

PART 216—REGULATIONS GOVERNING THE TAKING AND IMPORTING OF MARINE MAMMALS

1. The authority citation for part 216 continues to read as follows:

Authority: 16 U.S.C. 1361 *et seq.*, unless otherwise noted.

2. In § 216.23, paragraph (f) is added to read as follows:

§ 216.23 Native exceptions.

* * * * *

(f) *Cook Inlet beluga whales.*

(1) *Cooperative Agreement.*

Notwithstanding the provisions of 16 U.S.C. 1371(b) or paragraph (a) of this section, any taking of a Cook Inlet beluga whale by an Alaska Native must be authorized under a cooperative agreement between the National Marine Fisheries Service and an Alaska Native organization(s). The Cook Inlet beluga whale stock includes all beluga whales occurring in waters of the Gulf of Alaska north of 58 degrees North latitude including, but not limited to, Cook Inlet, Kamishak Bay, Chinitna Bay, Tuxedni Bay, Prince William Sound, Yakutat Bay, Shelikof Strait, and off Kodiak Island and freshwater tributaries to these waters.

(2) *Limitations on the Number of Cook Inlet Beluga Whales Taken for Subsistence.* Notwithstanding the provisions of 16 U.S.C. 1371(b) or paragraph (a) of this section, the number of whales that may be taken (killed or struck and lost) each year from the Cook Inlet, Alaska, stock of beluga whales for subsistence purposes shall be limited to no more than two (2) strikes annually until the stock is no longer designated as depleted.

(3) *Prohibition on the Sale of Cook Inlet Beluga Whale.* Notwithstanding the provisions of 16 U.S.C. 1371(b) or paragraph (b) of this section, the sale of products or foodstuffs from Cook Inlet beluga whales is prohibited.

(4) *Season.* Notwithstanding the provisions of 16 U.S.C. 1371(b) or paragraph (a) of this section, all hunting shall only occur after July 15 of each year.

(5) *Beluga calves or adult belugas with calves.* Notwithstanding the provisions of 16 U.S.C. 1371(b) or paragraph (a) of this section, the taking of beluga whale newborn calves, or adult whales with older, maternally dependent calves is prohibited.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 981022265-8265-01; I.D. 101698L]

RIN 0648-AL93

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Fishing in the EEZ Seaward of Navassa Island

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 prohibit fishing and anchoring of fishing vessels in the exclusive economic zone (EEZ) within 15 nautical miles (nm) seaward from the baseline of Navassa Island.

DATES: Comments must be received no later than 4:30 p.m., eastern daylight savings time, on November 3, 2000.

ADDRESSES: Written comments regarding this proposed rule must be sent to, and copies of a draft environmental assessment supporting this action, may be obtained from Michael Barnette, Southeast Regional Office, NMFS, 9721 Executive Center Drive N., St. Petersburg, FL 33702. Comments also may be sent via fax to 727-570-5583. Comments will not be accepted if submitted via e-mail or Internet. Comments on any ambiguity or unnecessary complexity arising from the language used in this rule should be addressed to Rod Dalton, Southeast Regional Office, NMFS, at the above address.

FOR FURTHER INFORMATION CONTACT: Michael Barnette, telephone: 727-570-5305, fax: 727-570-5583, e-mail: Michael.Barnette@noaa.gov.

SUPPLEMENTARY INFORMATION: The U.S. Territory of Navassa Island is located in the Caribbean Sea approximately 60 nm northeast of Jamaica and 34 nm west of Haiti. The uninhabited island covers an area of approximately 2 square miles (518 hectares).

NMFS has received several inquiries regarding whether fishing activities are permitted in the EEZ seaward of Navassa Island. In addition, a recent scientific expedition to Navassa Island publicized the unique and unprotected marine resources of the area. Important marine resources of this area include reef fish and invertebrates, especially

coral, live rock, sponges, queen conch, and spiny lobsters. NMFS believes these resources are in a relatively pristine condition due to the isolation of this area and its distance from the commercial fishing grounds of the major fishing nations.

Fishing in the EEZ seaward of Navassa Island is subject to regulation under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) (16 U.S.C. 1801 *et seq.*) and the Atlantic Tuna Conventions Act (16 U.S.C. 971 *et seq.*). The Caribbean Fishery Management Council (Council) has authority only over the fisheries in the EEZ of the Caribbean Sea and Atlantic Ocean seaward of the U.S. Virgin Islands and the Commonwealth of Puerto Rico. An amendment to the Magnuson-Stevens Act would be necessary to extend the Council's authority to the EEZ seaward of Navassa Island. However, the Secretary of Commerce has the authority under section 305(d) of the Magnuson-Stevens Act to promulgate such regulations as may be necessary to carry out the provisions and purposes of that act, including conserving and managing the fishery resources in the EEZ not within the authority of a regional fishery management council such as in the EEZ seaward of Navassa Island.

As a precautionary approach to fisheries management, NMFS is proposing this rule to protect the fishery resources in the EEZ seaward of Navassa Island from unregulated harvests until the Magnuson-Stevens Act can be amended to give the Council authority over the fishery resources of the EEZ seaward of Navassa Island, and until conservation and management measures, as recommended by the Council and approved and implemented by NMFS, are in effect. This rule would prohibit all fishing, including fishing for Atlantic highly migratory species, and anchoring of fishing vessels in the EEZ within 15 nm seaward from the baseline of Navassa Island. These measures would apply to vessels of the United States and to all foreign vessels except vessels of the Republic of Haiti.

This proposed rule is intended to protect coral reef resources from directed fishing or bycatch mortality and to prevent possible damage from unregulated fishing gear or from harmful fishing practices, such as the use of explosives or poisons. Establishment of a no-fishing zone would simplify and facilitate enforcement in this remote area. The anchoring prohibition would protect coral habitats from physical damage and facilitate enforcement of the fishing ban.

NMFS requests information regarding the fishery resources and existing or expected fishing activities in the EEZ within 15 nm of Navassa Island. Because of the scarcity of data regarding fishing activities in the area, NMFS is requesting public comment, especially from the longline fishing community, on the number, if any, of longline vessels that routinely fish within 15 nm of Navassa Island. If any such vessels have historically fished in the area, then additional information on the importance of the area in terms of overall catches is requested.

The U.S. Fish and Wildlife Service (Service) recently established the Navassa Island National Wildlife Refuge. For information regarding the refuge, see the Service's notice in the **Federal Register** (64 FR 73062; December 29, 1999).

Classification

This proposed rule is necessary in order to protect the coral reef and other fishery resources surrounding Navassa Island from harmful fishing practices until the Magnuson-Stevens Act can be amended to establish the Council's authority over the fishery resources of the EEZ seaward of Navassa Island, and conservation and management measures can be implemented through the Council process. NMFS is concerned that fishing activities in the EEZ seaward of Navassa Island will increase as a result of recent publicity and inquiries about the area.

NMFS prepared a draft environmental assessment (EA) for this proposed rule and the Assistant Administrator for Fisheries has preliminarily concluded that there will be no significant impact on the human environment as a result of this proposed rule. A copy of the draft EA is available from NMFS (see **ADDRESSES**).

This proposed rule has been determined to be significant for purposes of Executive Order 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 as follows:

The U.S. Territory of Navassa Island is located in the Caribbean Sea approximately 60 nm northeast of Jamaica and 34 nm west of Haiti. The uninhabited island covers an area of approximately 2 square miles (518 hectares). NMFS believes the resources in the

nearshore waters surrounding Navassa Island are in a relatively pristine condition due to the isolation of this area and its distance from the commercial fishing grounds of major fishing nations. As a precautionary approach to fisheries management, NMFS is proposing this rule to protect the fishery resources around Navassa Island from unregulated harvests and habitat damage. Accordingly, this rule would prohibit all fishing and anchoring of fishing vessels in the EEZ within 15 nm seaward from the baseline of Navassa Island. This rule and its measures would apply to vessels of the United States and to all foreign vessels except vessels of the Republic of Haiti.

Because of its remote location, there is a scarcity of data about current and historical fishing around Navassa Island. Anecdotal evidence based on infrequent visits to the island by scientists from non-governmental organizations (e.g., Center for Marine Conservation) and verbal information from Navassa Island National Wildlife Refuge staff indicates that the current level of fishing near the island is negligible, if any. Information from NMFS Highly Migratory Species (HMS) Division indicates that some longline fishermen may fish in the near vicinity of Navassa Island. However, NMFS' data on HMS fishing locations is not precise enough to establish the presence or absence of fishing within 15 nm of Navassa Island.

NMFS believes that the main effect of this rule would be to preserve the status quo. Given what little data are available, and the preliminary conclusion that fishing activity in the marine waters near the island is negligible, if any, NMFS has concluded that the proposed rule will not have a significant negative economic impact on a substantial number of small entities.

Accordingly, an initial regulatory flexibility analysis was not prepared for this proposed rule.

The President has directed Federal agencies to use plain language in their communications with the public, including regulations. To comply with this directive, we seek public comment on any ambiguity or unnecessary complexity arising from the language used in this proposed rule. Such comments should be directed to Rod Dalton at NMFS Southeast Regional Office (see **ADDRESSES**).

List of Subjects in 50 CFR Part 622

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

Dated: September 27, 2000.

William T. Hogarth,

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 § 622.1, paragraph (c) is added to read as follows:

§ 622.1 Purpose and scope.

* * * * *

(c) This part also governs fishing in the EEZ seaward of Navassa Island, which is not under the authority of a Regional Fishery Management Council.

3. In § 622.3, paragraph (f) is added to read as follows:

§ 622.3 Relation to other laws and regulations.

* * * * *

(f) In Navassa Island National Wildlife Refuge, the regulations of the U.S. Fish and Wildlife Service also apply.

4. In § 622.7, paragraph (l) is revised to read as follows:

§ 622.7 Prohibitions.

* * * * *

(l) Fish in violation of the prohibitions, restrictions, and requirements applicable to seasonal and/or area closures, including but not limited to: Prohibition of all fishing, gear restrictions, restrictions on take or retention of fish, fish release requirements, and restrictions on use of an anchor or grapple, as specified in §§ 622.33, 622.34, 622.35, 622.49, or as may be specified under § 622.46(b) or (c).

* * * * *

5. Section 622.49 is added to subpart C to read as follows:

§ 622.49 Activities prohibited in the EEZ surrounding Navassa Island.

In the EEZ within 15 nm seaward from the baseline of Navassa Island, fishing for any species of fish is prohibited, and a fishing vessel may not anchor, use an anchor and chain, or use a grapple and chain. These prohibitions do not apply to vessels or citizens of the Republic of Haiti.

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