

with § 90.671 and masks its emissions in accordance with § 90.669.

(b) In the event that the authorization for a previously authorized co-channel station within the geographic-area-based licensee's authorized spectrum block is terminated or revoked, the licensee's co-channel obligations to such station will cease upon deletion of the facility from the Commission's licensing record. The EA or MEA licensee then will be able to construct and operate base stations using such frequency.

**§ 90.680 Authorization, construction and implementation of EA or MEA-based licenses and Grandfathering provisions for incumbent licensees.**

(a) Geographic-area-based licenses in the 896–901/935–940 MHz band will be issued for a term not to exceed ten years.

(b) Each geographic-area-based licensee in the 896–901/935–940 MHz band must demonstrate, through a showing to the Commission ten years from the date of license grant, that it is providing substantial service within its service area.

(c) Geographic-area-based licensees who fail to make a convincing showing of substantial service by the end of the tenth year after grant of authorization will forfeit the portion of the geographic-area-based license that exceeds licensed facilities constructed and operating on the date of the license grant.

(d) *Grandfathering provisions for incumbent licensees.* An incumbent licensee's service area shall be defined by its originally-licensed 40 dBμV/m field strength contour. Incumbent licensees are permitted to add new or modify transmit sites in this existing service area so long as the original 40 dBμV/m field strength contour is not expanded.

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**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Parts 223 and 224**

[Docket No. 050304058–5058–01; I.D. No. 060204C]

**RIN 0648–XB29**

**Endangered and Threatened Wildlife and Plants; 12–Month Finding on a Petition To List Elkhorn Coral, Staghorn coral, and Fused-staghorn coral as Threatened or Endangered**

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

**ACTION:** Notice of petition finding and availability of a status review document.

**SUMMARY:** NMFS announces a 12-month finding on a petition to add the elkhorn coral (*Acropora palmata*), staghorn coral (*A. cervicornis*), and fused-staghorn coral (*A. prolifera*), throughout their known range, to the list of threatened and endangered wildlife and to designate critical habitat under the Endangered Species Act (ESA). Based on a review of the best available scientific and commercial information on the status of the species, NMFS finds that the petitioned action is warranted with respect to elkhorn and staghorn corals and will promptly publish a proposed rule to list these two species as threatened. Furthermore, NMFS concludes that listing fused-staghorn coral is not warranted as it is a hybrid and does not constitute a species.

**DATES:** The finding announced in this document was made on March 3, 2005.

**ADDRESSES:** Copies of the Atlantic *Acropora* status review document are available upon request from the Protected Resources Division, NMFS, 9721 Executive Center Drive North, St. Petersburg, FL 33702. After March 17, 2005, please direct requests to our new address: 263 13th Ave. South, St. Petersburg, FL 33701. The status review is also available on the NMFS website at <http://sero.nmfs.noaa.gov/pr/protres.htm>.

**FOR FURTHER INFORMATION CONTACT:** Ms. Jennifer Moore or Dr. Stephania Bolden, NMFS Southeast Region, 727–570–5312, or Ms. Marta Nammack, HQ Office of Protected Resources, 301–713–1401, ext. 180. Please note the NMFS Southeast Regional Office is moving March 17, 2005 and after March 21, 2005, the new telephone exchange will be 727–824–5312.

**SUPPLEMENTARY INFORMATION:** Pursuant to section 4(b)(3)(B) of the ESA (16 U.S.C. 1531 *et seq.*), for any petition to revise the List of Endangered or Threatened Wildlife and Plants which presents substantial scientific and commercial information, NMFS is required to make a finding within 12 months of the date of receipt of the petition on whether the petitioned action is (a) not warranted, (b) warranted, or (c) warranted but precluded from immediate proposal by other pending proposals of higher priority.

On March 4, 2004, the Center for Biological Diversity (CBD) petitioned NMFS to list elkhorn (*Acropora palmata*), staghorn (*A. cervicornis*), and fused-staghorn (*A. prolifera*) coral as either threatened or endangered under the Endangered Species Act (ESA) and to designate critical habitat. On June 23, 2004, NMFS made a positive 90-day finding (69 FR 34995) that the CBD presented substantial information indicating that the petitioned actions may be warranted and announced the initiation of a formal status review as required by section 4(b)(3)(A) of the ESA.

In order to conduct a comprehensive review, NMFS convened an Atlantic *Acropora* Biological Review Team (BRT) to conduct the status review, which incorporates and summarizes the best available scientific and commercial data to date. It addresses the status of the species, the five ESA listing factors, and current regulatory, conservation and research efforts that may yield protection. The BRT also reviewed and considered materials received by NMFS as a result of a **Federal Register** notice and public meetings; substantive materials were incorporated into the status review. Copies of the status review are available upon request from the Protected Resources Division, NMFS (see **ADDRESSES**). NMFS finds that with respect to elkhorn and staghorn corals, the petitioned action is warranted at this time. NMFS will promptly publish a proposed rule to list these two species as threatened. Furthermore, NMFS concludes that listing fused-staghorn coral is not warranted as it is a hybrid and does not constitute a species.

According to section 4(b)(3)(B) of the ESA, 16 U.S.C. 4(b)(3)(B), when a petitioned action is warranted, a proposed regulation to implement the action shall be promptly published in the **Federal Register**. NMFS will immediately begin developing a proposed rule to list the two species as threatened to comply with the ESA's requirement to publish the proposed listing rule promptly. NMFS will also

begin contacting and coordinating with State/Territory and NOAA resource managers to identify activities that may adversely affect the species and potential take exemptions that should be identified in a 4(d) rule, as necessary to provide for the conservation of these threatened species.

After publication of a proposed rule to list the species and establish protective regulations, regulations at 50 CFR 424.16 specify that NMFS allow for public comments regarding the proposed rule and hold public hearings if requested. Within 1 year of publishing the proposed listing regulation, a final rule to list the species, a notice extending the 1-year period, or a notice withdrawing the proposed listing must be published in the **Federal Register**.

The ESA requires that a final rule designating critical habitat of an endangered or threatened species shall be, to the maximum extent prudent, published concurrently with the final rule listing the species (ESA 4(a)(3)(A)). If at that time critical habitat is undeterminable, the period may be extended by not more than 1 additional year.

#### Authority

The authority for this section is the ESA of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: March 11, 2005.

**William T. Hogarth,**  
*Assistant Administrator for*  
*Fisheries, National Marine Fisheries Service.*

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 622

[Docket No. 050309066-5066-01; I.D. 030105D]

RIN 0648-AS53

#### Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic; Amendment 15

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

**ACTION:** Proposed rule; request for comments.

**SUMMARY:** NMFS issues this proposed rule to implement Amendment 15 to the

Fishery Management Plan for the Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic (FMP). This proposed rule would establish a limited access system for the commercial fishery for Gulf and Atlantic migratory group king mackerel by capping participation at the current level. The proposed rule also would change the fishing year for Atlantic migratory group king and Spanish mackerel to be March through February. The intended effects of this proposed rule are to provide economic and social stability in the fishery by preventing speculative entry into the fishery and to mitigate adverse impacts associated with potential quota closures.

**DATES:** Comments must be received no later than 5 p.m., eastern time, on May 2, 2005.

**ADDRESSES:** You may submit comments on the proposed rule by any of the following methods:

- E-mail: 0648-AS53.Proposed@noaa.gov. Include in the subject line the following document identifier: 0648-AS53.

- Federal e-Rulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.

- Mail: Steve Branstetter, Southeast Regional Office, NMFS, 9721 Executive Center Drive N., St. Petersburg, FL 33702.

- Fax: From March 22, 2005, through May 2, 2005, 727-824-5308. Comments cannot be received via fax from March 18 through March 21, 2005.

Copies of Amendment 15, which includes an environmental assessment, a regulatory impact review (RIR), and an initial regulatory flexibility analysis (IRFA), may be obtained from the Gulf of Mexico Fishery Management Council, The Commons at Rivergate, Suite 1000, 3018 U.S. Highway 301 North, Tampa, FL 33619; telephone: 813-228-2815; fax: 813-225-7015; e-mail:

[gulfcouncil@gulfcouncil.org](mailto:gulfcouncil@gulfcouncil.org); or from the South Atlantic Fishery Management Council, One Southpark Circle, Suite 306, Charleston, SC 29407-4699; telephone: 843-571-4366; fax: 843-769-4520; e-mail: [safmc@safmc.net](mailto:safmc@safmc.net).

**FOR FURTHER INFORMATION CONTACT:** Steve Branstetter; telephone: 727-570-5305; fax: 727-570-5583 (through March 18, 2005), 727-824-5308 (on and after March 22, 2005); e-mail: [Steve.Branstetter@noaa.gov](mailto:Steve.Branstetter@noaa.gov).

**SUPPLEMENTARY INFORMATION:** The fisheries for coastal migratory pelagic resources are managed under the FMP. The FMP was prepared jointly by the Gulf of Mexico Fishery Management Council and the South Atlantic Fishery Management Council (Councils),

approved by NMFS, and implemented under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) by regulations at 50 CFR part 622.

#### Background

Prior to 1998, the commercial king mackerel fishery in the exclusive economic zone of the Gulf of Mexico and Atlantic operated under open access. Due to concerns about increasing levels of participation in these fisheries, the Councils established a commercial king mackerel vessel permit moratorium in Amendment 8 to the FMP in March 1998. Amendment 12 extended the expiration date of the moratorium through October 15, 2005, or until the moratorium could be replaced with a license limitation, limited access, and/or individual fishing quota or individual transferable quota system, whichever occurred earlier. The effects of the existing permit moratorium have been to prevent increases in effort, reduce the number of permittees in the king mackerel fishery, and help stabilize the economic performance of current participants. Under the moratoria, the number of commercial king mackerel permits has declined from a peak of 2,172 in July 1998 to 1,683 in August 2004.

Current commercial king mackerel fishery participants, especially in the Gulf of Mexico, have demonstrated the capability of harvesting the applicable quotas well in advance of the end of the various fishing seasons, resulting in early closures of the fishery. Allowing the fishery to revert to open access would result in an increased number of participants in these mackerel fisheries, most likely negating any reductions in effort that have been achieved as a result of the current moratorium. Any increase in participants would: exacerbate the current derby fisheries that occur in the western Gulf zone and in the Florida west coast gillnet fishery, lead to even earlier closures, possibly result in closures of the Atlantic group king mackerel fishery, and have an adverse impact on the economic performance of current participants. Increased participation would also compound the complexity of any future consideration by the Councils to develop a more comprehensive controlled access system for this fishery. For these reasons, the Councils have concluded that a limited access system to continue restrictions on participation levels in these fisheries is appropriate.