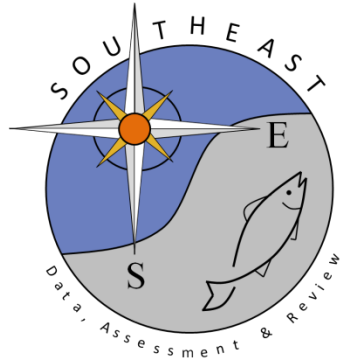


Federal Register Final Rule for Amendment 1 to the Fishery Management Plan for the Snapper
Grouper Fishery of the South Atlantic Region

Federal Register

SEDAR41-RD31

9 July 2014



extension that otherwise can be invoked, if partial or full denial should result in an appeal.

(ii) FOIA requests received by a Council should be coordinated promptly with the Regional Office. The Region will coordinate logging the FOIA request and obtain clearance from the NOAA General Counsel concerning initial determination for release or denial of information (under paragraph (c)(5)(ii) of this section.

(iii) FOIA requests will be controlled and documented in the Region by completion of Form CD-244. Councils may obtain copies of this three-part form from the NOAA Logistics Supply Center at Kansas City or from local GSA stores, and assist the Regional Office in completing the form as well as in assigning an official response date. Copies of the CD-244 should be distributed to the Regional Director (white copy) and the Council (yellow copy), and an information copy with the incoming request should be provided to the NMFS FOIA Officer.

(iv) Councils should recover allowable costs for locating and reproducing information released under the FOIA and forward these funds through the NOAA Freedom of Information Officer to the U.S. Treasury. Appropriate charges are outlined in the DOC Uniform Schedule of Fees, 15 CFR 4.9.

(2) *Initial denials.* (i) The purpose of the FOIA is to make available to the public all information requested, with some exceptions in nine categories of information. Each Council may determine who may disclose unclassified information in its possession. However, only the Assistant Administrator has been delegated authority to make initial determinations on whether to deny information requested under the FOIA. This authority may not be redelegated. Regions must keep Councils informed.

(ii) Proposals to deny, or partially deny, as request for information should be coordinated with the appropriate Regional Attorney who will, in turn, coordinate with the DOC's Office of General Counsel, and with NOAA's Office of Public Affairs, and NOAA's Office. No initial denial may be issued until the concurrence of the Department's Office of General Counsel has been obtained.

(iii) After the coordination mentioned in paragraph (e)(2)(ii) of this section, the Assistant Administrator must send a letter to the requesting party denying the request for information. The denial letter should include the following:

(A) The specific exemption(s) which apply and why they apply.

(B) In the case of a partial denial, a statement of the specific manner in which a portion of a record is being provided after deletion of the portions which are determined to be exempt.

(C) A statement of the right to appeal to the DOC General Counsel within 30 days of the receipt of the denial.

(D) A statement that the appeal should include a copy of the original request, the initial denial, the requester's reasons why the records should be made available, and the reasons why the initial denial is believed to be in error.

(E) Copies of the letter of denial, along with the original FOIA request, should be sent to the DOC Office of General Counsel, the NOAA FOIA Officer, and the NMFS FOIA Officer.

[FR Doc. 89-863 Filed 1-13-89; 8:45 am]
BILLING CODE 3510-22-M

50 CFR Part 646

[Docket No. 81017-8271]

Snapper-Grouper Fishery of the South Atlantic

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Final rule.

SUMMARY: NOAA issues this final rule to implement Amendment 1 to the Fishery Management Plan for the Snapper-Grouper Fishery of the South Atlantic Region (FMP). This rule prohibits the use of trawl nets in the snapper-grouper fishery in the exclusive economic zone (EEZ) between Cape Hatteras, North Carolina and Cape Canaveral, Florida. NOAA also redefines the area south of Fowey Rocks Light, Florida wherein fish traps may not be placed. The intended effects of this rule are to prevent habitat damage and prevent the harvest of undersized fish, thereby ensuring the continued productivity of the snapper-grouper resource and to clarify the regulations.

EFFECTIVE DATE: January 12, 1989.

FOR FURTHER INFORMATION CONTACT: Rodney C. Dalton, 813-893-3722.

SUPPLEMENTARY INFORMATION: The snapper-grouper fishery is managed under the FMP, prepared by the South Atlantic Fishery Management Council (Council), and its implementing regulations at 50 CFR Part 646, under the authority of the Magnuson Fishery Conservation and Management Act (Magnuson Act). The FMP, implemented September 28, 1983 (48 FR 39463, August 31, 1983), addressed growth overfishing of a number of the major species in the fishery and controversy regarding

certain harvest techniques. Minimum sizes were established for five of the major species, and limitations were imposed on the use of poisons, explosives, fish traps, and trawls in the fishery. A prohibition on use of roller trawls was considered in order to address concerns about trawl damage to live-bottom habitat and harvest of very small vermilion snapper. The prohibition was rejected because conclusive evidence of trawl-induced habitat damage was not available at that time. The FMP noted ongoing studies of the effects of trawls on live-bottom habitat and expressed the intent to address this issue via FMP amendment if evidence of significant damage was documented. Information is now available to document habitat damage resulting from use of bottom trawls in live-bottom areas.

Amendment 1 addresses the problems of habitat damage and trawl harvest of undersized fish by prohibiting the use of trawl gear in a directed snapper-grouper fishery between Cape Hatteras, North Carolina and Cape Canaveral, Florida. A vessel possessing trawl gear and more than 200 pounds of fish in the snapper-grouper fishery (as listed in § 646.2) is defined as a participant in a directed fishery. It is a rebuttable presumption that a vessel possessing fish in the snapper-grouper fishery harvested those fish in the EEZ.

In addition, Amendment 1 updates the habitat section of the FMP and incorporates vessel safety considerations into the FMP.

The primary habitat for the major species in the snapper-grouper fishery, the historical use of trawl gear to harvest snapper-grouper species, evidence of live-bottom habitat damage by trawl gear, the effect of trawl gear on the harvest of undersized vermilion snapper, and analysis of the economic impacts of implementing Amendment 1 were fully discussed in the proposed rule (53 FR 42985, October 25, 1988) and are not repeated here. In addition, changes to the regulations proposed by NOAA to redefine the area south of Fowey Rocks Light, Florida wherein fish traps may not be placed, and other technical changes were discussed in the proposed rule and are not repeated here.

Comments and Responses

NOAA received twenty-seven letters from recreational fishermen, sportfishing organizations, a conservation organization, two federal agencies, a state natural resource agency, and a member of Congress supporting Amendment 1 and implementation of the proposed rule. Most of these

commenters and the Council requested a waiver of the 30-day delayed

effectiveness of this final rule under the Administrative Procedure Act (APA). This waiver would make the rule effective near the beginning of the trawl season and, thus, would avoid additional habitat damage. Six letters opposing Amendment 1 and the proposed rule were received from individuals associated with a Sea Grant Marine Extension Service. The U.S. Coast Guard indicated support for the proposed rule but expressed concerns about enforceability.

U.S. Coast Guard Concerns

The Coast Guard indicated that the rule may not be effective in preventing habitat damage, because vessels can trawl over live bottom for other species and discard snapper-grouper to avoid exceeding the 200-pound limit. Although this is theoretically possible, NOAA does not believe this will occur. To our knowledge, there are no other trawl fisheries that target these live-bottom areas. Shrimp and calico scallop trawling do not occur in these areas. It is unlikely that finfish, other than the 69 species defined to be in the snapper-grouper fishery, would be sufficiently abundant in these areas to support directed fisheries and justify the extensive culling of snapper-grouper species that would be required. The Coast Guard also suggested that, because the rule does not prohibit the transfer of trawl gear, a trawl vessel could avoid detection of having engaged in a directed snapper-grouper fishery by transferring his gear at sea after use. NOAA considers the transfer at sea of trawl gear to be a cumbersome, time-consuming operation that will not be undertaken readily. If either of these problems does occur, amendment of the regulations will be considered. Finally, the Coast Guard commented that, because at-sea enforcement would still be required, this rule would not significantly reduce enforcement costs. NOAA concurs.

Marine Extension Service Comments

These commenters expressed a number of concerns about Amendment 1 including: (1) Data regarding habitat damage due to trawling are limited; (2) one of the cited studies indicated that the density of sponges and other invertebrates increased twelve months after the area was trawled; (3) other alternatives such as minimum size limits or prohibiting trawling only in specified areas should have been adopted; (4) the 200-pound limit will create a hardship for multi-gear vessels; and (5) prohibiting all trawling by vessels with

more than 200 pounds of fish in the snapper-grouper fishery will preclude development of other trawl harvesting methods. Responses are categorized below.

Scientific Data

NOAA acknowledges that the scientific information regarding habitat damage due to trawling are somewhat limited but concludes that information presented adequately demonstrates that trawling in the live-bottom areas that support most of the snapper-grouper fishery will result in habitat damage. Although one study did authors specifically stated that commercial trawlers often drag repeatedly over the same area and that multiple tows would probably have caused much greater damage to sponge and coral populations.

Alternatives

Minimum size limits to control the trawl harvest of small vermilion snapper were previously considered by the Council and rejected because of the poor survival rate of undersized fish that would be released. Further, minimum sizes would not address the problem of habitat damage. The alternative of prohibiting trawling only in specified live-bottom areas would require knowledge of the precise locations of all of these areas. Such information is not currently available. Because these areas are believed to be sparsely distributed, enforcement of a patchwork of prohibited areas would be extremely difficult, and compliance by fishermen might be difficult as well. Further, the snapper-grouper trawl fishery is prosecuted predominantly, if not exclusively, over areas containing live bottom because that is the primary habitat of the target species. It would appear that there would be little to be gained by allowing directed snapper-grouper trawling in areas devoid of live bottom. NOAA believes this alternative is impractical.

200-Pound Limit

The final rule prohibits the use of trawl gear in a directed snapper-grouper fishery in the prescribed area. The 200-pound limit is the criterion used to define a directed fishery. The Council specifically considered the potential hardship that the 200-pound criterion might create for vessels (primarily shrimpers) that possess trawls and occasionally use other gear to catch snapper-grouper on the same trip. Representatives of the State fisheries agencies from North Carolina, South Carolina, and Georgia indicated that shrimp vessels would not be impacted.

Data provided by Florida representatives indicated that of 8,396 shrimp trips taken during 1985-1987 only three exceeded the 200-pound limit. The number of multi-gear vessels likely to be affected by this criterion appears to be small. Because the criterion is critical to enforcement of the trawl prohibition, NOAA concludes that the measure is justified.

Impact on Development of New Trawling Methods

The prohibition on use of trawl gear in a directed snapper-grouper fishery is intended to prevent habitat damage and reduce growth by overfishing of vermilion snapper. There is no intent to " . . . stymie technological advances and economic growth of fisheries. . . ." The regulations for the Snapper-Grouper Fishery of the South Atlantic (50 CFR Part 646) contain a provision that allows the Secretary of Commerce to authorize, for the acquisition of information and data, activities otherwise prohibited by the regulations. Under this provision, a request for an exemption to allow limited research to evaluate alternative trawl technologies could be considered. This would provide a reasonable opportunity for technological advances. Data obtained from such research could be submitted to the Council for consideration of possible modification of the regulations.

Waiver of Delayed Effectiveness

NOAA has determined that delay of the effectiveness of this final rule for 30 days would lead to further habitat damage, and further harvest by the trawl fishery of undersized vermilion snapper, and thus would be contrary to the public interest. Therefore, "good cause" exists under section 553(d)(3) of the APA to waive the delayed effectiveness of this final rule.

Classification

The Secretary of Commerce determined that Amendment 1 is necessary for the conservation and management of the snapper-grouper fishery and that it is consistent with the Magnuson Act and other applicable law.

The Under Secretary for Oceans and Atmosphere, NOAA, determined that this rule is not a "major rule" requiring a regulatory impact analysis under E.O. 12291. This rule is not likely to result in an annual effect on the economy of \$100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or a significant adverse effect on competition, employment,

investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Council prepared a regulatory impact review for this rule. A summary of the economic effects was included in the proposed rule and is not repeated here.

The General Counsel of the Department of Commerce certified to the Small Business Administration that this rule will not have a significant economic impact on a substantial number of small entities. As a result, a regulatory flexibility analysis was not prepared. The reasons for this determination were included in the proposed rule and are not repeated here.

The Assistant Administrator for Fisheries, NOAA, (Assistant Administrator), determined that this rule will be implemented in a manner that is consistent to the maximum extent practicable with the approved coastal zone management programs of North Carolina, South Carolina, and Florida. Georgia does not have an approved coastal zone management program. This determination was submitted for review by the responsible State agencies under Section 307 of the Coastal Zone Management Act. The State agencies agreed with this determination.

The Council prepared an environmental assessment (EA) for Amendment 1 and, based on the EA, the Assistant Administrator concluded that there will be no significant adverse impact on the human environment as a result of this rule.

This rule does not contain a collection-of-information requirement for purposes of the Paperwork Reduction Act.

The rule does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under E.O. 12612.

List of Subjects in 50 CFR Part 646

Fisheries, Fishing.

Dated: January 11, 1989.

James W. Brennan,

Assistant Administrator for Fisheries,
National Marine Fisheries Service.

For reasons set forth in the preamble, 50 CFR Part 646 is amended as follows:

PART 646—SNAPPER-GROUPER FISHERY OF THE SOUTH ATLANTIC

1. The authority citation for Part 646 continues to read as follows:

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

2. In § 646.1, paragraph (b) is revised to read as follows:

§ 646.1 Purpose and scope.

(b) This part governs conservation and management of fish in the snapper-grouper fishery in the South Atlantic EEZ.

§ 646.2 [Amended]

3. In § 646.2, in the definition for *Black sea bass trap*, the phrase "fishes in the management unit" is removed and the phrase "fish in the snapper-grouper fishery" is added in its place; and in the term *Fish in the snapper-grouper species*, the word *species* is removed and the word *fishery* is added in its place.

§ 646.4 [Amended]

4. In § 646.4, in the first sentence, the phrase "for YPR analysis" is removed; and in the second sentence, the opening word "Those" is removed and the word "fishermen" is capitalized.

5. In § 646.6, in paragraph (b) the reference to "§ 646.20" is revised to read "§ 646.20(a)"; in paragraph (k) the reference to "§ 646.22(b)(5)" is revised to read "§ 646.22(b)(4)"; paragraphs (h) and (i) are revised; and new paragraphs (o) and (p) are added to read as follows:

§ 646.6 Prohibitions.

(h) Fish with explosives or poisons, as specified in § 646.22(a).

(i) Fish with a fish trap, except as specified in § 646.22(b).

(o) Use trawl gear in a directed snapper-grouper fishery in the EEZ between Cape Hatteras, North Carolina and Cape Canaveral, Florida, as specified in § 646.22(c)(1).

(p) Transfer at sea any fish in the snapper-grouper fishery from a vessel with trawl gear aboard to another vessel, or receive at sea any such fish, as specified in § 646.22(c) (2) and (3).

6. Section 646.22, with the exception of Figure 1, is revised to read as follows:

§ 646.22 Gear limitations.

(a) *Explosive and poisons.* (1) Explosives (except explosives in powerheads) may not be used in the EEZ to fish for fish in the snapper-grouper fishery.

(2) Poisons may not be used in the EEZ to fish for fish in the snapper-grouper fishery except as authorized by permit under State or Federal law.

(b) *Fish traps.* (1) A fish trap in the EEZ is required to have on at least one side, excluding top and bottom, a panel or door with an opening equal to or larger than the interior axis of the trap's throat (funnel). The panel or door

fasteners or hinges must be made of one of the following degradable materials:

(i) Untreated hemp, jute, or cotton string of 3/16-inch diameter or smaller;

(ii) Magnesium alloy, timed float releases (pop-up devices) or similar magnesium alloy fasteners; or

(iii) Ungalvanized or uncoated iron wire of 0.062-inch diameter or smaller.

(2) A fish trap in the EEZ must meet all of the following mesh size requirements (examples of fish trap mesh configurations which meet the minimum requirements are shown in Figure 1):

(i) Two square inch minimum open mesh area;

(ii) One inch minimum length for shortest side;

(iii) Minimum distance of one inch between parallel sides of rectangular openings, and one and one-half (1.5) inches between parallel sides of mesh openings with more than four sides; and

(iv) One and nine-tenths (1.9) inches minimum distance for diagonal measurement.

(3) A fish trap may not be placed in the South Atlantic EEZ south and west of 25°35.5' N. latitude (off Fowey Rocks Light, Florida) to 82°40' W. longitude shoreward of the 100-foot contour that is closest to the shore and continuous along the coast and Florida Keys, as shown on the latest editions of National Ocean Service charts 11462, 11452, 11442, and 11439. West of 82°40' W. longitude, traps may not be placed in the South Atlantic EEZ north of a line connecting 24°24.86' N. latitude, 82°40' W. longitude and 24°28.6' N. latitude, 83°00' W. longitude. A fish trap so placed will be considered unclaimed or abandoned property and may be disposed of in any appropriate manner by the Secretary (including an authorized officer).

(4) A buoy line attached to a fish trap possessed or fished shoreward of the outer boundary of the EEZ and south of 25°35.5' N. latitude must be a minimum of 125 feet in length.

(c) *Trawl gear.* (1) In the EEZ between Cape Hatteras, North Carolina (35°15' N. latitude) and Cape Canaveral, Florida (28°35.1' N. latitude)—due east of the NASA Vehicle Assembly Building), the use of trawl gear in a directed snapper-grouper fishery is prohibited. A vessel with trawl gear and more than 200 pounds of fish in the snapper-grouper fishery aboard is considered to be in a directed snapper-grouper fishery. It is a rebuttable presumption that a vessel with more than 200 pounds of fish in the snapper-grouper fishery aboard harvested such fish in the EEZ.

(2) A vessel with trawl gear aboard may not transfer at sea any fish in the snapper-grouper fishery—

(i) Taken in the EEZ between Cape Hatteras and Cape Canaveral; or

(ii) In the EEZ between Cape Hatteras and Cape Canaveral, regardless of where such fish were taken.

(3) No vessel may receive at sea any fish in the snapper-grouper fishery from a vessel with trawl gear aboard, as specified in paragraph (c)(2) (i) and (ii) of this section.

[FR Doc. 89-955 Filed 1-11-89; 3:35 pm]

BILLING CODE 3510-22-M

this species in interstate or foreign commerce, or to remove and reduce the species to possession from areas under Federal jurisdiction. In addition, for listed plants the 1988 amendments (Pub. L. 100-478) to the Act prohibit their malicious damage or destruction on Federal lands, and their removal, cutting, digging up, or damaging or destroying in known violation of any State law or regulation, including State criminal trespass law. Certain exceptions can apply to agents of the Service and State conservation agencies. The Act and 50 CFR 17.62 and 17.63 also provide for the issuance of permits to carry out otherwise prohibited activities involving endangered species under certain circumstances. It is anticipated that few trade permits would ever be sought or issued, since *Thalictrum cooleyi* is not common in cultivation or in the wild. Requests for copies of the regulations on plants and inquiries regarding them may be addressed to the Office of Management Authority, U.S. Fish and Wildlife Service, P.O. Box 27329, Central Station, Washington, DC 20038-7329 (202-343-4955).

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental

Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the Federal Register on October 25, 1983 (48 FR 49244).

References Cited

Ahles, H. 1939. *Thalictrum cooleyi* sp. nov. Brittonia 11:68-70.
 Kral, R. 1983. A report on some rare, threatened, or endangered forest-related vascular plants of the south. Tech. publ. R8-TP-2. USDA Forest Service. 4:28-431.
 Leonard, S. 1987. Inventory of populations of *Thalictrum cooleyi* and its occurrence sites in North Carolina. Report to the North Carolina Natural Heritage Program, Raleigh, NC. 16 pp.
 Mansberg, L. 1985. *Thalictrum coleyi*; draft global element ranking form prepared for the Nature Conservancy; North Carolina Natural Heritage Program, Raleigh, NC. 2 pp.
 Radford, A., H. Ahles, and C. Bell. 1964. Manual of the vascular flora of the Carolinas. UNC Press, Chapel Hill, 459-462.
 Rayner, D. 1980. Status report on *Thalictrum cooleyi* Ahles, submitted to U.S. Fish and Wildlife Service, Atlanta, GA.
 Rome, A. 1987. *Thalictrum cooleyi*; draft stewardship abstract. The Nature Conservancy, Arlington, VA. 9 pp.

Author

The primary author of this rule is Ms. Nora Murdock, Asheville Field Office,

U.S. Fish and Wildlife Service, 100 Otis Street, Room 224, Asheville, North Carolina 28801, (704/259-0321 or FTS 672-0321).

List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

Regulation Promulgation

Accordingly, Part 17, Subchapter B of Chapter I, Title 50 of the Code of Federal Regulations, is amended as set forth below:

PART 17—[AMENDED]

1. The authority citation for Part 17 is revised to read as follows:

Authority: Pub. L. 93-205, 87 Stat. 884; Pub. L. 94-359, 90 Stat. 911; Pub. L. 95-632, 92 Stat. 3751; Pub. L. 96-159, 93 Stat. 1225; Pub. L. 97-304, 96 Stat. 1411; Pub. L. 100-478, 102 Stat. 2308; Pub. L. 100-653, 102 Stat. 3825 (16 U.S.C. 1531 *et seq.*); Pub. L. 99-625, 100 Stat. 3500, unless otherwise noted.

2. Amend § 17.12(h) for plants by adding the following, in alphabetical order under the family Ranunculaceae, to the List of Endangered and Threatened Plants:

§ 17.12 Endangered and threatened plants.

* * * * *
 (h) * * *

Species		Historic range	Status	When listed	Critical habitat	Special rules
Scientific name	Common name					
Ranunculaceae—Buttercup family:						
<i>Thalictrum cooleyi</i>	Cooley's meadowrue	U.S.A. (NC, FL).....	E	344	NA	NA

Dated: January 24, 1989.
 Becky Norton Dunlop,
 Assistant Secretary for Fish and Wildlife and Parks.
 [FR Doc. 89-2858 Filed 2-6-89; 8:45 am]
 BILLING CODE 4310-55-M

DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
 50 CFR Part 646
 [Docket No. 81017-8271]
Snapper-Grouper Fishery of the South Atlantic; Corrections
AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Final rule; corrections.
SUMMARY: This document corrects errors in the preamble of the final rule to implement Amendment 1 to the Fishery Management Plan for the Snapper-Grouper Fishery of the South-Atlantic (FMP) which was published January 17, 1989 (54 FR 1720).
EFFECTIVE DATE: January 12, 1989.
FOR FURTHER INFORMATION CONTACT: Rodney C. Dalton, 813-893-3722.
 In rule document 89-955 beginning on page 1720 in the issue of January 17, 1989, the following corrections are made:
 1. On page 1721, column 2, under the paragraph heading "Scientific Data", line 9, the sentence is corrected to read

"Although one study did indicate recovery of a trawled area after twelve months, the study was based on a single pass of the trawl through the area."
 2. In the same paragraph, line 9, "The" is added before "authors".
 3. On the same page, column 3, under the paragraph heading "Impact on Development of New Trawling Methods", line 4, after "growth" delete "by".
 Dated: February 1, 1989.
 James E. Douglas, Jr.,
 Deputy Assistant Administrator For Fisheries, National Marine Fisheries Service.
 [FR Doc. 89-2842 Filed 2-6-89; 8:45 am]
 BILLING CODE 3510-22-M