

(E) Formulate EFH conservation recommendations and provide the recommendations to the Federal action agency and the appropriate Council.

(iv) *Timing.* The Federal action agency must submit its complete EFH Assessment to NMFS as soon as practicable, but at least 120 days prior to a final decision on the action, and NMFS must conclude expanded consultation within 90 days of submittal of a complete Assessment unless extended by NMFS with notification to the Federal action agency. If notification and the EFH Assessment are combined with other statutorily required environmental reviews, then the statutory deadlines for those reviews apply to the submittal and response. NMFS and Federal action agencies may agree to use a compressed schedule in cases where regulatory approvals cannot accommodate a 60 day consultation period.

(v) *Best scientific information.* The Federal action agency must provide NMFS with the best scientific information available, or reasonably accessible during the consultation, regarding the effects of the proposed action on EFH.

(vi) *Extension of consultation.* If NMFS determines that additional data or analysis would provide better information for development of EFH conservation recommendations, NMFS may request additional time for its expanded consultation. If NMFS and the Federal action agency agree to an extension, the Federal action agency must provide the additional information to NMFS, to the extent practicable. If NMFS and the Federal action agency do not agree to extend consultation, NMFS must provide EFH conservation recommendations to the Federal action agency using the best scientific data available to NMFS.

(7) *Responsibilities of Federal action agency following receipt of EFH conservation recommendations—(i) Federal action agency response.* Within 30 days after receiving an EFH conservation recommendation (or at least 10 days prior to final approval of the action, if a decision by the Federal agency is required in less than 30 days), the Federal action agency must provide a detailed response in writing to NMFS and the appropriate Council. The response must include a description of measures proposed by the agency for avoiding, mitigating, or offsetting the impact of the activity on EFH. In the case of a response that is inconsistent with the recommendations of NMFS, the Federal action agency must explain its reasons for not following the recommendations, including the

scientific justification for any disagreements with NMFS over the anticipated effects of the proposed action and the measures needed to avoid, minimize, mitigate, or offset such effects.

(ii) *Dispute resolution.* After receiving a Federal action agency response that is inconsistent with the recommendations of NMFS, the Assistant Administrator may request a meeting with the head of the Federal action agency, as well as any other agencies involved, to discuss the proposed action and opportunities for resolving any disagreements. Memoranda of agreement with Federal action agencies will be sought to further define such dispute resolution processes.

(8) *Supplemental consultation.* A Federal action agency must resume consultation with NMFS following either abbreviated or expanded consultation if the agency substantially revises its plans for the action in a manner that may adversely affect EFH or if new information becomes available that affects the basis for NMFS' EFH conservation recommendations. Additionally, where Federal oversight, involvement, or control over the action has been retained or is authorized by law, the Federal action agency must resume consultation if new EFH is designated that may be adversely affected by the agency's exercise of its authority.

(d) *NMFS recommendations to state agencies—(1) Establishment of Procedures.* Each Region should establish procedures for identifying actions or proposed actions authorized, funded, or undertaken by state agencies that may adversely affect EFH, and for identifying the most appropriate method for providing EFH conservation recommendations to the state agency.

(2) *Coordination with Federal consultation procedures.* When an activity that may adversely affect EFH requires authorization or funding by both Federal and state agencies, NMFS will provide the appropriate state agencies with copies of EFH conservation recommendations developed as part of the Federal consultation procedures in paragraph (c) of this section.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 970415091-7091-01; I.D. 033197D]

RIN 0648-AJ88

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Snapper Grouper Fishery Off the Southern Atlantic States; Black Sea Bass Pot Fishery; Control Date

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

ACTION: Advance notice of proposed rulemaking; consideration of a control date.

SUMMARY: This notice announces that the South Atlantic Fishery Management Council (Council) is considering whether there is a need to impose additional management measures limiting entry into the commercial pot fishery for black sea bass in the exclusive economic zone (EEZ) off the southern Atlantic states, and, if there is a need, what management measures should be imposed. If the Council determines that there is a need to impose additional management measures, it may initiate a rulemaking to do so. Possible measures include the establishment of a limited entry program to control participation or effort in the commercial pot fishery for black sea bass. If a limited entry program is established, the Council is considering [insert date of publication in the Federal Register], as a possible control date. Consideration of a control date is intended to discourage new entry into the fishery based on economic speculation during the Council's deliberation on the issues.

DATES: Comments must be submitted by May 23, 1997.

ADDRESSES: Comments should be directed to the South Atlantic Fishery Management Council, One Southpark Circle, Suite 306, Charleston, SC 29407-4699; Fax: 803-769-4520.

FOR FURTHER INFORMATION CONTACT: Peter Eldridge, 813-570-5305.

SUPPLEMENTARY INFORMATION: The black sea bass fishery in the EEZ off the southern Atlantic states is managed under the Fishery Management Plan for the Snapper-Grouper Fishery of the South Atlantic Region (FMP). The FMP was prepared by the Council and is implemented through regulations at 50

CFR part 622 under the authority of the Magnuson-Stevens Fishery Conservation and Management Act. The FMP covers black sea bass off the southern Atlantic states south of 35°15.3' N. lat. (due east of Cape Hatteras Light, NC). Pots may not be used south of 28°35.1' N. lat. (due east of the NASA Vehicle Assembly Building, Cape Canaveral, FL). Current regulations on black sea bass pots (1) require a permit for their use, (2) require vessel and gear identification, (3) prohibit their use in special management zones and the Oculina Bank habitat area of particular concern, and (4) specify construction requirements.

The black sea bass fishery is prosecuted mainly in the EEZ off North and South Carolina. Although most black sea bass are caught by pots, some are taken by hook and line. Action to control entry into the hook-and-line fishery for black sea bass is not contemplated at this time.

Implementation of an effort limitation program for the black sea bass pot fishery in the EEZ would require preparation of an amendment to the FMP by the Council and publication of a proposed implementing rule with a public comment period. NMFS' approval of the amendment and issuance of a final rule would also be required.

As the Council considers management options, including limited entry or access-controlled regimes, some fishermen who do not currently harvest black sea bass by pots, and have never done so, may decide to enter the fishery for the sole purpose of establishing a record of commercial landings. When management authorities begin to consider use of a limited access management regime, this kind of speculative entry often is responsible for a rapid increase in fishing effort in fisheries that are already fully developed or overdeveloped. The original fishery problems, such as overcapitalization or overfishing, may be exacerbated by the entry of new participants.

In order to avoid this problem, if management measures to limit participation or effort in the fishery are determined to be necessary, the Councils are considering [insert date of publication in the Federal Register], as the control date. After that date, anyone entering the commercial black sea bass pot fishery may not be assured of future participation in the fishery if a management regime is developed and implemented limiting the number of fishery participants.

Consideration of a control date does not commit the Council or NMFS to any particular management regime or criteria for entry into the black sea bass pot fishery. Fishermen are not guaranteed future participation in this fishery, regardless of their entry date or intensity of participation in the fishery before or after the control date under consideration. The Council may subsequently choose a different control date or they may choose a management regime that does not make use of such a date. The Council may choose to give variably weighted consideration to fishermen active in the fishery before and after the control date. Other qualifying criteria, such as documentation of commercial landings and sales, may be applied for entry. The Council also may choose to take no further action to control entry or access to the fishery, in which case the control date may be rescinded.

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

Dated: April 17, 1997.

Rolland A. Schmitten,

*Assistant Administrator for Fisheries,
National Marine Fisheries Service.*

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[I.D. 041597C]

RIN 0648-AG25

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic; Amendment 8

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

ACTION: Notice of availability of an amendment to a fishery management plan; request for comments.

SUMMARY: NMFS announces that the Gulf of Mexico and South Atlantic Fishery Management Councils (Councils) have submitted Amendment 8 to the Fishery Management Plan for Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic (FMP) for review, approval, and implementation by NMFS. Written comments are requested from the public.

DATES: Written comments must be received on or before June 23, 1997.

ADDRESSES: Comments must be mailed to the Southeast Regional Office, NMFS, 9721 Executive Center Drive N., St. Petersburg, FL 33702.

Requests for copies of Amendment 8, which includes an environmental assessment, a regulatory impact review, and an initial regulatory flexibility analysis, should be sent to the South Atlantic Fishery Management Council, 1 Southpark Circle, Suite 306, Charleston, SC 29407-4699; Phone: (803) 571-4366; Fax: (803) 769-4520 or to the Gulf of Mexico Fishery Management Council, 3018 U.S. Highway 301 North, Suite 1000, Tampa, FL 33619-2266; Phone: 813-228-2815; Fax: 813-225-7015.

FOR FURTHER INFORMATION CONTACT: Mark Godcharles, 813-570-5305.

SUPPLEMENTARY INFORMATION: The Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) requires each Regional Fishery Management Council to submit any fishery management plan or amendment to the Secretary of Commerce for review and approval, disapproval, or partial approval. The Magnuson-Stevens Act also requires that NMFS, upon receiving an amendment, immediately publish a document in the **Federal Register** stating that the amendment is available for public review and comment.

Amendment 8 would: (1) Add two new fishery problems to be addressed by the FMP (i.e., localized reduction of fish abundance due to high fishing pressure and disruption of markets); (2) establish a moratorium on the issuance of commercial vessel permits for king or Spanish mackerel; (3) specify allowable gear in the fisheries for coastal migratory pelagic resources; (4) revise the FMP's definition of optimum yield (OY); (5) revise the earned income requirement for a commercial vessel permit for king or Spanish mackerel; (6) extend the management area for cobia to include the exclusive economic zone off the coastal states from, and inclusive of, Virginia through New York; (7) allow the retention of up to five cut-off (e.g., barracuda-damaged) king mackerel in excess of an applicable commercial trip limit; (8) establish commercial trip limits for Atlantic group king mackerel; and (9) revise the FMP framework procedure for adjusting management measures to: (a) Remove from the framework procedure a provision for subdividing Gulf migratory group king mackerel into eastern and western subgroups when sufficient stock assessment information is available; (b) require that the Council's stock