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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

RIN 0648-BI98

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Snapper-Grouper Fishery of the South Atlantic Region; Amendment 42

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

ACTION: Notice of availability (NOA); request for comments.

SUMMARY: The South Atlantic Fishery Management Council (South Atlantic Council) has submitted Amendment 42 to the Fishery Management Plan (FMP) for the Snapper-Grouper Fishery of the South Atlantic Region for review, approval, and implementation by NMFS. If approved by the Secretary of Commerce, Amendment 42 would add three new devices as options for fishermen with Federal commercial or charter vessel/headboat permits for South Atlantic snapper-grouper to meet existing requirements for sea turtle release gear, and would simplify and clarify the requirements for other sea turtle release gear. Amendment 42 would also modify the

FMP framework procedure to allow for future changes to release gear and handling requirements for sea turtles and other protected resources. The purpose of Amendment 42 is to allow the use of new devices to safely handle and release incidentally captured sea turtles, clarify existing requirements, and streamline the process for making changes to the release devices and handling procedures for sea turtles and other protected species.

DATES: Written comments on Amendment 42 must be received by **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: You may submit comments on Amendment 42 identified by "NOAA-NMFS-2019-0047" by either of the following methods:

- *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2019-0047, click the "Comment Now!" icon, complete the required fields, and enter or attach your comments.

- *Mail:* Submit all written comments to Frank Helies, NMFS Southeast Regional Office, 263 13th Avenue South, St. Petersburg, FL 33701.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on *www.regulations.gov* without change. All personal identifying information (e.g., name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter "N/A" in the required fields if you wish to remain anonymous).

Electronic copies of Amendment 42 may be obtained from *www.regulations.gov* or from the Southeast Regional Office website at *https://www.fisheries.noaa.gov/action/amendment-42-modifications-sea-turtle-release-gear-and-framework-procedure-snapper-grouper*. Amendment 42 includes a fishery impact statement, a regulatory impact review, and a Regulatory Flexibility Act (RFA) analysis.

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

SUPPLEMENTARY INFORMATION: The Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) requires each regional fishery management council to submit any FMP or FMP amendment to NMFS for review, and approval, partial approval, or disapproval. The Magnuson-Stevens Act also requires that NMFS, upon receiving an FMP or amendment, publish an announcement in the *Federal Register* notifying the public that the FMP or amendment is available for review and comment.

The Council prepared the FMP being revised by Amendment 42, and if approved, Amendment 42 would be implemented by NMFS through regulations at 50 CFR part 622 under the authority of the Magnuson-Stevens Act.

Background

The Endangered Species Act (ESA) directs all Federal agencies to ensure that any action they authorize, fund, or carry-out is not likely to jeopardize the continued existence of endangered or threatened species, or destroy or adversely modify designated critical habitat. In June 2006, NMFS issued a biological opinion (2006 BiOp), in accordance with section 7 of the ESA, that evaluated the impact of the South Atlantic snapper-grouper fishery on

ESA-listed sea turtles and smalltooth sawfish. The 2006 BiOp concluded that the anticipated incidental take of sea turtles and smalltooth sawfish by the South Atlantic snapper-grouper fishery is not likely to jeopardize their continued existence, or destroy or adversely modify designated critical habitat. However, the 2006 BiOp required that within the fishery reasonable and prudent measures be taken to minimize stress and increase the survival rates of any sea turtles and smalltooth sawfish taken in the fishery.

In response to the 2006 BiOp, the South Atlantic Council developed measures in Amendment 15B to the FMP (Amendment 15B) to increase the likelihood of survival of released sea turtles and smalltooth sawfish caught incidentally in the South Atlantic snapper-grouper fishery. The final rule for Amendment 15B required fishermen on vessels with Federal commercial or charter vessel/headboat permits for South Atlantic snapper-grouper to possess a specific set of release gear, and comply with sea turtle and smalltooth sawfish handling and release protocols and guidelines (74 FR 58902, November 16, 2009). The final rule also required those fishermen to maintain a reference copy

of the NMFS sea turtle handling and release protocols document titled, "Careful Release Protocols for Sea Turtle Release with Minimal Injury" (Release Protocols), in the event a sea turtle is incidentally captured. These South Atlantic snapper-grouper permit holders are also required to post a NMFS placard of sea turtle handling and release guidelines inside their vessel wheelhouse, or in an easily viewable area on the vessel if there is no wheelhouse.

The required gear for safe sea turtle handling and release was initially the same gear as required for vessels using pelagic longline gear for highly migratory species. However, most effort in the snapper-grouper fishery in the South Atlantic occurs on smaller vessels using lighter tackle than used when longline fishing for pelagic species. Subsequent to Amendment 15B, Comprehensive Ecosystem-Based Amendment 2 modified sea turtle release gear requirements to allow smaller vessels to have fewer gear requirements than for pelagic longline vessels based on the freeboard height of the snapper-grouper fishing vessel (76 FR 82183, December 30, 2011).

Since implementation of Amendment 15B, the Release Protocols have been revised twice, once in 2008, and again

in 2010. NMFS recently published a 2019 revision to the Release Protocols that includes the sea turtle release devices recently approved by the NMFS Southeast Fisheries Science Center (SEFSC). Fishermen participating in the snapper-grouper fishery would be able to use these new devices to meet sea turtle release gear requirements if they are implemented via regulations.

In 2018, the Gulf of Mexico Fishery Management Council took final action on similar management measures to allow federally permitted fishermen in the commercial and charter vessel/headboat components of the reef fish fishery to use the newly-approved devices to meet requirements for sea turtle release gear. The final rule for Amendment 49 to the FMP for Reef Fish Resources in the Gulf of Mexico (Gulf) updated those fishery regulations to incorporate the new devices, and simplified and clarified the requirements for other sea turtle release gear (84 FR 22383, May 17, 2019). If NMFS implements a proposed rule for Amendment 42, regulations for release gear and handling requirements for sea turtles in the Gulf and South Atlantic would be consistent, thereby benefiting fishermen that fish in both areas.

Actions Contained in Amendment 42

Amendment 42 would add three new sea turtle handling and release devices, clarify the requirements for other currently required gear, and modify the FMP framework procedure to include future changes to release gear and handling requirements for sea turtles and other protected resources.

New Sea Turtle Release Gear

For vessels with Federal commercial and charter vessel/headboat permits for South Atlantic snapper-grouper, Amendment 42 would add three new devices that have been approved for use by SEFSC to safely handle and release sea turtles, and provide more options for fishermen to fulfill existing requirements. Details for these new devices can be found in Amendment 42 and the Release Protocols. NMFS expects the proposed new release devices would increase flexibility for fishermen and regulatory compliance within the snapper-grouper fishery, which may result in positive benefits to sea turtles.

Two of the new sea turtle handling devices are a collapsible hoop net and a sea turtle hoist (net). Both of these devices are more compact versions of the currently

required long-handled dip net, and would be used for bringing an incidentally captured sea turtle on board the fishing vessel to remove fishing gear from the sea turtle. For the collapsible hoop net, the net portion is attached to hoops made of flexible stainless steel cable; when the collapsible hoop net is folded over on itself for storage, its size reduces to about half of its original diameter. Additionally, there are two versions of the sea turtle hoist. One version consists of the net portion securely fastened to a frame, providing a relatively taut platform for the sea turtle to be brought on board. Another version creates a basket with the frame and net that holds the sea turtle as it is brought on board. Both the collapsible hoop net and the sea turtle hoist use rope handles attached to either side of the frame, in place of the rigid handle on the dip net. Generally, the collapsible hoop net or hoist would be used to bring sea turtles on board vessels with a high freeboard when it is not feasible to use a dip net.

The third new device is a dehooker that can be used to remove an externally embedded hook from a sea turtle. This device has a squeeze handle that secures the hook into notches at the end of the shaft of the dehooker, so the

hook can be twisted out. This new device would provide another option for fishermen to comply with the regulations for a short-handled dehooker for external hooks.

Requirements for Existing Sea Turtle Release Gear

Amendment 42 also would also update the requirements of some currently approved devices for clarity and simplicity, and to aid fishermen and law enforcement with compliance and enforcement efforts. These updates would include more specific measurements for sea turtle release gear. The revisions would provide for either a minimum size dimension or a size range for the short-handled dehookers for external and internal hooks, bite block on the short-handled internal use dehooker, long-nose or needle-nose pliers, bolt cutters, and the block of hard wood and hank of rope when used as mouth openers and gags. Other proposed changes to the gear requirements follow.

Current regulations specify that short- and long-handled dehookers must be constructed of 316L stainless steel, which is resistant to corrosion from salt water. The SEFSC has also approved 304L stainless steel for the construction of all short-handled and long-handled dehookers. This proposed additional grade of stainless

steel is commonly available and is also corrosion resistant.

Another required device to assist with removing fishing gear from a sea turtle is a pair of monofilament line cutters. Current regulations state that the monofilament line cutters must have cutting blades of 1-inch (2.5 cm) in length (Appendix F to 50 CFR part 622). However, SEFSC has clarified that the blade length must be a minimum of 1 inch (2.5 cm) but could be longer.

Another required gear type is mouth openers and gags, used to hold a sea turtle's mouth open to remove fishing gear. At least two of the seven types of mouth openers and gags are required on board. Current regulations state that canine mouth gags, an option for this gear requirement, must have the ends covered with clear vinyl tubing, friction tape, or similar, to pad the surface. However, SEFSC determined that this was not necessary and could result in the canine mouth gags not functioning properly. Amendment 42 would remove the requirement to cover the ends of the canine mouth gags with these materials.

A life-saving device on a vessel, such as a personal flotation device or life ring buoy, may currently be used

as the required cushion or support device for sea turtles brought aboard a vessel to remove fishing gear. However, Amendment 42 would add language to clarify that any life-saving device used to fulfill the sea turtle safe handling requirements cannot also be used to meet U.S. Coast Guard safety requirements of one flotation device per person on board the vessel.

Lastly, fishermen are currently required to maintain a paper copy of the Release Protocols on each vessel for reference in the event a sea turtle is incidentally captured. Amendment 42 would allow fishermen to use an electronic copy of the document to fulfill the requirement, as long as the electronic document is readily available for viewing and reference during a trip.

FMP Framework Procedure

Currently, adding or changing careful release devices and protocols for incidentally caught sea turtles and other protected species requires an amendment to the FMP. This limits the South Atlantic Council and NMFS' ability to implement new release devices and handling requirements in a timely manner. The FMP amendment and rulemaking process generally involves more detailed analyses and a lengthier

timeline prior to implementation than rulemaking done through a framework procedure. The FMP contains a framework procedure to allow the South Atlantic Council to modify certain management measures via an expedited process (see 50 CFR 622.194). The FMP framework procedure was last modified by the final rule implementing Amendment 27 to the FMP (78 FR 78770, December 27, 2013).

Amendment 42 would allow changes to the sea turtle release gear and handling techniques under the framework procedure. For example, the South Atlantic Council could more quickly add a new release device for sea turtles if approved by the SEFSC. The South Atlantic Council decided that making these changes through an expedited process may have beneficial biological and socio-economic impacts. The South Atlantic Council concluded that the revised framework procedure would still allow adequate opportunity for the public to comment on any future proposed regulatory changes.

Proposed Rule for Amendment 42

A proposed rule that would implement Amendment 42 has been drafted. In accordance with the Magnuson-Stevens Act, NMFS is evaluating the proposed rule to determine whether

it is consistent with the FMP, the Magnuson-Stevens Act, and other applicable laws. If that determination is affirmative, NMFS will publish the proposed rule in the *Federal Register* for public review and comment.

Consideration of Public Comments

The Council has submitted Amendment 42 for Secretarial review, approval, and implementation. Comments on Amendment 42 must be received by **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. Comments received during the respective comment periods, whether specifically directed to Amendment 42 or the proposed rule, will be considered by NMFS in the decision to approve, disapprove, or partially approve Amendment 42. Comments received after the comment periods will not be considered by NMFS in this decision. All comments received by NMFS on the amendment or

the proposed rule during their respective comment periods will be addressed in the final rule.

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

Dated: June 10, 2019.

Alan D. Risenhoover,

Director, Office of Sustainable Fisheries,

National Marine Fisheries Service.

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