



DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 210219-0026]

RIN 0648-BK01

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Reef Fish Fishery of the Gulf of Mexico; Framework Action

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes to implement management measures described in a framework action to the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico (Reef Fish FMP), as prepared and submitted by the Gulf of Mexico Fishery Management Council (Council). This proposed rule would prohibit certain fishing activities and, with one exception, the possession of Gulf of Mexico (Gulf) reef fish within the Madison-Swanson and Steamboat Lumps Marine Protected Areas (MPAs). The purpose of this proposed rule and the framework action is to protect spawning aggregations of mature reef fish species by reducing the potential for illegal fishing activities within these MPAs.

DATES: Written comments on the proposed rule must be received by [*insert date 30 days after date of publication in the FEDERAL REGISTER*].

ADDRESSES: You may submit comments on the proposed rule, identified by "NOAA-NMFS-2020-0142," by either of the following methods:

- *Electronic submission:* Submit all electronic comments via the Federal e-Rulemaking Portal. Go to <http://www.regulations.gov/docket/NOAA-NMFS-2020-0142>, click the "Comment Now!" icon, complete the required fields, and enter or attach your comments.

- *Mail:* Submit all written comments to Rich Malinowski, 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 required fields if you wish to remain anonymous).

Electronic copies of the framework action may be obtained from *www.regulations.gov* or the Southeast Regional Office website at <https://www.fisheries.noaa.gov/action/modification-fishing-access-eastern-gulf-mexico-marine-protected-areas>. The framework action includes an environmental assessment, regulatory impact review, and Regulatory Flexibility Act (RFA) analysis.

FOR FURTHER INFORMATION CONTACT: Rich Malinowski, NMFS Southeast Regional Office, telephone: 727-824-5305, or email: *rich.malinowski@noaa.gov*.

SUPPLEMENTARY INFORMATION: NMFS and the Council manage the reef fish fishery under the Reef Fish FMP. The Reef Fish 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) (16 U.S.C. 1801 *et seq.*).

Background

The Madison-Swanson and Steamboat Lumps MPAs were established on June 19, 2000 (65 FR 31827, May 19, 2000). The two MPAs combined cover 219 square nautical miles (nmi²) (751 square kilometers (km²)) near the 240-foot (73-meter) contour, also known as the 40-fathom contour, off northwest and west Florida. The area of Madison-Swanson is 115 nmi² (394 km²) and the area of Steamboat Lumps is 104 nmi² (357 km²). The distance between these MPAs is approximately 69

nmi (127 km). The Council and NMFS created the MPAs to provide protection to spawning aggregations of gag, which is a species of grouper, and other reef fish. When the MPAs were implemented, all fishing inside the MPAs was prohibited, except for Atlantic highly migratory species (HMS) such as tunas, billfishes, and oceanic sharks, which are managed separately by NMFS' Atlantic HMS Management Division. Since 2004, surface trolling has been allowed for non-reef fish species in the MPAs from May 1 through October 31 annually (69 FR 24532, May 4, 2004). In 2006, NMFS implemented complementary management measures to prohibit fishing for Atlantic HMS except by surface trolling from May 1 through October 31 annually (71 FR 58058, October 2, 2006). In addition, the possession of Gulf reef fish while inside the MPAs is prohibited, except on a vessel in transit with fishing gear stowed as specified in § 622.34(a)(4).

At its October 2019 meeting, the Council's Reef Fish Advisory Panel (AP) discussed observations of illegal harvest of reef fish species under the appearance of trolling within the boundaries of the MPAs. Reef Fish AP members believed that the MPAs are not a legitimate trolling destination for non-reef fish species and that the illegal harvest of reef fish is occurring in these areas. Reef Fish AP members also acknowledged that it was possible to drift through the MPAs with fishing tackle weighted deep

below the vessel to increase the probability of hooking a reef fish. At this meeting, an enforcement officer from the Florida Fish and Wildlife Conservation Commission noted that enforcement of the MPAs is challenging due to the remote locations.

At its January 2020 meeting, the Council discussed the Reef Fish AP's recommendation to prohibit all fishing (other than for Atlantic HMS) in the MPAs year-round to reduce the potential for targeting reef fish while bottom fishing under the guise of trolling within the MPAs. The U.S. Coast Guard representative on the Council agreed that enforcement in the MPAs can be difficult due to the distance from port.

In response to these concerns, the Council developed a framework action that would modify the restrictions on fishing in, and transiting through, the Madison-Swanson and Steamboat Lumps MPAs in the eastern Gulf. The framework action would prohibit all fishing, except for HMS, year-round in the Madison-Swanson and Steamboat Lumps MPAs, and prohibit the possession of Gulf reef fish year-round in these areas unless a vessel has a valid Federal commercial permit for Gulf reef fish, an operating satellite-based VMS, and is in transit with fishing gear appropriately stowed. The Council determined that eliminating surface trolling from May 1 through October 31, which would effectively close the MPAs to fishing year-round, would

make it easier for law enforcement to detect whether a vessel was fishing within the MPAs and result in direct positive effects for mature spawning gag that are known to inhabit the MPAs, as well as other resident federally managed reef fish. The Council also determined that a prohibition on possession Gulf reef fish would aid law enforcement. However, in response to concerns raised by fishermen who hold Federal commercial reef fish permits, the Council made an exception to this prohibition for vessels issued these permits because those vessels are easily tracked through the required VMS.

These prohibitions would not apply to Atlantic HMS. However, on July 20, 2020, the Council sent a letter that requested the NMFS Atlantic HMS Management Division consider developing compatible regulations for HMS to the proposed management measures in the framework action. Federal regulations currently applicable to Atlantic HMS in the MPAs are located at 50 CFR 635.

Management Measures Contained in this Proposed Rule

This proposed rule would prohibit fishing year-round in the Madison-Swanson and Steamboat Lumps MPAs. Additionally, the possession of any Gulf reef fish would be prohibited year-round in the MPAs, with a limited exception.

This proposed rule would revise current fishing restrictions in the MPAs. Currently, surface trolling is

the only allowable fishing activity and is only permitted from May through October each year. Surface trolling is defined in § 622.34(a)(5) as fishing with lines trailing behind a vessel which is in constant motion at speeds in excess of four knots (4.6 mph) with a visible wake, and the use of downriggers, wire lines, planers, or similar devices is not allowed. Federally managed species that may be targeted by surface trolling in the MPAs include the Gulf CMP species king mackerel and Spanish mackerel, and HMS.

This proposed rule would prohibit fishing year-round for all species except HMS. However, as stated earlier, NMFS may implement compatible regulations for HMS later, as requested by the Council.

Currently, fishing vessels with Gulf reef fish on board may transit through the MPAs as long as all fishing gear is appropriately stowed. This provision allows transiting fishing vessels to proceed between destinations, without the need to reroute to avoid a specific area even if they are in possession of reef fish. For these MPAs, transit means non-stop progression through the area and fishing gear appropriately stowed is defined in 50 CFR 622.34(a)(4)(i) through (iv). This proposed rule would prohibit the possession of Gulf reef fish in the MPAs even when transiting unless the vessel was issued a valid Federal commercial permit for Gulf reef fish, which requires an operating satellite-based VMS. As with the

current regulation, all fishing gear would need to be appropriately stowed.

Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that this proposed rule is consistent with the framework amendment, the FMP, the Magnuson-Stevens Act, and other applicable laws, subject to further consideration after public comment.

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

The Chief Counsel for Regulation of the Department of Commerce 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 factual basis for this certification is as follows. A copy of the full analysis is available from NMFS (see **ADDRESSES**).

A description of the action, why it is being considered, and the objectives of and legal basis for this action are contained at the beginning of this **SUPPLEMENTARY INFORMATION** section and in the **SUMMARY** section of the preamble.

The Magnuson-Stevens Act provides the statutory basis for this proposed rule. No duplicative, overlapping, or conflicting Federal rules have been identified. In

addition, no new reporting or recordkeeping compliance requirements are introduced in this proposed rule.

The proposed rule concerns recreational and commercial fishing within the Madison-Swanson and Steamboat Lumps MPAs within the Gulf exclusive economic zone (EEZ). Currently, the possession of Gulf reef fish in these MPAs is generally prohibited, and surface trolling is the only allowable fishing activity during May through October. As stated previously, this proposed rule does not affect Atlantic HMS. Therefore, the proposed rule directly affects both anglers (recreational fishers) and commercial fishing businesses that harvest non-reef fish species, such as king mackerel, Spanish mackerel, or cobia within the MPAs by surface trolling and both anglers, and charter vessels and headboats (for-hire) fishing businesses that operate vessels that transit through the MPAs with reef fish onboard. Because of the proximity of the MPAs to the west coast of Florida, NMFS expects that any entity that may surface troll for CMP species within the MPAs or operate a vessel that transits through the MPAs with reef fish onboard lands its catch in Florida.

Anglers are not considered small entities as that term is defined in 5 U.S.C. 601(6), whether fishing from for-hire fishing, private, or leased vessels. Therefore, neither estimates of the number of anglers, nor the impacts on them are required or provided in this analysis.

Any business that operates a commercial fishing vessel that harvests either king mackerel or Spanish mackerel in the Gulf EEZ must have a valid Federal permit for these Gulf CMP species issued to that vessel. From 2014 through 2018, an annual average of 2,081 vessels had Federal commercial permits for one or both of those CMP species, and 77 (3.7 percent) of those permitted vessels used surface trolling to harvest the CMP species and land their catch in Florida. An estimated 74 businesses operate the 77 vessels, and all of these businesses are expected to operate primarily in the commercial fishing industry (NAICS code 11411).

No Federal permit is required for the commercial harvest and sale of Gulf cobia. However, from 2014 through 2018, an annual average of 5 of the above 77 commercial fishing vessels reported harvesting Gulf cobia by surface trolling.

For Regulatory Flexibility Act purposes, NMFS has established a small business size standard for businesses, including their affiliates, whose primary industry is commercial fishing (see 50 CFR 200.2). A business primarily involved in commercial fishing (NAICS 11411) is classified as a small business if it is independently owned and operated, is not dominant in its field of operation (including its affiliates), and its combined annual receipts are not in excess of \$11 million for all of its

affiliated operations worldwide. The average annual revenue per vessel for the 77 vessels that harvest CMP species by surface trolling and land those fish in Florida is \$14,707 (2018 dollars). Therefore, the 74 commercial fishing businesses that operate the 77 vessels are classified as small.

Any business that operates a for-hire fishing vessel that has reef fish onboard in the Gulf EEZ must have a valid Federal charter vessel/headboat permit for Gulf reef fish. As of June 23, 2020, there were 770 such permits held by entities residing in Florida. That figure is also consistent with the average annual number of Federal charter vessel/headboat permits for Gulf reef fish held by entities residing in Florida from 2014 through 2018. The proposed rule would not directly affect for-hire vessels with both valid Federal charter vessel/headboat permits and commercial permits for Gulf reef fish, and approximately 24 percent (183) of the for-hire vessels have both permits. Therefore, 587 vessels with a Federal charter vessel/headboat permit for Gulf reef fish could be directly affected by the proposed rule. An estimated 411 businesses operate these 587 vessels.

A business in the for-hire fishing industry (NAICS code 487210) is a small business if it is independently owned and operated, is not dominant in its field of operation (including its affiliates) and its combined

annual receipts that are no more than \$8.0 million for all of its affiliated operations worldwide. The average charter vessel operating in the Gulf with a Federal reef fish permit is estimated to receive approximately \$88,095 (2018 dollars) in gross revenue annually. The average headboat operating in the Gulf with a Federal reef fish permit is estimated to receive approximately \$267,358 (2018 dollars) in gross revenue annually. From that, NMFS concludes that the above 411 for-hire fishing businesses are classified as small.

Currently, from May through October, surface trolling is allowed within the MPAs. The proposed rule would prohibit surface trolling within the MPAs year-round.

Average annual dockside revenue from CMP species landed by federally permitted commercial vessels from May through October of 2014 through 2018 accounted for 20 percent (\$2,948 in 2018 dollars) of the annual dockside revenue from all landings by the average federally permitted vessel that used surface trolling and landed CMP species in Florida. If all May through October landings of CMP species by these vessels were entirely of CMP species harvested from the MPAs, the average adverse economic impact of the proposed rule would be \$2,948 annually per vessel for 77 CMP federally permitted vessels. However, that is highly unlikely. The MPAs are small and represent a relatively small percentage of the Gulf EEZ. Madison-

Swanson is 115 nmi² (394 km²) and Steamboat Lumps is 104 nmi² (357 km²). Moreover, the MPAs are considered as relatively poor destinations for successful surface trolling. Therefore, NMFS expects any adverse economic impact of a year-round surface trolling prohibition on the 74 small commercial fishing businesses to be minimal.

Currently, possession of Gulf reef fish year-round or any other species of fish from November through April, including CMP species, is prohibited in the MPAs, except on a vessel in transit with fishing gear appropriately stowed. Under the proposed rule, the possession of any species of Gulf reef fish would be prohibited year-round in the MPAs, except for a vessel with a valid Federal commercial Gulf reef fish permit, which is required to have an operating satellite-based VMS, that is in transit with fishing gear stowed.

Under the proposed rule, the 411 small businesses that operate the 587 for-hire fishing vessels that have a for-hire reef fish permit, but do not have a Gulf commercial reef fish permit, would no longer be able to transit through the MPAs with reef fish onboard. It is unknown how many, if any, of the 587 for-hire vessels transit through the MPAs with reef fish onboard. However, because of the relatively small size of the MPAs and the distance between them, NMFS expects that any of those vessels could relatively easily avoid transiting through the MPAs if they

have reef fish on board and any additional cost to transit around the MPAs would be minimal.

From the above, NMFS expects any impacts from the proposed rule on small businesses in the commercial fishing and for-hire fishing industries to be minimal. Therefore, NMFS concludes that this proposed rule would not have a significant economic impact on a substantial number of small entities. As a result, an initial regulatory flexibility analysis is not required and none has been prepared.

This proposed rule contains no information collection requirements under the Paperwork Reduction Act of 1995.

List of subjects in 50 CFR Part 622

Fisheries, Fishing, Gulf of Mexico, Marine protected area, Reef fish.

Dated: February 22, 2021.

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 proposed to be 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. Amend § 622.34 by:

a. Revising paragraph (a) introductory text and paragraphs (a)(2) and (3), and

b. Removing paragraphs (a)(5) and (6).

The revisions read as follows:

§ 622.34 Seasonal and area closures designed to protect Gulf reef fish.

(a) *Closure provisions applicable to the Madison and Swanson sites, Steamboat Lumps, and the Edges.* For the purpose of this paragraph (a), fish means finfish, mollusks, crustaceans, and all other forms of marine animal and plant life other than marine mammals and birds. The provisions of this paragraph (a) do not apply to Atlantic highly migratory species, such as tunas, billfishes, and oceanic sharks. See 50 CFR part 635 for any provisions applicable to fishing for or possession of Atlantic highly migratory species in these areas.

* * * * *

(2) Within the Madison and Swanson sites and Steamboat

Lumps: Fishing is prohibited year-round; possession of Gulf reef fish is prohibited year-round except when such possession is on a vessel that has been issued a valid Federal commercial permit for Gulf reef fish, has an operating satellite-based VMS unit, and is in transit with fishing gear stowed as specified in paragraph (a)(4) of this section; and possession of any non-Gulf reef fish species is prohibited year-round, except for such possession on a vessel in transit with fishing gear stowed as specified in paragraph (a)(4) of this section.

(3) Within the Edges during January through April each year, all fishing is prohibited and the possession of any fish species is prohibited, except for such possession on a vessel in transit with fishing gear appropriately stowed as specified in paragraph (a)(4) of this section.

* * * * *