



DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 210713-0147]

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: Final rule.

SUMMARY: NMFS is implementing 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 final rule will 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 final rule is to protect spawning aggregations of mature reef fish species by reducing the potential for illegal fishing activities within these MPAs.

DATES: This final rule is effective on [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: Electronic copies of this framework action to the FMP for the Reef Fish Resources of the Gulf of Mexico may be obtained from *www.regulations.gov* or from the NMFS 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.*).

On March 2, 2021, NMFS published the proposed rule for the framework action and requested public comment (86 FR 12163). The proposed rule outlined the rationale for the actions contained in this final rule. A summary of the management measures described in the proposed rule and implemented by this final rule is described below.

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).

The Council developed this framework action to modify the restrictions on fishing in, and transiting through, the Madison-Swanson and Steamboat Lumps MPAs in the eastern Gulf. The framework action prohibits all fishing, except for HMS, year-round in the Madison-Swanson and Steamboat Lumps MPAs, and prohibits 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 vessel monitoring system (VMS), and is in transit with fishing gear appropriately stowed.

These prohibitions do not apply to Atlantic HMS. Federal regulations currently applicable to Atlantic HMS in the MPAs are located at 50 CFR part 635.

Management Measures Contained in This Final Rule

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

This final rule revises current fishing restrictions in the MPAs. Currently, surface trolling, as defined at § 622.34(a)(5), is the only allowable fishing activity and is only allowed from May through October each year. Federally managed species that may be targeted by surface trolling in the MPAs include the Gulf coastal migratory pelagic species king mackerel and Spanish mackerel, and HMS.

This final rule prohibits fishing year-round for all species except HMS. However, NMFS Atlantic HMS Management Division is considering a request from the Council to develop compatible regulations for HMS.

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 final rule prohibits 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. All fishing gear needs to be appropriately stowed.

Comments and Responses

NMFS did not receive any comments during the public comment period for the proposed rule for the framework action and therefore no changes were made to this proposed rule as a result of public comment.

Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has

determined that this final rule is consistent with the framework amendment, the Reef Fish FMP, the Magnuson-Stevens Act, and other applicable laws.

This 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 action would not have a significant economic impact on a substantial number of small entities. The factual basis for the certification was published in the proposed rule and is not repeated here. No comments were received regarding the certification and NMFS has not received any new information that would affect its determination. As a result, a regulatory flexibility analysis was not required and none was prepared.

List of Subjects in 50 CFR Part 622

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

Dated: July 13, 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 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 the paragraph heading and adding paragraph
(a) introductory text;
- b. Revising paragraphs (a) (2) and (3); and
- c. 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.

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