

Atmospheric Administration (NOAA), Commerce.

**ACTION:** Notice of informational public hearings.

**SUMMARY:** The South Atlantic Fishery Management Council (Council) will hold nine informational public hearings to collect social and economic information on the use of proposed marine protected area (MPA) candidate sites as a fishery management tool with an emphasis on deepwater species found in the snapper/grouper management complex.

**DATES:** The meetings will be held in January and February 2004. See

**SUPPLEMENTARY INFORMATION** for specific dates, location and times of the informational public hearings. Written comments, including email will be accepted until close of business on February 27, 2004.

**ADDRESSES:** Written comments should be sent to Kerry O'Malley, South Atlantic Fishery Management Council, One Southpark Circle, Suite 306, Charleston, SC 29407; email [kerry.omalley@safmc.net](mailto:kerry.omalley@safmc.net). Copies of the informational public hearing document are available by contacting Kerry O'Malley, South Atlantic Fishery Management Council, One Southpark Circle, Suite 306, Charleston, SC 29407-4699; telephone: 843/571-4366 or toll free 1-866/SAFMC-10; FAX 843/769-4520; email: [kerry.omalley@safmc.net](mailto:kerry.omalley@safmc.net). The informational public hearing document will also be available at the meeting. See **SUPPLEMENTARY INFORMATION** for specific locations.

**FOR FURTHER INFORMATION CONTACT:** Kim Iverson, Public Information Officer; telephone: 843/571-4366 or toll free 1-866/SAFMC-10; fax: 843/769-4520; email: [kim.iverson@safmc.net](mailto:kim.iverson@safmc.net).

**SUPPLEMENTARY INFORMATION:**

#### Purpose of Meetings

The Council will hold nine informational public hearings to collect social and economic information from the public on individual marine protected area alternatives being considered for use as a fishery management tool to protect deepwater species in the snapper/grouper management complex. This information is critical to evaluating the impacts of the various MPA candidate sites on people and communities.

#### Times and Locations of Informational Public Hearings

Public informational hearings will be held at the following dates and locations. All meetings are scheduled to begin at 6 p.m.

1. Monday, January 19, 2004, Sea Turtle Inn, One Ocean Boulevard, Atlantic Beach, FL 32233; telephone: 904-249-7402;

2. Tuesday, January 20, 2004, Ramada Inn, 1200 S Federal Highway, Stuart, FL 34994; telephone: 772-287-6900;

3. Thursday, January 22, 2004, The Islander, 82100 Overseas Highway, Islamorada, FL 33036; telephone: 305-664-2031;

4. Tuesday, January 27, 2004, Crystal Coast Civic Center, 3505 Arendell Street, Morehead City, NC 28557; telephone: 252-247-3883;

5. Wednesday, January 28, 2004, Blockade Runner, 275 Waynick Boulevard, Wrightsville Beach, NC 28480; telephone: 800-541-1161 or 910-256-2251;

6. Tuesday, February 10, 2004, University of Georgia Marine Extension, 715 Bay Street, Brunswick, GA 31520; telephone: 912-264-7268;

7. Wednesday, February 11, 2004, Richmond Hill City Hall, 40 Richard R. Davis Drive, Richmond Hill, GA 31324; telephone: 912-756-3345;

8. Tuesday, February 17, 2004, Holiday Inn, 722 Highway 17, Little River, SC 29566; telephone: 843-281-9400; and

9. Thursday, February 19, 2004, Town & Country Inn, 2008 Savannah Highway, Charleston, SC 29407; telephone: 1-800-334-6660 or 843-571-1000.

#### Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to the Council office (see **ADDRESSES**) by January 16, 2004.

Dated: December 29, 2003.

**Bruce C. Morehead,**

*Acting 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. 031217320-3320-01; I.D. 112403D]

RIN 0648-AR66

#### Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Reef Fish Fishery of the Gulf of Mexico; Extension of Marine Reserves

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

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

**SUMMARY:** NMFS issues proposed regulations to implement Amendment 21 to the Fishery Management Plan (FMP) for the Reef Fish Resources of the Gulf of Mexico (Amendment 21) prepared by the Gulf of Mexico Fishery Management Council (Council). These proposed regulations would modify the fishing restrictions that apply within the Madison and Swanson sites and Steamboat Lumps marine reserves in the eastern Gulf of Mexico and would extend the period of effectiveness of those restrictions through June 16, 2010. The intended effect of these proposed regulations is to protect the spawning aggregations of species within these areas, prevent overfishing, and aid in the evaluation of the effectiveness of marine reserves as a management tool.

**DATES:** Comments on the proposed rule must be received no later than 5 p.m., eastern time, on February 19, 2004.

**ADDRESSES:** Written comments on the proposed rule must be sent to Phil Steele, 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.

Copies of Amendment 21, which includes a regulatory impact review (RIR), Regulatory Flexibility Analyses, and an environmental assessment (EA), and a copy of a minority report filed by three Council members opposing provisions in the amendment that allow seasonal surface trolling within the reserves, may be obtained from the Gulf of Mexico Fishery Management Council, The Commons at Rivergate, 3018 U.S. Highway 301 North, Suite 1000, Tampa, FL 33619-2266; telephone: 813-228-2815; fax: 813-225-7015; e-mail: [gulfcouncil@gulfcouncil.org](mailto:gulfcouncil@gulfcouncil.org). Copies of

Amendment 21 can also be downloaded from the Council's website at [www.gulfcouncil.org](http://www.gulfcouncil.org).

Copies of a supplement to the RIR and EA, and copies of a supplementary RIR and Regulatory Flexibility Analysis, may be obtained from Phil Steele, Southeast Regional Office, NMFS, 9721 Executive Center Drive N., St. Petersburg, FL 33702; telephone: 727-570-5305, fax: 727-570-5583, e-mail: [phil.steele@noaa.gov](mailto:phil.steele@noaa.gov).

**FOR FURTHER INFORMATION CONTACT:** Phil Steele, telephone: 727-570-5305, fax: 727-570-5583, e-mail: [phil.steele@noaa.gov](mailto:phil.steele@noaa.gov).

**SUPPLEMENTARY INFORMATION:** The reef fish fishery in the exclusive economic zone (EEZ) of the Gulf of Mexico is managed under the FMP. The FMP was prepared by the 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.

### Background

The Madison and Swanson sites and Steamboat Lumps are located in the eastern Gulf of Mexico and encompass a total area of approximately 219 square nautical miles (751 km<sup>2</sup>). The boundaries of the two areas are:

#### MADISON AND SWANSON SITES

NW corner	29°17' N. lat., 85°50' W. long.
NE corner	29°17' N. lat., 85°38' W. long.
SW corner	29°06' N. lat., 85°50' W. long.
SE corner	29°06' N. lat., 85°38' W. long.

#### STEAMBOAT LUMPS

NW corner	28°14' N. lat., 84°48' W. long.
NE corner	28°14' N. lat., 84°37' W. long.
SW corner	28°03' N. lat., 84°48' W. long.
SW corner	28°03' N. lat., 84°37' W. long.

These two areas include important reef fish habitat in the dominant region where gag spawning aggregations are known to occur. These areas were originally established as marine reserves in June 2000 as part of a regulatory amendment intended to address concerns about overfishing of the gag stock, a substantial decline in the proportion of male gag in the gag population, and the need to evaluate the effectiveness of marine reserves as a management tool. The final rule implementing the regulatory amendment (65 FR 31827, May 19, 2000) prohibited all fishing, except fishing for highly migratory pelagic species (HMS)(billfish, sharks, swordfish and tunas other than blackfin tuna), within the Madison and Swanson sites and Steamboat Lumps for a 4-year period ending June 16, 2004.

#### Provisions of This Proposed Rule

This proposed rule would modify the fishing restrictions that apply within the Madison and Swanson sites and Steamboat Lumps marine reserves and would extend the period of effectiveness of those restrictions through June 16, 2010. Specifically, within these marine reserves, this proposed rule would: (1) prohibit the possession of Gulf reef fish year-round, except for possession aboard a vessel in transit with fishing gear appropriately stowed; (2) during November through April, prohibit all fishing and possession of any fish species, with exceptions for HMS species and for fish possessed aboard a vessel in transit with fishing gear

appropriately stowed; and (3) during May through October, restrict fishing activity to surface trolling only.

For the purpose of these provisions, "transit" would mean non-stop progression through the area; "fishing gear appropriately stowed" would mean

(A) A longline may be left on the drum if all gangions and hooks are disconnected and stowed below deck. Hooks cannot be baited. All buoys must be disconnected from the gear; however, buoys may remain on deck.

(B) A trawl net may remain on deck, but trawl doors must be disconnected from the trawl gear and must be secured.

(C) A gillnet must be left on the drum. Any additional gillnets not attached to the drum must be stowed below deck.

(D) A rod and reel must be removed from the rod holder and stowed securely on or below deck. Terminal gear (i.e., hook, leader, sinker, flasher, or bait) must be disconnected and stowed separately from the rod and reel. Sinkers must be disconnected from the down rigger and stowed separately.

For the purpose of these provisions, "surface trolling" would mean fishing with lines trailing behind a vessel which is in constant motion at speeds in excess of four knots with a visible wake. Such trolling may not involve the use of down riggers, wire lines, planers, or similar devices.

In structuring these modified provisions, the Council and NMFS carefully considered concerns expressed by members of the public and others

regarding both the need to limit restrictions on fishing activities to those essential for protecting gag and other reef fish species and the need to avoid measures that would unduly compromise adequate enforcement. The resulting provisions represent a reasoned balance between those somewhat conflicting objectives. If Amendment 21 is approved and implemented, the Council and NMFS would monitor the effectiveness of these measures with respect to achievement of the purposes of the marine reserves as well as adequate enforceability. Any necessary adjustments could be made through a timely regulatory framework procedure that would involve additional rulemaking and opportunity for public comment.

#### Request for Complementary Restrictions for Highly Migratory Species (HMS)

The Council has requested that NMFS' HMS Division implement restrictions regarding HMS that would complement the restrictions in this proposed rule. Specifically, the Council requested that fishing for HMS be prohibited within the Madison and Swanson sites and Steamboat Lumps marine reserves, except for surface trolling during May through October. If NMFS concurs, such restrictions would be implemented through separate rulemaking, including the opportunity for public comment. If Amendment 21 is approved and NMFS implements the requested HMS restrictions, 50 CFR 622.34(k) would be revised accordingly

and would include a cross reference to the applicable HMS restrictions in 50 CFR part 635.

#### Minority Report

A minority report, signed by three Council members, opposed the provision of Amendment 21 that would allow surface trolling during May through October. Their objections included concerns that the measure was unenforceable and inconsistent with NMFS' policy to move toward ecosystem management; involved procedural irregularities at the July Council meeting; and would create a privileged class of fishermen (surface trollers) and, thus, was unfair to others. Copies of the minority report are available (see **ADDRESSES**).

#### Classification

At this time, NMFS has not determined that Amendment 21, which this proposed rule would implement, is consistent with the national standards of the Magnuson-Stevens Act and other applicable laws. In making that determination, NMFS will take into account the data, views, and comments received during the comment period on Amendment 21 and this proposed rule.

This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

NMFS prepared an IRFA, based on the RIR, for this proposed rule. A summary of the IRFA follows.

The Magnuson-Stevens Fisheries Conservation and Management Act provides the statutory basis for the proposed rule. The proposed rule would extend the designation of the Madison and Swanson sites and Steamboat Lumps as marine reserves for another six years from the current sunset date of June 16, 2004. As an integral part of such designation, within the designated areas, the proposed rule would: prohibit possession of Gulf reef fish, except for possession aboard a vessel in transit with fishing gear appropriately stowed; during November through April, prohibit fishing for and possession of any fish species with exceptions for highly migratory species and for possession of fish aboard a vessel in transit with gear appropriately stowed; during May through October, allow only surface trolling; and require vessels transiting the marine reserves in possession of fish, subject to an exemption, to comply with gear stowage requirements.

The objectives of the proposed rule are to provide continued protection to spawning aggregations for gag, male gag, and other species within the reserves. A subsidiary objective of the proposed

rule is to allow additional time for research to be conducted on the effectiveness of the two marine reserves as a fishery management tool. The Council believes that the achievement of these objectives can be best accomplished through an extension of the marine reserve designation for another six years.

The proposed rule would not impose any changes in record-keeping for affected entities. Compliance requirements would change slightly by allowing the use of troll gear within the reserves and allowing vessels to transit the reserves. These changes would mitigate revenue losses from fishing restrictions within the reserves and reduce travel costs for vessels passing through the reserves.

No duplicative, overlapping, or conflicting Federal rules have been identified. However, fishing restrictions within the reserves may pose coordination problems with respect to fishing provisions affecting highly migratory species.

This proposed rule would impact both the commercial and recreational participants that traditionally harvested fish, provided recreational trips to the two areas, received fish harvested in the two areas, or would be expected to do so upon sunset of the current designation.

The specific fishing activities that historically occurred within the two marine reserves are unknown, but some characteristics of fishing activities can be inferred from fishing activities conducted in Statistical Areas 6 and 8, where the marine reserves are located. This approach likely overestimates the impacts of the proposed rule because participants would have adjusted their fishing patterns, but adjustments in the estimation procedures incorporating consideration of water depth have been introduced to partially address this problem.

Of the 1,338 boats that reported in their logbooks to have landed fish in the Gulf of Mexico, 356 boats harvested fish in Statistical Areas 6 or 8. These 356 boats include 59 vessels that harvest reef fish using fish traps. These trap vessels are not believed to have historically operated in the marine reserve areas since they generally operate in shallower waters. Of the 431 dealers that received fish from various vessels in the Gulf of Mexico, 87 dealers received fish that were harvested in Statistical Areas 6 or 8. There are 1,515 for-hire vessels with Gulf reef fish or coastal migratory pelagics permits. It cannot be determined, however, how many of these vessels actually fished in Statistical Areas 6 or 8. The rule is, thus,

expected to directly affect 356 commercial fishing vessels, 87 fish dealers/processors, and an unknown number of for-hire vessels.

According to a survey of commercial fishing vessels, average gross receipts of vessels in the eastern Gulf (those that likely fished in Statistical Areas 6 or 8) ranged from \$24,588 for low-volume vertical line vessels to \$116,989 for high-volume longline vessels. Also, according to a survey of reef fish processors in the Southeast, employment by reef fish processors totaled 700 individuals, both part and full time. Given this number and the likelihood that fish dealers are generally of smaller size than processors, employment by any of the affected dealers is very likely to be less than 500 individuals. Furthermore, according to a survey of for-hire vessels in Florida, average gross receipts for charterboats totaled \$68,000 while that for headboats totaled \$324,000. A fishing business is considered a small entity if it is independently owned and operated and not dominant in its field of operation, and if it has annual receipts not in excess of \$3.5 million in the case of commercial harvesting entities or \$6 million in the case of for-hire entities, or if it has fewer than 500 employees in the case of fish processors, or fewer than 100 employees in the case of fish dealers. Given these data on earnings and employment, all of the business entities directly affected by the rule are determined to be small business entities.

Assuming alternative sources of revenue have not been located during the current closure, the proposed rule is expected to continue to reduce total gross revenues of commercial fishing vessels by \$352,000 annually based on pre-closure fishing information. This represents approximately 1 percent to 4 percent of gross revenues if equally divided among the 356 affected vessels, or 2 percent to 5 percent if the 59 trap vessels are excluded from the universe of affected vessels. The revenue and profit profile for dealers is not known. The projected reduction in ex-vessel sales (\$352,000) as a result of the proposed rule equals approximately 11 percent of total shallow-water grouper revenues generated from harvests in Statistical Areas 6 and 8. It is unlikely, however, that any dealer with substantial business operations would be wholly dependent upon harvests from just these areas. Although there is some information on the revenues of for-hire vessels, information on for-hire vessel profits is unavailable, and the extent of for-hire vessel participation within the marine reserves is unknown.

It is, therefore, not possible to provide even a general estimate of the impacts of the two marine reserves on the revenues and profits of for-hire vessels.

A general characteristic of economic impacts of the proposed rule shared by all affected small entities is that under the proposed rule they would likely shoulder lower costs than under current fishing restrictions because the proposed rule would allow surface trolling within the two reserves for the months of May through October and would allow commercial and recreational vessels to transit the reserves.

Seven alternatives were considered for the continuation of the two marine reserves. The alternatives differ mainly on the sunset date of the marine reserve designation, with four alternatives identifying a specific sunset date and three alternatives establishing an indefinite sunset date. For any given set of fishing restrictions accompanying the continuation of the marine reserve designation, forgone revenues and profits are greatest with the longest time horizon. It is not possible to determine the relative impacts of the alternatives that specify an indeterminate duration. With respect to those alternatives that have specific time durations, two alternatives provide shorter time horizons and two provide longer time horizons than the proposed alternative. Costs to small entities would be reduced under the no-extension or 4-year extension alternatives, whereas costs would increase under the longer extensions. The shorter extensions, however, would not provide sufficient time to assess the effects of the two marine reserves as a management tool and would not, therefore, achieve the Council's objectives.

There are six alternatives to the proposed alternative that would establish harvest restrictions in the reserves. In terms of impacts on revenues of small entities, these alternatives may be grouped into two groups, with the proposed alternative falling approximately in the middle of the two groups with regards to fishing restrictions. The proposed alternative provides for a middle-of-the-road approach with respect to trolling by allowing this gear to be used within the reserves for six months of the year. Four alternatives are more restrictive than the proposed alternative and would not reduce the adverse impacts. Two alternatives are less restrictive than the proposed alternative and would allow trolling year-round. These alternatives would reduce the negative impacts on small entities but would possibly interfere with the Council's goal of

protecting spawning aggregations of gag during key spawning months. Prohibition of all trolling, however, was determined to be excessive. The proposed alternative, therefore, is expected to best achieve the Council's objectives at the lowest possible cost.

There are two alternatives to the proposed alternative on seasonal duration of the proposed fishing restrictions. These two alternatives would limit the applicability of fishing restrictions. Limiting the seasonal duration of the fishing restrictions would reduce the negative effects of the fishing restrictions within the reserves. However, reducing the seasonal duration of the fishing restrictions reduces the protection of the stocks and, therefore, would not achieve the Council's objectives.

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

**List of Subjects in 50 CFR Part 622**

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

Dated: December 29, 2003.

**John Oliver,**

*Deputy Assistant Administrator for Operations, 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 § 622.34, paragraph (k) is revised to read as follows:

**§ 622.34 Gulf EEZ seasonal and/or area closures.**

\* \* \* \* \*

(k) Closure provisions applicable to the Madison and Swanson sites and Steamboat Lumps. The Madison and Swanson sites are bounded by rhumb lines connecting, in order, the following points:

Point	North lat.	West long.
A	29°17'	85°50'
B	29°17'	85°38'
C	29°06'	85°38'
D	29°06'	85°50'
A	29°17'	85°50'

STEAMBOAT LUMPS IS BOUNDED BY RHUMB LINES CONNECTING, IN ORDER, THE FOLLOWING POINTS:

Point	North lat.	West long.
A	28°14'	84°48'
B	28°14'	84°37'
C	28°03'	84°37'
D	28°03'	84°48'
A	28°14'	84°48'

The following provisions apply within the Madison and Swanson sites and Steamboat Lumps through June 16, 2010.

(1) Possession of Gulf reef fish is prohibited, except for such possession aboard a vessel in transit with fishing gear stowed as specified in paragraph (k)(3) of this section.

(2) During November through April, all fishing is prohibited, and possession of any fish species is prohibited, except for such possession aboard a vessel in transit with fishing gear stowed as specified in paragraph (k)(3) of this section. The provisions of this paragraph, (k)(2), do not apply to highly migratory species.

(3) For the purpose of paragraph (k) of this section, transit means non-stop progression through the area; fishing gear appropriately stowed means -

(i) A longline may be left on the drum if all gangions and hooks are disconnected and stowed below deck. Hooks cannot be baited. All buoys must be disconnected from the gear; however, buoys may remain on deck.

(ii) A trawl net may remain on deck, but trawl doors must be disconnected from the trawl gear and must be secured.

(iii) A gillnet must be left on the drum. Any additional gillnets not attached to the drum must be stowed below deck.

(iv) A rod and reel must be removed from the rod holder and stowed securely on or below deck. Terminal gear (i.e., hook, leader, sinker, flasher, or bait) must be disconnected and stowed separately from the rod and reel. Sinkers must be disconnected from the down rigger and stowed separately.

(4) During May through October, surface trolling is the only allowable fishing activity. For the purpose of this paragraph (k)(4), surface trolling is defined as fishing with lines trailing behind a vessel which is in constant motion at speeds in excess of four knots with a visible wake. Such trolling may not involve the use of down riggers, wire lines, planers, or similar devices.

(5) For the purpose of paragraph (k) of this section, fish means finfish, mollusks, crustaceans, and all other

forms of marine animal and plant life  
other than marine mammals and birds.  
Highly migratory species means tuna

species, marlin (*Tetrapturus* spp. and  
*Makaira* spp.), oceanic sharks, sailfishes

(*Istiophorus* spp.), and swordfish  
(*Xiphias gladius*).

\* \* \* \* \*

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