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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 161020986-7352-02]

RIN 0648-BG38

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Snapper-Grouper Fishery of the South Atlantic Region; Amendment 36

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

ACTION: Final rule.

SUMMARY: NMFS issues regulations to implement Amendment 36 to the Fishery Management Plan (FMP) for the Snapper-Grouper Fishery of the South Atlantic Region as prepared and submitted by the South Atlantic Fishery Management Council (Council). This final rule modifies the FMP framework procedures to allow spawning special management zones (SMZs) to be established or modified through the framework process; establishes spawning SMZs off North Carolina, South Carolina, and Florida; establishes transit and anchoring provisions in the spawning SMZs; and establishes a sunset provision for most of the spawning SMZs. This final rule also moves the boundary of the

existing Charleston Deep Artificial Reef Marine Protected Area (MPA). The purpose of this final rule is to protect spawning snapper-grouper species and the habitat where they spawn, and to reduce bycatch and bycatch mortality for snapper-grouper species, including speckled hind and warsaw grouper.

DATES: This final rule is effective [*insert date 30 days after date of publication in the FEDERAL REGISTER*].

ADDRESSES: Electronic copies of Amendment 36 may be obtained from *www.regulations.gov* or the Southeast Regional Office Web site at *http://sero.nmfs.noaa.gov*. Amendment 36 includes an environmental assessment, Regulatory Flexibility Act (RFA) analysis, regulatory impact review, and fishery impact statement.

FOR FURTHER INFORMATION CONTACT: Frank Helies, NMFS Southeast Regional Office, telephone: 727-824-5305, or email: *frank.helies@noaa.gov*.

SUPPLEMENTARY INFORMATION: The snapper-grouper fishery in the South Atlantic region is managed under the FMP and includes speckled hind and warsaw grouper, along with other snapper-grouper species. The FMP was prepared by the Council and is implemented by NMFS through regulations at 50 CFR part 622 under the authority of the Magnuson-Stevens

Fishery Conservation and Management Act (Magnuson-Stevens Act).

On January 4, 2017, NMFS published a notice of availability of Amendment 36 and requested public comment (82 FR 810). On January 18, 2017, NMFS published the proposed rule to implement Amendment 36 and requested public comment (82 FR 5512). The proposed rule and Amendment 36 outline the rationale for the actions contained in this final rule. A summary of the actions implemented by Amendment 36 and this final rule is provided below.

Management Measures Contained in This Final Rule

This final rule modifies the FMP framework procedures to allow spawning SMZs to be established or modified through the framework process; establishes spawning SMZs off North Carolina, South Carolina, and Florida; establishes transit and anchoring provisions in the spawning SMZs; establishes a sunset provision for most of the spawning SMZs; and moves the existing Charleston Deep Artificial Reef MPA 1.4 mi (2.3 km) northwest to match the permitted site boundary.

Modify the FMP Framework Procedures for Spawning SMZs

The current FMP contains framework procedures to allow the Council to modify certain management measures, such as

annual catch limits and other management measures, via an expedited process (see 50 CFR 622.194; 56 FR 56016, October 31, 1991). In Amendment 36 and this final rule, the Council has included changes to spawning SMZs, such as boundary modifications and the establishment or removal of spawning SMZs, under the framework process. For example, this final rule allows the Council to remove a spawning SMZ if monitoring efforts do not document evidence of spawning snapper-grouper species within the boundary. The revisions to the FMP framework procedures also allow the Council to remove the 10-year sunset provision for a spawning SMZ if monitoring efforts document snapper-grouper species' spawning inside a spawning SMZ. The Council decided that changing spawning SMZs through an expedited process can have beneficial biological and socio-economic impacts, especially if the changes respond to newer information, such as spawning locations for snapper-grouper species. The Council concluded that the framework process will allow adequate time for the public to comment on any proposed change related to a spawning SMZ.

Establish Spawning SMZs off North Carolina, South Carolina, and Florida

The Council is establishing five snapper-grouper spawning SMZs in the South Atlantic off North Carolina,

South Carolina, and Florida. This final rule prohibits fishing for or harvest of snapper-grouper species year-round in the spawning SMZs. The final rule establishes other restrictions in the spawning SMZs, including transiting with snapper-grouper species on board and anchoring.

The spawning SMZ off North Carolina is called South Cape Lookout (5.1 sq mi; 13.2 sq km). The final rule establishes three spawning SMZs off South Carolina that are called Devil's Hole/Georgetown Hole (3.03 sq mi; 7.8 sq km), Area 51 (approximately 3 sq mi; 7.8 sq km), and Area 53 (approximately 3 sq mi; 7.8 sq km). The spawning SMZ off the east coast of the Florida Keys is called Warsaw Hole/50 Fathom Hole (3.64 sq mi; 9.4 sq km).

Another purpose of spawning SMZs is to reduce bycatch and bycatch mortality of snapper-grouper species, including speckled hind and warsaw grouper. Currently, retention of speckled hind and warsaw grouper is prohibited in Federal waters in the South Atlantic. Prohibiting the targeting or harvest of snapper-grouper species in specified areas where these species are known to occur and possibly spawn is expected to reduce encounters with these deep-water species and provide protection for reproduction. The Council concluded that protecting snapper-grouper species within

the spawning SMZs could enhance the opportunity for these species to reproduce and introduce more eggs and larvae into the environment.

Establish Transit and Anchoring Provisions in Spawning SMZs

This final rule allows fishing vessels to transit through the spawning SMZs with snapper-grouper species on board only when fishing gear is properly stowed. "Properly stowed" means that trawl or try nets and the attached doors must be out of the water, but are not be required to be on deck or secured below deck. Terminal gear (hook, leader, sinker, flasher, or bait) used with automatic reels, bandit gear, buoy gear, handline, or rod and reel would have to be disconnected and stowed separately from such fishing gear and sinkers would have to be disconnected from down riggers and stowed separately. Except under the limited condition to possess snapper-grouper species while transiting a spawning SMZ with fishing gear properly stowed, vessels in the spawning SMZs are prohibited from fishing for, harvesting, or possessing snapper-grouper species year-round in these areas. Except for the Area 51 and Area 53 Spawning SMZs off South Carolina, persons on board a fishing vessel are not allowed to anchor, use an anchor or chain, or use a grapple and chain while in spawning SMZs. Fishermen continue to be allowed to troll for pelagic

species such as dolphin, tuna, and billfish in spawning SMZs.

Establish a Sunset Provision for Most Spawning SMZs

This final rule implements a 10-year sunset provision for the establishment of the spawning SMZs, except for the Area 51 and Area 53 Spawning SMZs, which will remain in effect indefinitely. Therefore, except for Areas 51 and 53, the spawning SMZs and their associated management measures are effective for 10 years following the implementation of this final rule for Amendment 36. For the spawning SMZs and management measures subject to the sunset provision to extend beyond 10 years, the Council would need to take further action. The Council will regularly evaluate all of the spawning SMZs over the 10-year period.

Move the Existing Charleston Deep Artificial Reef MPA

This final rule moves the existing Charleston Deep Artificial Reef MPA 1.4 mi (2.3 km) northwest to match the boundary of the U.S. Army Corps of Engineers' permitted artificial reef area at that location. This final rule does not change the size of the existing MPA. The Council originally designated the current area as an artificial reef site in Amendment 14 to the FMP (74 FR 1621, January 13, 2009). The State of South Carolina has worked with the U.S. Army Corps of Engineers to modify the boundary of this

site to include material recently sunk by the state in the area and requested that the Council shift their boundary of the existing Charleston Deep Artificial Reef MPA to match the new boundary of the U.S. Army Corps of Engineers' permitted artificial reef area.

Management Measure Contained in Amendment 36 but not Codified Through this Final Rule

In addition to the management measures that this final rule implements, Amendment 36 includes an action to modify the SMZ procedures in the FMP to allow for the designation of spawning SMZs. The Council will be able to designate important spawning areas as spawning SMZs to provide additional protection to some existing Essential Fish Habitat-Habitat Areas of Particular Concern for snapper-grouper species. The Council concluded that designating areas as spawning SMZs is important to protect snapper-grouper species and habitat where snapper-grouper species spawn. Additionally, the Council concluded that designating the spawning SMZ sites through this final rule, and subsequent changes to regulations, would enhance reproduction for snapper-grouper species and thus increase the number of eggs and larvae that are produced by the species.

Comments and Responses

NMFS received a total of 101 comments on the notice of availability and proposed rule for Amendment 36. The commenters included commercial, private recreational, and charter vessel fishing entities, as well as recreational divers, non-governmental organizations, and individuals from the general public. Comments both supported additional protections for spawning fish through implementation of spawning SMZs and opposed the implementation of any spatial closures in the South Atlantic. The majority of comments received from the public during the comment period were supportive of the actions in Amendment 36 to establish spawning SMZs to protect spawning snapper-grouper species. NMFS' responses to comments that specifically relate to the actions contained in Amendment 36 and the proposed rule are summarized below.

Comment 1: NMFS should not establish additional fishing area closures to protect spawning fish. The data used to determine potential spawning SMZ sites are flawed and the sites were arbitrarily selected. Additionally, the science does not support the use of MPAs or similarly named spatial closures as a viable management option.

Response: NMFS disagrees that the spawning SMZ sites were arbitrarily selected and that the data used are flawed. The Council used a variety of data sources to

select spawning SMZ sites. Data sources included the Southeast Reef Fish Survey, habitat mapping research, and cooperative research projects that identified locations where snapper-grouper species occur, including spawning fish. In addition, multiple groups provided input on site selection to protect spawning fish while reducing social and economic impacts to fishermen. These groups included fishermen on the Council's MPA Expert Work Group and Snapper-Grouper Advisory Panel (Snapper-Grouper AP) who could be affected by the spawning SMZs. Finally, the Council evaluated comments and recommendations from the public during meetings such as public hearings and scoping meetings. The NMFS Southeast Fisheries Science Center reviewed the data and analyses contained in Amendment 36 and certified it to be based on the best scientific information available.

NMFS disagrees that spatial closures are not a viable management option for protecting spawning snapper-grouper species. Areas closed to protect known spawning locations of fish species have been shown to provide positive biological and socio-economic benefits. The spawning SMZs implemented by this final rule are expected to result in additional protections for spawning snapper-grouper, while potentially providing positive economic effects by

increasing future stock size and sustainability. Should monitoring efforts highlight the need for the adjustment of an area or the removal of a spawning SMZ if spawning snapper-grouper species are not documented in the area, this final rule will allow the Council to modify spawning SMZs. If the Council does not take any subsequent action to modify or renew the spawning SMZs, most of the spawning SMZs would expire automatically after the 10-year sunset provision in this final rule.

Comment 2: NMFS is establishing spawning SMZs without any regard for the economic and social impacts on fishermen and coastal communities.

Response: NMFS disagrees. The Magnuson-Stevens Act requires NMFS to consider and analyze the economic and social impacts of proposed management actions. Amendment 36 and this final rule recognize that negative short-term economic effects resulting from restrictions in fishing opportunities in the designated spawning SMZs may occur. The spawning SMZs are small (combined total area is 17.71 square miles) relative to all available fishing grounds in the South Atlantic, and the total estimated economic loss of ex-vessel revenue for the entire commercial sector is \$1,605 annually. NMFS assumes that any reduction in ex-vessel revenue from this final rule would be minimized

based on the small size of each spawning SMZ area and the high likelihood that commercial vessels would substitute landings of snapper-grouper species in other areas. Also, the allowance for transit and trolling for pelagic species could reduce economic impacts from this final rule to fishermen.

Comment 3: The spawning SMZs should be closed to all fishing methods. Research has shown that snapper-grouper species, including warsaw grouper and speckled hind, can be harvested through the deployment of trolling gear. Allowing trolling of any kind could undermine the potential effectiveness of a spawning SMZ and would make enforcement of the provision that allows transiting with snapper-grouper species on board difficult.

Response: Amendment 36 and this final rule allow fishermen to troll for pelagic species in the spawning SMZs but do not allow fishing vessels to have snapper-grouper species on board. The final rule allows fishing vessels to possess snapper-grouper species on board while in a spawning SMZ only if the vessel is transiting through the spawning SMZ directly and without stopping, and if fishing gear is appropriately stowed and unavailable for immediate use (e.g., terminal gear, like hooks and weights, must be disconnected and stowed separately from a rod and reel).

Therefore, law enforcement would be able to determine the difference between fishing vessels that are trolling for pelagic species and fishing vessels that are transiting the spawning SMZs with snapper-grouper species on board through visual inspection of the gear and the species on board. The trolling and transit allowances were discussed by the Council and included in Amendment 36 as a way to reduce the economic and social impacts of spatial closures on the fishing community and address concerns about safety at-sea, respectively.

Comment 4: Fishing for snapper-grouper species and anchoring in the spawning SMZs should be exempted for spear fishermen. Spear fishing is a selective gear type and large catches of snapper-grouper are not expected to occur through its use.

Response: In all of the spawning SMZs implemented by this final rule, the fishing for, harvest, or possession (except while transiting through a spawning SMZ) of snapper-grouper species is prohibited year-round. While NMFS agrees that spear fishing is a selective fishing gear with lower bycatch potential compared to other fishing methods, spear fishing could remove larger fish that are important to spawning. Prohibiting spear fishing in spawning SMZs is expected to provide protection to spawning

snapper-grouper species to meet the objectives of Amendment 36.

Comment 5: Establishing Warsaw Hole as a spawning SMZ should be removed from consideration in Amendment 36. Fish caught in the Warsaw Hole and surrounding area (particularly greater amberjack) make up the majority of some fishermen's annual income in Key West, Florida, and fishing in the area results in little to no discards. Additionally, the majority of landings around Warsaw Hole occur north of 24°21' N. lat., within the 1.8-square mile area included in another sub-alternative. However, if the Warsaw Hole Spawning SMZ must be established, the alternative consisting of a 0.9-square mile area is recommended over the preferred alternative of a 3.6-square mile area. The 0.9-square mile area would provide the least amount of negative economic impact to fishermen in Key West, Florida.

Response: The Council's objective for the protection of Warsaw Hole is to implement a spawning SMZ that would maximize the probability that snapper-grouper species, including warsaw grouper and greater amberjack, reform spawning aggregations at this site while balancing both short and long-term social and economic impacts to fishermen. To accomplish this objective, the Council

determined the spawning SMZ should cover the shelf edge around the hole where greater amberjack spawn. After evaluating a spawning SMZ of different sizes around Warsaw Hole, the Council concluded that the 3.6-square mile area for the Warsaw Hole Spawning SMZ best meets this objective.

NMFS acknowledges that there may be short-term negative social and economic impacts from the spawning SMZ being implemented for Warsaw Hole. The Council considered these economic impacts but determined that the enhanced reproduction for snapper-grouper species and, subsequently, the increased the number of eggs and larvae that are produced as a result of this added protection, would be expected to result in long-term indirect economic benefits to commercial and recreational fishermen. In the end, the Council concluded that the 3.6-square mile area for the Warsaw Hole Spawning SMZ best meets the objectives of Amendment 36 by creating positive impacts, while balancing both short and long-term social and economic impacts.

Comment 6: The Council should adopt the 3.6-square mile area as a spawning SMZ for Warsaw Hole and the 13.3-square mile area as a spawning SMZ for Daytona Steeples. These two alternatives together would provide the greatest amount of protection to spawning snapper-grouper species off Florida.

Response: The Council selected the 3.6-square mile area around Warsaw Hole as the only spawning SMZ off Florida. Extensive input from the Council's Snapper-Grouper AP and the public indicated that there would be support for a spawning SMZ at Daytona Steeples if there were data on spawning snapper-grouper species or habitat in the area. The Council considered a spawning SMZ in the Daytona Steeples area but agreed with the Snapper-Grouper AP and public about the lack of available data on spawning snapper-grouper species or habitat and decided not to propose any spawning SMZ in the Daytona Steeples area.

Comment 7: The details in the system management plan (SMP) for the spawning SMZs, such as cost, monitoring, and evaluation techniques, should have been fully developed before the proposed sites in Amendment 36 were presented to the Council.

Response: The SMP for the spawning SMZs was developed in conjunction with Amendment 36 to outline the data and research needed to monitor and evaluate the spawning SMZs and guide researchers applying for project funding. The SMP outlines the estimated project costs for each study type to aid fishery managers in determining research priorities. The purpose of the SMP is not to outline the specific methods and costs. The Council acknowledged that the SMP

will likely be modified over time as research projects are implemented. One of the primary tasks for the SMP was to recommend development of an advisory panel to the Council. The advisory panel would be used to further develop specific projects to monitor spawning SMZs.

Classification

The Regional Administrator for the NMFS Southeast Region has determined that this final rule is consistent with Amendment 36, the FMP, the Magnuson-Stevens Act, and other applicable laws.

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

The Magnuson-Stevens Act provides the statutory basis for this rule. No duplicative, overlapping, or conflicting Federal rules have been identified. In addition, no new reporting, record-keeping, or other compliance requirements are introduced by this final rule.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration during the proposed rule stage that this rule would not have a significant economic impact on a substantial number of small entities. The factual basis for this determination was published in the proposed rule and is not repeated here. Public comments

relating to socio-economic implications and potential impacts on small businesses are addressed in the responses to Comments 2, 3, and 4 in the Comments and Responses section of this final rule. No comments were received regarding the certification and NMFS has not received any new information that would affect its determination. As a result, a final regulatory flexibility analysis was not required and none was prepared.

Change to Codified Text from the Proposed Rule

In this final rule, NMFS makes one change to the coordinates table for the Devil's Hole/Georgetown Hole Spawning SMZ. In the proposed rule, the coordinate points for this spawning SMZ were listed in a counter-clockwise order when plotted on a map or chart. The points for all other coordinate tables of the spawning SMZs in the proposed rule were listed in a clockwise order. This final rule revises the order of the coordinates for the Devil's Hole/Georgetown Hole Spawning SMZ to list them in a clockwise order, to be consistent with the other spawning SMZs in this final rule.

List of Subjects in 50 CFR Part 622

Fisheries, Fishing, Marine protected area, South Atlantic, Special management zone.

Dated: June 27, 2017.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs,

National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 622 is amended as follows:

PART 622--FISHERIES OF THE CARIBBEAN, GULF OF MEXICO, 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 § 622.183, revise the table in paragraph (a) (1) (i) (D) and add paragraph (a) (2) to read as follows:

§ 622.183 Area and seasonal closures.

(a) * * *

(1) * * *

(i) * * *

(D) * * *

Point	North lat.	West long.
A	32°05.04'	79°13.575'
B	32°09.65'	79°09.2'
C	32°07.155'	79°05.595'
D	32°02.36'	79°09.975'
A	32°05.04'	79°13.575'

* * * * *

(2) *Spawning SMZs.* (i) Any fishing vessel in a spawning SMZ is prohibited to fish for or harvest species in the snapper-grouper fishery management unit year-round. For a fishing vessel to possess snapper-grouper species on board while in a spawning SMZ, the vessel must be in transit and fishing gear must be appropriately stowed, as specified in paragraph (a)(2)(vii) of this section. Except for spawning SMZs of Area 51 and Area 53, the spawning SMZs in this paragraph are effective until [*insert date 10 years and 30 days from the date of publication in the FEDERAL REGISTER*]. A person on board a fishing vessel may not anchor, use an anchor and chain, or use a grapple and chain while in the spawning SMZs specified in paragraph (a)(2) of this section. The anchoring prohibition does not apply to fishing vessels in the spawning SMZs of Area 51 and Area 53.

(ii) *South Cape Lookout Spawning SMZ* is bounded by rhumb lines connecting, in order, the following points:

Point	North lat.	West long.
A	33°53.040'	76°28.617'
B	33°52.019'	76°27.798'
C	33°49.946'	76°30.627'
D	33°51.041'	76°31.424'
A	33°53.040'	76°28.617'

(iii) *Devil's Hole/Georgetown Hole Spawning SMZ* is bounded by rhumb lines connecting, in order, the following points:

Point	North lat.	West long.
A	32°34.311'	78°34.996'
B	32°34.311'	78°33.220'
C	32°32.748'	78°33.220'
D	32°32.748'	78°34.996'
A	32°34.311'	78°34.996'

(iv) *Area 51 Spawning SMZ* is bounded by rhumb lines connecting, in order, the following points:

Point	North lat.	West long.
A	32°35.25'	79°28.6'
B	32°35.25'	79°27'
C	32°33.75'	79°27'
D	32°33.75'	79°28.6'
A	32°35.25'	79°28.6'

(v) *Area 53 Spawning SMZ* is bounded by rhumb lines connecting, in order, the following points:

Point	North lat.	West long.
A	32°22.65'	79°22.25'
B	32°22.65'	79°20.5'
C	32°21.15'	79°20.5'
D	32°21.15'	79°22.25'
A	32°22.65'	79°22.25'

(vi) *Warsaw Hole/50 Fathom Hole Spawning SMZ* is bounded by rhumb lines connecting, in order, the following points:

Point	North lat.	West long.
A	24°22.277'	82°20.417'
B	24°22.277'	82°18.215'
C	24°20.932'	82°18.215'
D	24°20.932'	82°20.417'
A	24°22.277'	82°20.417'

(vii) For the purpose of paragraph (a) (2) (i) of this section, transit means direct, non-stop progression through the spawning SMZ. Fishing gear appropriately stowed means—

(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) Trawl doors and nets must be out of the water, but the doors are not required to be on deck or secured on or below deck.

(C) A gillnet, stab net, or trammel net must be left on the drum. Any additional such nets not attached to the drum must be stowed below deck.

(D) Terminal gear (*i.e.*, hook, leader, sinker, flasher, or bait) used with an automatic reel, bandit gear,

buoy gear, handline, or rod and reel must be disconnected and stowed separately from such fishing gear. Sinkers must be disconnected from the down rigger and stowed separately.

(E) A crustacean trap, golden crab trap, or sea bass pot cannot be baited. All buoys must be disconnected from the gear; however, buoys may remain on deck.

* * * * *

3. In § 622.194, revise paragraph (a) to read as follows:

§ 622.194 Adjustment of management measures.

* * * * *

(a) Biomass levels, age-structured analyses, target dates for rebuilding overfished species, MSY (or proxy), OY, ABC, TAC, quotas (including a quota of zero), annual catch limits (ACLs), annual catch targets (ACTs), AMs, maximum fishing mortality threshold (MFMT), minimum stock size threshold (MSST), trip limits, bag limits, size limits, gear restrictions (ranging from regulation to complete prohibition), seasonal or area closures, fishing year, rebuilding plans, definitions of essential fish habitat, essential fish habitat, essential fish habitat HAPCs or Coral HAPCs, restrictions on gear and fishing activities applicable in essential fish habitat and essential fish habitat HAPCs, and establish or modify

spawning SMZs.

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