9/17/2010

REGULATORY AMENDMENT TO THE REEF FISH FISHERY MANAGEMENT PLAN

TO SET 2011 TOTAL ALLOWABLE CATCH FOR RED GROUPER AND ESTABLISH MARKING REQUIREMENTS FOR BUOY GEAR

September 2010
(Including Revised Environmental Assessment, Regulatory Impact Review, and Regulatory Flexibility Analysis)

Gulf of Mexico Fishery Management Council
2203 North Lois Avenue, Suite 1100
Tampa, Florida 33607
813-348-1630
813-348-1711 (fax)
888-833-1844 Toll Free
gulfcouncil@gulfcouncil.org
www.gulfcouncil.org

National Oceanic & Atmospheric Administration
National Marine Fisheries Service
Southeast Regional Office
263 13th Avenue South
St. Petersburg, Florida 33701
727-824-5308
727-824-5305 (fax)
http://sero.nmfs.noaa.gov

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FINDING OF NO SIGNIFICANT IMPACT

National Oceanic and Atmospheric Administration (NOAA) Administrative Order 216-6 (NAO 216-6) (May 20, 1999) contains criteria for determining the significance of the impacts of a proposed action. On July 22, 2005, NOAA published a Policy Directive with guidelines for the preparation of a Finding of No Significant Impact (FONSI). In addition, the CEQ regulations at 40 C.F.R. Section 1508.27 state that the significance of an action should be analyzed both in terms of "context" and "intensity". Each criterion listed below is relevant to making a finding of no significant impact and has been considered individually, as well as in combination with the others. The significance of this action is analyzed based on the NAO 216-6 criteria, the recent Policy Directive from NOAA, and CEQ's context and intensity criteria. These include:

1) Can the proposed action reasonably be expected to jeopardize the sustainability of any target species that may be affected by the action?

Response: No, the proposed action would not jeopardize the sustainability of the target species. The most recent stock assessment update projects indicated that although the stock continues to be neither overfished or undergoing overfishing, the stock has declined since 2005. This decline was attributed to a 2005 episodic mortality event. The proposed action is intended to ensure the catch for 2011 will remain below the overfishing threshold, so that overfishing does not occur and the stock can increase to the stock biomass needed to harvest the equilibrium optimum yield. The Council's Scientific and Statistical Committee recommended an acceptable biological catch at 6.31 million pounds (MP) gutted weight (GW). This difference between the overfishing threshold (7.42 MP GW) and the acceptable biological catch allows for scientific uncertainty in the assessment. The Scientific and Statistical Committee's recommendation for acceptable biological catch is precautionary, recommending harvests slightly above that which would be achieved if the fishery were fishing at optimum yield (5.68 MP GW).

2) Can the proposed action reasonably be expected to jeopardize the sustainability of any non-target species?

Response: No, the proposed action will not jeopardize the sustainability of any non-target species, and is not expected to substantially alter standard fishing practices during the 2011 fishing season. The action is intended to allow a decrease in the harvest of red grouper in the U.S. waters of the Gulf of Mexico (Gulf) from 7.57 to 5.68 MP GW, based on recent scientific advice indicating a decline in the status of the stock. Decreasing the total allowable catch could result in a shift in effort to other species, but this would be minimal for the recreational sector where regulations would not change as a result of this action. There could be a shift towards other species in the commercial sector, but harvest of the most desirable species is closely regulated through either an individual fishing quota program or through quotas. In addition, the red grouper commercial sector which lands approximately 80% of red grouper has not met its quota since 2006, so any shift in effort is unlikely.

3) Can the proposed action reasonably be expected to cause substantial damage to the ocean and coastal habitats and/or essential fish habitat (EFH) as defined under the Magnuson-Stevens Act and identified in FMPs?

Response: No, the proposed action is not reasonably expected to cause substantial damage to the ocean and coastal habitats and/or EFH in the U.S. waters of the Gulf. Outside this proposed action, oil contamination to coastal and ocean habitats from the Deepwater Horizon MC252 oil spill is expected to have long-term significant impacts to major portions of the Gulf. This action should lessen overall impacts to EFH because effort needed to catch the allowable harvest will reduced. Nevertheless, longline and vertical line gear has the potential to snag and entangle bottom structures. Although individual gear has a very small footprint the cumulative impact of the commercial and recreational fishing sector results in a large amount of gear being placed in the water, increasing the potential for impact. Additionally, anchoring can add to the potential damage of the bottom at fishing locations.

4) Can the proposed action reasonably be expected to have a substantial adverse impact on public health or safety?

Response: No, the proposed action is not reasonably expected to have a substantial adverse impact on public safety or health. The commercial red grouper fishery in the Gulf of Mexico operates under an individual fishing quota, which removes the need to "race for the fish", thus allowing fishermen to better choose when and how they want to fish. This increases safety at sea by eliminating the need for a derby fishery. The decrease from 7.57 MP to 5.68 MP GW in allowable harvest is not expected to substantially alter the manner in which the recreational fishery in the Gulf of Mexico is prosecuted. There is the potential that red grouper contaminated with oil from the Deepwater Horizon MC252 oil spill could be caught. However, federal and State governments have strong systems in place to test and monitor seafood safety and to prohibit harvesting from affected areas, keeping oiled products out of the market. NOAA Fisheries Service is working closely with the U.S. Food and Drug Administration (FDA) and the States to ensure seafood safety. The first and most important preventive step in protecting the public from potentially contaminated seafood is from NOAA Fisheries Service's actions to close fishing and shellfish harvesting areas in federal waters of the Gulf that have been or are likely to be exposed to oil from the spill. In addition, NOAA and FDA are monitoring fish caught just outside of closed areas, and testing them for petroleum compounds, to ensure that the closed areas are sufficiently large so as to prevent the harvest of contaminated fish. NOAA conducts a combination of both sensory analysis (of tissue) and chemical analysis (of water, sediment, and tissue) to determine if seafood is safe. If managers determine that seafood may be affected, the next step is to assess whether seafood is tainted or contaminated to levels that could pose a risk to human health through consumption. So far, fish flesh tested from outside the closure areas have tested well below any level of concern for oil-based contamination.

5) Can the proposed action reasonably be expected to adversely affect endangered or threatened species, their critical habitat, marine mammals, or other non-target species?

Response: No, the proposed action is not expected to adversely affect endangered or threatened species, marine mammals, or critical habitat of these species as the proposed action is not expected to substantially alter the manner in which the fishery is conducted in the Gulf of Mexico. A 2009 biological opinion for the Gulf of Mexico reef fish fishery determined the fishery is not likely to jeopardize the continued existence of any endangered or threatened species under the jurisdiction of National Marine Fisheries Service or result in the destruction or adverse modification of critical habitat. In addition, the Gulf of Mexico reef fish fishery is classified in the 2010 Marine Mammal Protection Act List of Fisheries as Category III fishery

(74 FR 58859, November 16, 2009). This classification indicates the annual mortality and serious injury of a marine mammal stock resulting from the fishery is less than or equal to 1% of the potential biological removal. Dolphins are the only species documented as interacting with this fishery. Bottlenose dolphins may feed on the bait, catch, and/or released discards of the reef fish fishery.

6) Can the proposed action be expected to have a substantial impact on biodiversity and/or ecosystem function within the affected area (e.g., benthic productivity, predator-prey relationships, etc.)?

Response: No, the proposed action is not expected to have a substantial impact on biodiversity and/or ecosystem function within the affected area. The proposed action to decrease the allowable harvest of red grouper is not expected to substantially alter the manner in which the fishery is conducted in the Gulf of Mexico. Therefore, this action is not expected to further alter biodiversity or ecosystem function.

7) Are significant social or economic impacts interrelated with natural or physical environmental effects?

Response: No, the proposed action would not create any significant social or economic impacts interrelated with natural or physical environmental effects. Allowing decreased harvest of red grouper by both the commercial and recreational fishing sectors will have direct and indirect social and economic impacts to their respective sectors and to the shoreside operations that support them. However, these impacts are not related to, nor have an impact on, the natural or physical environment.

8) Are the effects on the quality of the human environment likely to be highly controversial?

Response: No, the effects on the quality of the human environment are not likely to be highly controversial. The only source of controversy for the proposed action is that the fishing industry often questions the validity of the science involved in the estimates of annual harvest and the status of the various targeted fish stocks. However, because the commercial fishery has not met its quota since 2006 and there are no management changes for the recreational sector, this source of controversy will likely be minimal.

9) Can the proposed action reasonably be expected to result in substantial impacts to unique areas, such as historic or cultural resources, park land, prime farmlands, wetlands, wild and scenic rivers, EFH, or ecologically critical areas?

Response: No, the proposed action is not reasonably expected to result in substantial impacts to unique areas, park land, prime farmlands, wetlands, wild and scenic rivers, or EFH. This action affects federal waters of the Gulf of Mexico. In regard to ecologically critical areas in the Gulf, areas such as the Flower Gardens and the Tortugas Marine Sanctuaries are closed to fishing and the Madison Swanson and Steamboat Lumps ecologically-critical areas are closed to bottom fishing. The action should have no impact on the *U.S.S. Hatteras*, located in federal waters off Texas, which is listed in the National Register of Historic Places; fishing occurs over this wreck, but the action is not expected to increase overall fishing effort. Therefore, there would be no additional impacts on these components of the environment from the proposed action.

10) Are the effects on the human environment likely to be highly uncertain or involve unique or unknown risks?

Response: No, the effects on the human environment are not likely to be highly uncertain or involve unique or unknown risks. This action proposes to adjust the total allowable catch of red grouper, in accordance with approved procedures outlined in the Council's Reef Fish FMP. Adjustments to total allowable catch are made regularly in many fisheries, based on updated information regarding the status of a specific stock or stocks.

11) Is the proposed action related to other actions with individually insignificant, but cumulatively significant impacts?

Response: No, there are no past or reasonably foreseeable future actions related to the proposed red grouper management action with individually insignificant but cumulatively significant impacts. The proposed action to decrease the allowable harvest of red grouper is not expected to substantially alter the manner in which the fishery is conducted. However, because of reductions in the total allowable catch needed to end overfishing for gag, some aspects of the red grouper harvest may need to be further regulated. The degree of the needed regulations on red grouper (if any) are not known at this time.

12) Is the proposed action likely to adversely affect districts, sites, highways, structures, or objects listed in or eligible for listing in the National Register of Historic Places or may cause loss or destruction of significant scientific, cultural, or historical resources?

Response: The proposed action does not adversely affect districts, sites, highways, structures, or objects listed in or eligible for listing in the National Register of Historic Places. The action should have no impact on the *U.S.S. Hatteras*, located in federal waters off Texas, which is listed in the National Register of Historic Places; fishing occurs over this wreck, and the action does not increase overall fishing effort. Additionally, red grouper are not targeted in the western Gulf as red grouper are more commonly found in eastern Gulf waters. The proposed action is not expected to cause loss or destruction of significant scientific, cultural, or historical resources because there are none located in the affected area.

13) Can the proposed action reasonably be expected to result in the introduction or spread of a non-indigenous species?

Response: No, the proposed action is not reasonably expected to result in the introduction or spread of a non-indigenous species. The proposed action to decrease the allowable harvest of the regional red grouper stock is not expected to substantially alter the manner in which the fishery is conducted. The fishery is prosecuted within the boundaries of the Gulf of Mexico reducing the likelihood of introducing non-indigenous species. The lionfish (*Pterois miles* and *P. volitans*) could be caught by reef fish fishermen, these species would be either released at the point of capture or killed consistent with the manner he fishery is prosecuted thus minimizing the spread of this species.

14) Is the proposed action likely to establish a precedent for future actions with significant effects or represents a decision in principle about a future consideration?

Response: No, the proposed action does not establish a precedent for future action with significant effects, and it does not represent a decision in principle about future consideration. Fishing effort for gag is regulated through individual fishing quotas, size limits, and other fishing restrictions. The Council has based its decision on updated scientific information summarized in the EA regarding the status of the stock. The assessment indicates the stock has been depressed by an episodic mortality event but is not considered overfished and undergoing overfishing. Action is needed to allow the stock to recover to target levels. The proposed action, conducted in accordance with regulations established under the FMP, as amended to date, in no way constitutes a decision in principle about a future consideration. FMPs and their implementing regulations are always subject to future changes. The Council and NMFS have discretion to amend the FMP and accompanying regulations and may do so at any time, subject to the Administrative Procedures Act, National Environmental policy Act, and other applicable laws.

15) Can the proposed action reasonably be expected to threaten a violation of federal, state, or local law or requirements imposed for the protection of the environment?

Response: No, the proposed action is being taken pursuant to federal legal mandates for the management of fishery resources and does not implicate state or local requirements. It is not reasonably expected to threaten a violation of federal, state, local law, or requirements imposed for the protection of the environment.

16) Can the proposed action reasonably be expected to result in cumulative adverse effects that could have a substantial effect on the target species or non-target species?

Response: No, the proposed action is not reasonably expected to result in cumulative adverse effects that could have a substantial effect on the target species or non-target species. In general, the proposed action to decrease the allowable harvest of red grouper is not expected to substantially alter the manner in which the fishery is conducted. The proposed harvest levels are adjusted well below the overfishing threshold to ensure overfishing does not occur. There may be some increasing of fishing pressure on a variety of other reef fish and non-targeted stocks, because of the decreased ability to harvest red grouper.

DETERMINATION:

In view of the information presented in this document and the analysis contained in the supporting Environmental Assessment prepared for this framework action to the FMP for the Reef Fish Fishery Resources of the Gulf of Mexico, it is hereby determined that this framework action will not significantly impact the quality of the human environment as described above and in the supporting Environmental Assessment. In addition, all beneficial and adverse impacts of the proposed action have been addressed to reach the conclusion of no significant impacts. Accordingly, preparation of an Environmental Impact Statement (EIS) for this action is not necessary.

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Roy E. Crabtree, Ph.D.
Regional Administrator
Southeast Regional Office
National Marine Fisheries Service

Date