

an existing protected area, called the Oculina Bank HAPC, would also prohibit the use of bottom tending gear in the expanded Oculina HAPC. This portion of the proposed rule would apply to about 25 small fishing businesses that have historically participated in the calico scallop 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, which 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.

Other information indicates the possibility that bottom longline fishermen who land sharks and snapper-grouper species may be impacted by the prohibition on the use of bottom tending gear in the expanded Oculina HAPC. According to information contained in the Final Fishery Management Plan for Atlantic Tunas, Swordfish and Sharks, dated April 1999, there were 802 shark fishermen who reported landings in 1997 and are permitted under regulations governing the Highly Migratory Species fisheries. The information confirms that these fishermen also target other species, including snapper-grouper. During the winter, the directed shark fishery is concentrated in the southeastern United States, particularly in Florida. However, it is known that the universe of 802 shark fishermen includes firms that specialize in the use of pelagic longline gear and only a portion of the 802 permitted fishermen harvest sharks and other species from the two statistical areas containing the expanded Oculina HAPC. Specifically, available information indicates that the bottom longline fishermen targeting sharks and snapper-grouper species in the general area encompassing the Oculina HAPC utilize fishing craft in the 30 to 49-foot (9 to 15-m) category, take trips that average 7 to 10 days, incur variable expenses of \$3,683 per trip, generate gross revenues ranging from \$5,954 to \$7,145 per trip and realize annual returns to the owner, captain, and crew that range from \$34,000 to \$51,000. Regarding compliance costs, 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).

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

Dated: October 22, 1999.

Andrew A. Rosenberg,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 622 and 654

[Docket No. 991021283-9283-01; I.D. 072699D]

RIN 0648-AL81

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Fishery Management Plans of the Gulf of Mexico; Addition to FMP Framework Provisions; Stone Crab Gear Requirements

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes regulations to implement those provisions of the Generic Sustainable Fisheries Act Amendment to the Fishery Management Plans (FMPs) of the Gulf of Mexico (SFA

Amendment) that would modify the framework regulatory adjustment procedures in the FMPs for reef fish, red drum, and coastal migratory pelagics. These FMP framework modifications would allow timely addition of various stock population parameters to the appropriate FMP(s), including biomass-based estimates of minimum stock size thresholds (MSSTs), optimum yield (OY), maximum sustainable yield (MSY), stock biomass that would be achieved by fishing at MSY (B_{MSY}), and maximum fishing mortality thresholds (MFMTs). These regulations also would revise the stone crab trap construction requirements, as proposed by the SFA Amendment. The intended effects are to provide a more timely mechanism for incorporating stock population parameters into the applicable FMPs when such information becomes available and to establish stone crab trap construction regulations that are compatible with those of the State of Florida and that will reduce finfish bycatch.

DATES: Written comments must be received on or before December 17, 1999.

ADDRESSES: Comments on this proposed rule must be sent to the Southeast Regional Office, NMFS, 9721 Executive Center Drive N., St. Petersburg, FL 33702.

Requests for copies of the SFA Amendment, which includes an environmental assessment and a regulatory impact review, should be sent to the Gulf of Mexico Fishery Management Council, 3018 U.S. Highway 301 North, Suite 1000, Tampa, FL 33619-2266; Phone: 813-228-2815; Fax: 813-225-7015; E-mail: gulf.council@noaa.gov.

FOR FURTHER INFORMATION CONTACT: Roy Crabtree, 727-570-5305.

SUPPLEMENTARY INFORMATION: The SFA Amendment addresses fisheries under the FMPs for coral and coral reef resources, coastal migratory pelagics, red drum, reef fish, shrimp, spiny lobster, and stone crab. The FMPs were prepared by the Gulf of Mexico Fishery Management Council (Council), except for the FMPs for coastal migratory pelagics and spiny lobster that were prepared jointly by the South Atlantic and Gulf of Mexico Fishery Management Councils. All of these FMPs, except the spiny lobster and stone crab 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. The Fishery Management Plan for the Spiny Lobster Fishery of the Gulf of

Mexico and South Atlantic is implemented by regulations at 50 CFR part 640; the Fishery Management Plan for the Stone Crab Fishery of the Gulf of Mexico is implemented by regulations at 50 CFR part 654.

In 1998, NMFS published revised national standard guidelines to implement the October 1996 amendments to the Magnuson-Stevens Act, which resulted from the Sustainable Fisheries Act of 1996 (SFA). The revised guidelines are intended to assist regional fishery management councils in developing amendments to their fishery management plans to meet SFA requirements including the description of fisheries and fishing communities, setting criteria to determine when a stock is overfished, establishing measures to prevent or end overfishing and rebuild overfished stocks, assessing the amount and type of bycatch, and establishing measures to minimize bycatch (63 FR 24212, May 1, 1998).

Using these revised guidelines, the Council developed its SFA Amendment. Two measures in the SFA amendment, the modification of the framework procedures and the changes to stone crab trap construction requirements, would be implemented by regulation. The SFA Amendment would modify the framework procedures for adjustments in the measures of FMPs for reef fish, red drum, and coastal migratory pelagics to allow timely addition/modification of biomass-based estimates of MSST, OY, MSY, B_{MSY} , estimates of MFMT, and rebuilding schedules for overfished species, with regard to the subject FMPs. The proposed revisions to the FMPs' framework procedures would allow more timely incorporation of these population parameters and rebuilding schedules into the appropriate FMP, and subsequent modification, as new scientific information becomes available. These proposed regulations simply reflect the SFA Amendment's modification of the existing framework procedures in the Council's FMPs to allow incorporation of the aforementioned population parameters and their subsequent modification.

Although the framework procedures of the Council's FMPs generally refer to rulemaking, NMFS does not intend to specify the actual values of these population parameters in codified text. However, NMFS would publish notification of such Council-proposed additions/modifications of these parameters with regard to an FMP in the **Federal Register** and would solicit public comment in accordance with the applicable FMP framework procedure.

After considering the public comment and the Council's proposal, NMFS would take final action to approve/disapprove the proposed parameters. Approved population parameters would be considered legitimate measures of the applicable FMP but would not appear in codified text. This process should allow more timely incorporation/modification of such parameters with regard to an FMP, while ensuring the opportunity for adequate public review and comment.

This proposed rule also would implement stone crab trap construction requirements compatible with those set forth in Chapter 46–13.002(2)(a) of Florida law. The stone crab fishery is prosecuted almost exclusively off Florida. Compatible regulations enhance compliance and enforceability. Since the Council's decision to adopt stone crab trap construction requirements compatible with Florida's, Florida has revised its requirements by providing additional options for complying with the degradable panel specifications. Because it was the Council's intent to adopt measures compatible with Florida's and because Florida's revisions, effective June 1, 1999, relieve a restriction by providing additional options for compliance, NMFS proposes to revise § 654.22(a)(6)(ii) consistent with Florida's June 1, 1999, revisions. Comments are invited regarding that additional change.

In addition to the two measures that would be implemented by this rule, the SFA Amendment includes several measures that are not being implemented through regulatory text. It describes Gulf of Mexico fishing communities using existing U.S. census data and information about regional landings and about fishing participants in various fisheries for each of the Gulf of Mexico coastal states. It briefly addresses the Magnuson-Stevens Act requirement to describe fishing sectors and quantify trends in landings by sector. It defines bycatch and concludes that, with the addition of changes in the construction of stone crab pots proposed in this rule, conservation and management measures currently in place under Council FMPs minimize bycatch and bycatch mortality to the extent practicable. It also discusses measures to improve the assessment of the type, amount, and mortality of fish caught and released alive in recreational catch-and-release programs.

The SFA Amendment specifies status determination criteria and overfishing thresholds for each FMP that are intended to meet the appropriate requirements of the Magnuson-Stevens Act and establishes stock rebuilding schedules for overfished red snapper

(1999–2033) and Gulf-group king mackerel (1999–2009). Stock rebuilding schedules for Nassau grouper, jewfish, or red drum (also overfished) would be specified and implemented through the framework procedures of FMPs as such schedules are developed.

Availability of Comprehensive Amendment

Additional background and rationale for the measures discussed above are contained in the SFA Amendment, the availability of which was announced in the **Federal Register** (64 FR 44884, August 18, 1999). The public comment period on the SFA Amendment expired on October 18, 1999. All comments received on the SFA Amendment or on this proposed rule during their respective comment periods will be addressed in the preamble to the final rule.

Classification

At this time, NMFS has not determined that the SFA 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 the SFA Amendment, as well as the administrative record.

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

The Chief Counsel for Regulation of the Department of Commerce has certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. The basis for this certification follows:

The SFA Amendment would modify the existing framework regulatory adjustment procedures in the FMPs for coastal migratory pelagics, reef fish, and red drum to allow timely incorporation into the FMPs of biomass-based population parameters, such as status determination criteria (e.g., minimum stock size thresholds) and overfishing thresholds (e.g., maximum fishing mortality thresholds), as soon as the necessary scientific information becomes available. The proposed rule simply reflects the SFA Amendment's proposed modifications in the FMPs' framework measures. These modifications would have no immediate economic impacts. Ultimately, these new biological population parameters, as required by the Magnuson-Stevens Fishery Conservation and Management Act, may provide the basis for additional future management actions. The impacts of such future actions would be evaluated at that

time in the appropriate supporting regulatory impact analysis.

This proposed rule would also revise the trap construction requirements for the stone crab fishery to make them compatible with the requirements established by the State of Florida, where the majority of the fishery is prosecuted. These changes in trap construction are intended to minimize the bycatch of finfish in stone crab traps. The economic impact on affected fishermen will be very small, almost negligible, because the changes are minor and because the majority of stone crab traps used in Federal waters already conform to the Florida requirements for trap design.

As a result, a regulatory flexibility analysis was not required.

List of Subjects

50 CFR Part 622

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

50 CFR Part 654

Fisheries, Fishing.

Dated: October 26, 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 654 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 § 622.48, paragraphs (c) and (d) are revised, and paragraph (j) is added to read as follows:

§ 622.48 Adjustment of management measures.

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(c) *Coastal migratory pelagic fish.* For a species or species group: Target date for rebuilding an overfished species, MSY (or proxy), stock biomass achieved by fishing at MSY (B_{MSY}) (or proxy), maximum fishing mortality threshold (MFMT), minimum stock size threshold (MSST), OY, 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 and reopenings, gear restrictions (ranging from regulation to complete prohibition), reallocation of the commercial/recreational allocation of Atlantic group Spanish mackerel, and permit requirements.

(d) *Gulf reef fish.* (1) For a species or species group: Target date for rebuilding an overfished species, TAC, bag limits,

size limits, vessel trip limits, closed seasons or areas, gear restrictions, quotas, MSY (or proxy), OY, and estimates of stock biomass achieved by fishing at MSY (B_{MSY}), minimum stock size threshold (MSST), and maximum fishing mortality threshold (MFMT).

(2) SMZs and the gear restrictions applicable in each.

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(j) *Gulf red drum.* Target date for rebuilding an overfished species, MSY (or proxy), stock biomass achieved by fishing at MSY (B_{MSY}), OY, TAC, minimum stock size threshold (MSST), maximum fishing mortality threshold (MFMT), escapement rates for juvenile fish, bag limits, size limits, gear harvest limits, and other restrictions required to prevent exceeding allocations or quotas.

PART 654—STONE CRAB FISHERY OF THE GULF OF MEXICO

3. The authority citation for part 654 continues to read as follows:

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

4. In § 654.22, paragraph (a) is revised to read as follows:

§ 654.22 Gear restrictions.

(a) *Trap construction requirements.*

No person fishing for stone crab may transport on the water or fish with any trap which does not meet the following requirements:

(1) Each trap must be constructed of wood, plastic, or wire.

(2) A trap may be no larger in dimension than 24 by 24 by 24 inches (61 by 61 by 61 cm) or 8.0 ft³ (0.23 m³).

(3) The throats (entrances) to all wood and plastic traps must be located on the top horizontal section of the trap. If the throat is longer in one dimension, the throat size in the longer dimension must not exceed 5½ inches (14.0 cm) and in the shorter dimension must not exceed 3½ inches (9.0 cm). If the throat is round, the throat size must not exceed 5 inches (12.7 cm) in diameter.

(4) In any wire trap used to harvest stone crabs, each throat must be horizontally oriented. The width of the opening where the throat meets the vertical wall of the trap and the opening of the throat at its farthest point from the vertical wall, inside the trap, must be greater than the height of any such opening. No such throat may extend farther than 6 inches (15.2 cm) into the inside of any trap, measured from where the throat opening meets the vertical wall of the trap to the throat opening at its farthest point from the vertical wall, inside the trap.

(5) A wire trap must have at least three unobstructed escape rings installed, each with a minimum inside

diameter of 2 3/8 inches (6.0 cm). One such escape ring must be located on a vertical outer surface adjacent to each crab retaining chamber.

(6) A plastic or wire trap must have a degradable panel.

(i) A plastic trap will be considered to have degradable panel if it contains at least one sidewall with a rectangular opening no smaller in either dimension than that of the throat. This opening may be obstructed only with a cypress or untreated pine slat or slats no thicker than 3/4 inch (1.9 cm) such that when the slat degrades, the opening in the sidewall of the trap will no longer be obstructed.

(ii) A wire trap will be considered to have a degradable panel if one of the following methods is used in construction of the trap:

(A) The trap lid tie-down strap is secured to the trap at one end by a single loop of untreated jute twine, a corrodible loop composed of non-coated steel wire measuring 24 gauge or thinner, or an untreated pine dowel no larger than 2 inches (5.1 cm) in length by 3/8 inch (0.95 cm) in diameter. The trap lid must be secured so that when the jute, corrodible loop, or pine dowel degrades, the lid will no longer be securely closed.

(B) The trap contains at least one sidewall with a vertical rectangular opening no smaller in either dimension than 6 inches (15.2 cm) in height by 3 inches (7.6 cm) in width. This opening may be laced, sewn, or otherwise obstructed by—

(1) A single length of untreated jute twine knotted only at each end and not tied or looped more than once around a single mesh bar;

(2) Untreated pine slat(s) no thicker than 3/8 inch (0.95 cm);

(3) Non-coated steel wire measuring 24 gauge or thinner;

(4) A panel of ferrous single-dipped galvanized wire mesh made of 24 gauge or thinner wire; or

(5) A rectangular panel made of any material, fastened to the trap at each of the four corners of the rectangle by rings made of non-coated 24 gauge or thinner wire or single strands of untreated jute twine. When the jute, untreated pine slat(s), non-coated steel wire, wire mesh panel, or corner fasteners degrade, the opening in the sidewall of the trap must no longer be obstructed.

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