622.7 Prohibitions.

* * * * *

(d) Falsify or fail to maintain, submit, or provide information or fail to comply with inspection requirements or restrictions, as specified in § 622.5(a) through (f).

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4. In § 622.31, paragraph (c)(2) is revised to read as follows:

§ 622.31 Prohibited gear and methods.

* * * * *

(c) * * *

(2) In the Gulf EEZ, a fish trap—

(i) May not be used or possessed west of 85°30' W. long.;

(ii) May not be used, but may be possessed on board a vessel with a valid fish trap endorsement for the sole purpose of transit, after February 7, 2001, south of 25°03' N. lat.; and

(iii) May not be used or possessed after February 7, 2007.

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5. In § 622.41, paragraph (i) is added to read as follows:

§ 622.41 Species specific limitations.

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(i) *Gulf reef fish exhibiting trap rash.* Gulf reef fish in or from the Gulf EEZ that exhibit trap rash may be possessed on board a vessel only if that vessel has a valid fish trap endorsement, as required under § 622.4(a)(2)(i), on board. Possession of such fish on board a vessel without a valid fish trap endorsement is prima facie evidence of illegal trap use and is prohibited. For the purpose of this paragraph, trap rash is defined as physical damage to fish that characteristically results from contact with wire fish traps. Such damage includes, but is not limited to, broken fin spines, fin rays, or teeth; visually obvious loss of scales; and cuts or abrasions on the body of the fish, particularly on the head, snout, or mouth.

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