

public health or safety, or State, local, or tribal governments or communities;

Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in E.O. 12866.

In addition, the Department prepares a regulatory flexibility analysis, in accordance with the Regulatory Flexibility Act (5 U.S.C. chapter 6), if the rule is expected to have a significant impact on a substantial number of small entities.

Because the amendment affects only NIH OMA investigatory records, a small subset of Agency records, we do not believe this proposed rule is economically significant nor do we believe that it will have a significant impact on a substantial number of small entities. The proposed rule is not expected to have any significant impact on OMA operations and does not impose any new information collection requirements under the Paperwork Reduction Act. In addition, this proposed rule is not inconsistent with the actions of any other agency.

For these same reasons, the Secretary certifies this proposed rule will not have a significant economic impact on a substantial number of small entities, and that a Regulatory Flexibility Analysis, as defined under the Regulatory Flexibility Act, is not required.

#### List of Subjects in 45 CFR Part 5b

Privacy.

Dated: October 13, 1998.

**Harold Varmus,**

*Director, National Institutes of Health.*

Approved: March 11, 1999.

**Donna E. Shalala,**

*Secretary.*

For the reasons set out in the preamble, 45 CFR part 5b is proposed to be amended as set forth below:

#### PART 5b—PRIVACY ACT REGULATIONS

1. The authority citation for part 5b would continue to read:

**Authority:** 5 U.S.C. 301, 5 U.S.C. 552a.

2. Section 5b.11(b)(2)(vii) would be amended by designating the paragraph after the colon as paragraph (b)(2)(vii)(A) and republishing it and by adding paragraph (b)(2)(vii)(B) to read as follows:

#### § 5b.11 Exempt systems.

\* \* \* \* \*

(b) \* \* \*

(2) \* \* \*

(vii) Pursuant to subsections (k)(2) and (k)(5) of the Act:

(A) Public Health Service Records Related to Investigations of Scientific Misconduct, HHS/OASH/ORI.

(B) Administration: Investigative Records, HHS/NIH/OM/OA/OMA.

\* \* \* \* \*

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#### DEPARTMENT OF COMMERCE

##### National Oceanic and Atmospheric Administration

##### 50 CFR Part 622 and 640

[Docket No. 990621165-9165-01; I.D. 022599A]

RIN: 0648-AL43

##### Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Essential Fish Habitat (EFH) for Species in the South Atlantic; Amendment 4 to the Fishery Management Plan for Coral, Coral Reefs, and Live/Hard Bottom Habitats of the South Atlantic Region (Coral FMP)

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

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

**SUMMARY:** NMFS proposes to increase the size of the Oculina Bank Habitat Area of Particular Concern (HAPC) and to incorporate two adjacent areas within the Oculina Bank HAPC. NMFS also proposes regulatory changes to reflect the South Atlantic Fishery Management Council's proposed framework procedure for all its fishery management plans (FMPs) that would allow for timely modification of definitions of EFH and establishment or modification of EFH-HAPCs and Coral HAPCs. The intended effect is to protect, conserve, and enhance EFH.

**DATES:** Written comments on this proposed rule must be received on or before August 23, 1999.

**ADDRESSES:** Copies of the Habitat Plan for the South Atlantic Region (Habitat Plan) and the EFH Amendment, which includes Amendment 4 to the Coral FMP, a final supplemental environmental impact statement (FSEIS), a regulatory impact review (RIR), and a social impact assessment/

fishery impact assessment may be obtained from the South Atlantic Fishery Management Council (Council), One Southpark Circle, Suite 306, Charleston, SC 29407-4699; telephone: 843-571-4366; fax: 843-769-4520. Copies of the initial regulatory flexibility analysis (IRFA) prepared by NMFS may be obtained from the Southeast Regional Office, NMFS, 9721 Executive Center Drive N., St. Petersburg, FL 33702.

Written comments on the proposed rule or the IRFA may be submitted to the Southeast Regional Office, NMFS, 9721 Executive Center Drive N., St. Petersburg, FL 33702.

**FOR FURTHER INFORMATION CONTACT:** Michael Barnette, 727-570-5305.

**SUPPLEMENTARY INFORMATION:** The fisheries for shrimp, red drum, snapper-grouper, coastal migratory pelagics, golden crab, spiny lobster, and coral, coral reefs, and live/hard bottom habitat of the South Atlantic are managed under the Council's FMPs, as approved and implemented by NMFS. These FMPs were prepared solely by the Council, except for the FMPs for coastal migratory pelagics and spiny lobster that were prepared jointly by the Council and the Gulf of Mexico Fishery Management Council. These FMPs are implemented under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) by regulations at 50 CFR part 622, except for the FMP for spiny lobster that is implemented by regulations at 50 CFR part 640.

The Magnuson-Stevens Act, as amended by the Sustainable Fisheries Act, requires the Council to describe and identify EFH in all its FMPs, including identification of adverse impacts from both fishing and non-fishing activities on EFH and identification of actions required to conserve and enhance EFH. This requirement is intended to provide a basis for the Council and NMFS to protect, conserve, and enhance EFH under management measures that are proposed, approved, and implemented through amendments to FMPs or other means provided by the Magnuson-Stevens Act, if appropriate, and for the Council and NMFS to fulfill their consulting and commenting responsibilities regarding Federal and state actions that may adversely affect EFH.

50 CFR 600.10 defines EFH as follows:

Essential fish habitat (EFH) means those waters and substrate necessary to fish for spawning, breeding, feeding, or growth to maturity. For the purpose of interpreting the

definition of essential fish habitat: Waters include aquatic areas and their associated physical, chemical, and biological properties that are used by fish and may include aquatic areas historically used by fish where appropriate; substrate includes sediment, hard bottom, structures underlying the waters, and associated biological communities; necessary means the habitat required to support a sustainable fishery and the managed species' contribution to a healthy ecosystem; and "spawning, breeding, feeding, or growth to maturity" covers a species' full life cycle.

The Council may identify EFH that is judged to be particularly important to the long-term productivity of populations of one or more managed species, or to be particularly vulnerable to degradation, as an HAPC. Such designation helps provide additional focus for conservation efforts. EFH-HAPCs may be identified based on the following criteria: (1) The importance of the ecological function provided by the habitat; (2) the extent to which the habitat is sensitive to human-induced environmental degradation; (3) whether, and to what extent, development activities are, or will be, stressing the habitat type; and (4) the rarity of the habitat type (50 CFR § 600.815(a)(9)).

The Council prepared and submitted a Habitat Plan, which serves as a source document for habitat data, and a Comprehensive Amendment addressing EFH in FMPs of the South Atlantic Region (EFH Amendment). The EFH Amendment proposes EFH definitions and EFH-HAPCs for the management unit species in all of the Council's FMPs.

The EFH Amendment also would establish a framework procedure, applicable to all of the Council FMPs, to allow for timely modification of EFH definitions and establishment or modification of existing EFH-HAPCs or Coral HAPCs. This framework procedure would allow the Council to recommend to NMFS additions or modifications regarding EFH definitions and EFH-HAPCs and Coral-HAPCs without requiring an amendment to the appropriate FMP(s). This procedure would provide for a streamlined Council process for obtaining public comment on the Council's proposals and their expected biological, social, and economic impacts. After receiving the Council's recommendations for additions or modifications regarding EFH definitions, EFH-HAPCs, and Coral-HAPCs, the NMFS Regional Administrator would decide whether to approve or disapprove the Council's recommendations as well as whether to implement any approved measures directly by a final rule or through a proposed and final rule. Finally, the

framework procedure would allow these adjustments any time during the year. Although the FMP's framework procedures refer to rulemaking, NMFS does not intend to modify EFH definitions, EFH-HAPCs, or Coral-HAPCs in codified text. However, NMFS would publish notice of the proposed changes in the **Federal Register** and solicit public comment in accordance with the FMP framework procedure. Details of the proposed framework procedure are contained in section 4.2.8 of the EFH Amendment. This rule proposes changes to 50 CFR § 622.48 and 50 CFR § 640.25 to reflect the Council's proposed framework procedure.

The EFH Amendment contains Amendment 4 to the Coral FMP that would expand the boundaries of the current Oculina Bank HAPC to encompass: (1) An area bounded on the north by 28°30' N. lat., on the south by 27°30' N. lat., on the east by the 100-fathom (183-m) contour, as shown on the latest edition of NOAA chart 11460, and on the west by 80°00' W. long.; and (2) two adjacent areas, the first bounded on the north by 28°30' N. lat., on the south by 28°29' N. lat., on the east by 80°00' W. long., and on the west by 80°03' W. long., and the second bounded on the north by 28°17' N. lat., on the south by 28°16' N. lat., on the east by 80°00' W. long., and on the west by 80°03' W. long.

The current boundaries of the Oculina Bank HAPC were established by the final rule to implement the Fishery Management Plan for Coral and Coral Reefs of the Gulf of Mexico and South Atlantic (49 FR 29607, July 23, 1984). In the Oculina Bank HAPC, fishing with a bottom longline, bottom trawl, dredge, pot, or trap is prohibited, and a fishing vessel may not anchor, use an anchor and chain, or use a grapple and chain.

Subsequently, fishing for South Atlantic snapper-grouper in the Oculina Bank HAPC was prohibited (59 FR 27242, May 26, 1994). The purpose of this prohibition was to evaluate the benefits of marine reserves. In effect, an experimental closed area was established for South Atlantic snapper-grouper with the same boundaries as the original Oculina Bank HAPC.

Amendment 4 to the Coral FMP would expand only the Oculina Bank HAPC—the experimental closed area would not be expanded and its restrictions on snapper-grouper fishing would not be changed or expanded. The proposed expanded Oculina Bank HAPC also includes the current area closed to rock shrimp trawling.

Expansion of the Oculina Bank HAPC is necessary to protect the *Oculina* coral

concentrations contained in the area of expansion. *Oculina* coral, a slow growing, delicate stony coral, is easily damaged by anchoring and use of bottom tending gear (e.g., trawls, traps). *Oculina* coral provides important habitat for snapper-grouper species and for rock shrimp and calico scallop spawning stock.

#### **Availability of the Habitat Plan and EFH Amendment**

Specifications of EFH and HAPCs and additional background and rationale for the expansion of the Oculina Bank HAPC are contained in the Habitat Plan and the EFH Amendment, which includes Amendment 4 to the Coral FMP. Availability of the Habitat Plan and EFH Amendment was announced in the **Federal Register** (63 FR 10612, March 5, 1998). The preamble to the final rule will summarize and address all comments on the EFH Amendment, including Amendment 4, the Habitat Plan, and this proposed rule that are received during their respective comment periods.

#### **Classification**

The Administrator, Southeast region, NMFS, determined that the EFH Amendment is necessary for the conservation and management of the Council's FMPs and it is consistent with the Magnuson-Stevens Act and other applicable law on June 3, 1999.

The Council prepared a final SEIS (FSEIS) for the EFH Amendment, including Amendment 4 to the Coral FMP. The Environmental Protection Agency (EPA) published a notice of the availability of the draft SEIS on July 17, 1998 (63 FR 19120). EPA published a notice of availability of the FSEIS on April 19, 1999, (64 FR 17362). The environmental impacts described in the FSEIS are summarized as follows. Expanding the Oculina Bank HAPC to include the *Oculina* coral and the hard bottom/soft coral habitat within the area north of the current Oculina Bank HAPC boundary and in two adjacent areas would provide additional protection for essential fish habitat. The expansion would reduce the gear-related impact of the rock shrimp and calico scallop fisheries on live/hard bottom and coral habitat by eliminating the use of trawl gear in the expanded area. It would also eliminate damage from other fishing gear that contacts the bottom.

Trawl damage occurs from direct contact with live/hard bottom, including *Oculina* coral. *Oculina* is only known to be distributed in bank formation south of 29° N. lat. Therefore, prohibiting the use of trawl gear in the expanded area will help prevent the loss

of this essential snapper grouper habitat and will enhance its biological integrity.

There is concern that repetitive trawling of the limited fishable bottom over the years has and may continue to impact the benthic habitat and the fishery resources it sustains. Therefore, an additional benefit of protecting these habitats would be protection of a portion of the rock shrimp and calico scallop spawning stock. This would help the fishery recover in years when recruitment is low due to poor environmental conditions.

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

The EFH Amendment does not contain measures that would result in immediate economic effects, except for Actions 3A and 3B. These actions would enlarge the existing Oculina Bank HAPC, create two "satellite HAPC" areas, and prohibit fishing with a bottom longline, bottom trawl, dredge, pot, or trap in these areas. The Council determined that the prohibition on trawling for calico scallops would not have a significant impact on a substantial number of small entities. NMFS reviewed the Council's determination and made an independent determination that certain criteria for significance, in particular the NMFS criterion of a 5 percent negative impact on revenues, may be met. Accordingly, NMFS determined there would be a significant impact on a substantial number of small entities and prepared an IRFA. However, NMFS notes that the information on economic impacts associated with the proposed rule is incomplete and is specifically requesting public comment on the extent and nature of economic impacts that may be associated with a prohibition on calico scallop trawling in expanded Oculina HAPC. The IRFA prepared by NMFS was based on information in the EFH Amendment and on other available information. A summary of the IRFA follows.

The proposed action responds to the Magnuson-Stevens Act requirements to identify essential fish habitats and to minimize any fishing related damage to these habitats. The overall objective of the proposed rule is to identify and maintain essential fish habitats. The Magnuson-Stevens Act provides the legal basis for the rule. Most of the provisions of the proposed rule would result in regulations that would not have cost or revenue effects on small entities. However, a proposal to enlarge an existing protected area, called the Oculina Bank HAPC, would also prohibit trawling for calico scallops in the expanded HAPC. This portion of the

proposed rule would apply to about 25 small fishing businesses that have historically participated in the fishery. Most of the vessels used by these small businesses were not built specifically for harvesting calico scallops but are shrimp trawling vessels using modified gear. In 1997, the industry had landings that generated gross revenues of \$1.3 million dollars, and this indicates that gross revenue per vessel averaged about \$52,000. Complete information regarding variability of revenues among vessels does not exist, but it is known with reasonable certainty that the actual landings of calico scallops and the associated revenues would show a considerable amount of variation among the 25 vessels in the industry, and differential impacts are expected. There are no additional reporting, recordkeeping, or other compliance costs associated with the proposed action, and no existing duplicative, overlapping, or conflicting Federal rules have been identified. Two alternatives were considered and rejected. One of the alternatives considered was no action. While this option obviously would have no impact on small business entities, it was rejected since it would provide no additional protection for essential fish habitats. The other alternative would expand the Oculina Bank HAPC by a greater area than required by the proposed alternative. This option would provide additional protection to essential fish habitats but would result in the closure of a major portion of the known historic fishing grounds for calico scallops and would result in major negative impacts on the calico scallop industry. The resulting negative economic impacts were deemed to be greater than the benefits that would accrue from the additional protection for essential fish habitats, and the alternative was rejected on that basis.

Copies of the IRFA are available (see **ADDRESSES**).

#### List of Subjects

##### 50 CFR Part 622

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

##### 50 CFR Part 640

Fisheries, Fishing, Incorporation by reference, Reporting and recordkeeping requirements.

Dated: July 1, 1999.

**Andrew A. Rosenberg,**

*Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.*

For the reasons set out in the preamble, 50 CFR parts 622 and 640 are 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 § 622.35, paragraph (g) is removed and paragraph (c) is revised to read as follows:

#### **§ 622.35 South Atlantic EEZ seasonal and/or area closures.**

\* \* \* \* \*

(c) *Oculina Bank*—(1) *HAPC*. The Oculina Bank HAPC encompasses an area bounded on the north by 28°30' N. lat., on the south by 27°30' N. lat., on the east by the 100-fathom (183-m) contour, as shown on the latest edition of NOAA chart 11460, and on the west by 80°00' W. long.; and two adjacent areas: the first bounded on the north by 28°30' N. lat., on the south by 28°29' N. lat., on the east by 80°00' W. long., and on the west by 80°03' W. long.; and the second bounded on the north by 28°17' N. lat., on the south by 28°16' N. lat., on the east by 80°00' W. long., and on the west by 80°03' W. long.

In the Oculina Bank HAPC, no person may:

- (i) Use a bottom longline, bottom trawl, dredge, pot, or trap.
- (ii) If aboard a fishing vessel, anchor, use an anchor and chain, or use a grapple and chain.
- (iii) Fish for rock shrimp or possess rock shrimp in or from the area on board a fishing vessel.

(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.

\* \* \* \* \*

3. In § 622.48, the introductory text and paragraphs (c), (f), (g), and (h) are

revised; and paragraphs (j) and (k) are added to read as follows:

**§ 622.48 Adjustment of management measures.**

In accordance with the framework procedures of the applicable FMPs, the RD may establish or modify the following items:

\* \* \* \* \*

(c) *Coastal migratory pelagic fish*. For cobia or for a migratory group of king or Spanish mackerel: MSY, overfishing level, TAC, quota (including a quota of zero), bag limit (including a bag limit of zero), minimum size limit, vessel trip limits, closed seasons or areas, gear restrictions (ranging from regulation to complete prohibition), reallocation of the commercial/recreational allocation of Atlantic group Spanish mackerel, permit requirements, definitions of essential fish habitat, and establishment or modification of essential fish habitat HAPCs or Coral HAPCs.

\* \* \* \* \*

(f) *South Atlantic snapper-grouper and wreckfish*. For species or species groups: Target dates for rebuilding overfished species, MSY, ABC, TAC, quotas, trip limits, bag limits, minimum sizes, gear restrictions (ranging from regulation to complete prohibition), seasonal or area closures, definitions of essential fish habitat, and establishment or modification of essential fish habitat HAPCs or Coral HAPCs.

(g) *South Atlantic golden crab*. MSY, ABC, TAC, quotas (including quotas equal to zero), trip limits, minimum sizes, gear regulations and restrictions, permit requirements, seasonal or area closures, time frame for recovery of golden crab if overfished, fishing year (adjustment not to exceed 2 months), observer requirements, authority for the RD to close the fishery when a quota is reached or is projected to be reached, definitions of essential fish habitat, and establishment or modification of essential fish habitat HAPCs or Coral HAPCs.

(h) *South Atlantic shrimp*. Certified BRDs and BRD specifications, definitions of essential fish habitat, and establishment or modification of essential fish habitat HAPCs or Coral HAPCs.

\* \* \* \* \*

(j) *Atlantic coast red drum*. Definitions of essential fish habitat and establishment or modification of essential fish habitat HAPCs or Coral HAPCs.

(k) *South Atlantic coral, coral reefs, and live/hard bottom habitats*. Definitions of essential fish habitat and establishment or modification of essential fish habitat HAPCs or Coral HAPCs.

**PART 640—SPINY LOBSTER FISHERY OF THE GULF OF MEXICO AND SOUTH ATLANTIC**

3. The authority citation for part 640 continues to read as follows:

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

4. A new § 640.25 is added to subpart B to read as follows:

**§ 640.25 Adjustment of management measures.**

In accordance with the framework procedure of the Fishery Management Plan for the Spiny Lobster Fishery of the Gulf of Mexico and South Atlantic, the RD may establish or modify the following items: definitions of essential fish habitat, Essential Fish Habitat-Habitat Areas of Particular Concern, Coral-Habitat Areas of Particular Concern, limits on the number of traps fished by each vessel, construction characteristics of traps, specification of gear and vessel identification requirements, specification of allowable or prohibited gear in a directed fishery, specification of bycatch levels in non-directed fisheries, changes to soak or removal periods and requirements for traps, recreational bag and possession limits, changes in fishing seasons, limitations on use, possession, and handling of undersized lobsters, and changes in minimum size.

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