the Act, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), and Executive Order 13132. Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects ($100 million or more in any one year). This rule does not reach the economic threshold and thus is not considered a major rule.

The RFA requires agencies to analyze options for regulatory relief of small entities. For purposes of the RFA, small entities include small businesses, nonprofit organizations, and government agencies. According to the Small Business Administration (SBA) approximately 53 percent of all SNFs and NFs generate revenues of $11.5 million or less in a one year period, and are considered small entities. Individuals and States are not included in the definition of small entities. The only burden associated with this rule is the information collection burden associated with collecting and posting nurse staffing data. We are not preparing an analysis for the RFA because we have determined that this rule will not have a significant economic impact on a substantial number of small entities.

In addition, section 1102(b) of the Act requires us to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 100 beds. We are not preparing an analysis for section 1102(b) of the Act because we have determined that this final rule will not have a significant impact on the operations of a substantial number of small rural hospitals because it applies only to SNFs and NFs.

Section 202 of the Unfunded Mandates Reform Act of 1995 also requires that agencies assess anticipated costs and benefits before issuing any rule that may result in expenditure in any one year by State, local, or tribal governments, in the aggregate, or by the private sector, of $110 million. The only burden associated with this rule is the information collection burden associated with collecting and posting nurse staffing data. This final rule will have no consequential effect on the governments mentioned or on the private sector.

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a proposed rule (and subsequent final rule) that imposes substantial direct requirement costs on State and local governments, preempts State law, or otherwise has Federalism implications. Since this regulation will not impose any costs on State or local governments, the requirements of Executive Order 13132 are not applicable.

In accordance with the provisions of Executive Order 12866, this regulation was reviewed by the Office of Management and Budget.

List of Subjects in 42 CFR Part 483

Grant programs-health, Health facilities, Health professions, Health records, Medicaid, Medicare, Nursing homes, Nutrition, Reporting and recordkeeping requirements, Safety.

■ For the reasons set forth in the preamble, the Centers for Medicare & Medicaid Services amends 42 CFR part 483 as follows:

PART 483—REQUIREMENTS FOR STATES AND LONG TERM CARE FACILITIES

■ 1. The authority citation for part 483 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

■ 2. Section 483.30 is amended by adding paragraph (e) to read as follows:

§ 483.30 Nursing services.

* * * * *

(e) *Nurse staffing information*—(1) *Data requirements.* The facility must post the following information on a daily basis:

(i) Facility name.

(ii) The current date.

(iii) The total number and the actual hours worked by the following categories of licensed and unlicensed nursing staff directly responsible for resident care per shift:

(A) Registered nurses.

(B) Licensed practical nurses or licensed vocational nurses (as defined under State law).

(C) Certified nurse aides.

(iv) Resident census.

(2) *Posting requirements.* (i) The facility must post the nurse staffing data specified in paragraph (e)(1) of this section on a daily basis at the beginning of each shift.

(ii) Data must be posted as follows:

(A) Clear and readable format.

(B) In a prominent place readily accessible to residents and visitors.

(3) *Public access to posted nurse staffing data.* The facility must, upon oral or written request, make nurse staffing data available to the public for review at a cost not to exceed the community standard.

(4) *Facility data retention requirements.* The facility must maintain the posted daily nurse staffing data for a minimum of 18 months, or as required by State law, whichever is greater.

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance)

Dated: April 21, 2005.

Mark B. McClellan,

Administrator, Centers for Medicare & Medicaid Services.

Approved: June 16, 2005.

Michael O. Leavitt,

Secretary.

[FR Doc. 05–21278 Filed 10–27–05; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 600 and 622

[Docket No. 050729208–5267–02; I.D. 060805B]

RIN 0648–AP51

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Comprehensive Amendment to the Fishery Management Plans of the U.S. Caribbean

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

ACTION: Final rule.

SUMMARY: NMFS issues this final rule to implement a comprehensive amendment prepared by the Caribbean Fishery Management Council (Council) to amend its Reef Fish, Spiny Lobster, Queen Conch, and Coral Fishery Management Plans (FMPs). The comprehensive amendment is designed to ensure the FMPs are fully compliant with the provisions of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). This final rule redefines the fishery management units for the FMPs; establishes seasonal closures; imposes gear restrictions and requirements;

revises requirements for marking pots and traps; and prohibits the filleting of fish at sea. In addition, the comprehensive amendment establishes biological reference points and stock status criteria; establishes rebuilding schedules and strategies to end overfishing and rebuild overfished stocks; provides for standardized collection of bycatch data; minimizes bycatch and bycatch mortality to the extent practicable; designates essential fish habitat (EFH) and EFH habitat areas of particular concern (HAPCs); and minimizes adverse impacts on such habitat to the extent practicable. The intended effect of this final rule is to achieve optimum yield in the fisheries and provide social and economic benefits associated with maintaining healthy stocks.

DATES: This final rule is effective November 28, 2005.

ADDRESSES: Copies of the final regulatory flexibility analysis (FRFA) and Record of Decision (ROD) are available from Dr. Steve Branstetter, NMFS, Southeast Regional Office, 263 13th Avenue South, St. Petersburg, FL 33701; telephone 727–824–5305; fax 727–824–5308; e-mail *Steve.Branstetter@noaa.gov*.

FOR FURTHER INFORMATION CONTACT: Dr. Steve Branstetter, 727–824–5305; fax 727–824–5308; e-mail *Steve.Branstetter@noaa.gov*.

SUPPLEMENTARY INFORMATION: The fisheries for spiny lobster, queen conch, reef fish, and corals and reef-associated invertebrates in the exclusive economic zone (EEZ) off Puerto Rico and off the U.S. Virgin Islands are managed under the respective fishery management plans prepared by the Council. These fishery management plans are implemented under the authority of the Magnuson-Stevens Act by regulations at 50 CFR part 622. This final rule implements Amendment 2 to the FMP for the Spiny Lobster Fishery, Amendment 1 to the FMP for Queen Conch Resources, Amendment 3 to the FMP for the Reef Fish Fishery, and Amendment 2 to the FMP for the Corals and Reef Associated Plants and Invertebrates of Puerto Rico and the U.S. Virgin Islands, known collectively as the Comprehensive Amendment to the FMPs of the Caribbean.

NMFS published a notice of availability for the comprehensive amendment in the **Federal Register** on June 16, 2005, and requested public comment on the amendment (70 FR 35053). On September 13, 2005, NMFS published the proposed rule to implement the comprehensive amendment and requested public comment on the proposed rule (70 FR 53979). NMFS approved the comprehensive amendment on September 14, 2005. The rationale for the measures in the comprehensive amendment is provided in the amendment and in the preamble to the proposed rule and is not repeated here. This final rule is implemented with no changes from the proposed rule.

Comments and Responses

NMFS received 17 comments on the comprehensive amendment and proposed rule. Following is a summary of the comments and NMFS' responses.

Biological Reference Points and Stock Status Determination Criteria

Comment 1: The data underlying the calculations for maximum sustainable yield (MSY) do not comply with the Magnuson-Stevens Act requirement to use the best scientific information available. In data-poor situations, it is appropriate to base estimates of MSY on catch levels, such as is done in the amendment. However, catch estimates derived from the Marine Recreational Fishery Statistics Survey (MRFSS) are widely regarded as flawed and inconclusive. The Council needs to develop a more suitable tool for determining recreational catch levels. Estimates of MSY should be set more conservatively.

Response: NMFS and the Council acknowledge there are data limitations regarding all Caribbean fisheries, but NMFS disagrees that the MRFSS data are flawed and inconclusive. The primary purpose of the MRFSS survey techniques is to produce regional (and possibly by state), annual estimates of recreational saltwater fishing effort, catch and participation. These methods have been peer-reviewed and found to be adequate or better for their intended purpose and scope. The MRFSS program began in Puerto Rico in 2000 and routinely collects information on both catch and discards. Over 2,700 field intercept angler observations were made in the year 2000, and sampling continues at a similar level. Under other actions in the amendment, more robust standardized reporting requirements are being established, and as additional data become available in the future, these catch estimates can be revised. Until such data become available, the amendment includes several processes intended to ensure quality control in the establishment of MSY for the various stocks. MSY is not simply defined as the long-term average catch. Equating MSY to just the average catch over time assumes that both biomass (B) and fishing mortality (F) are consistent and able to produce MSY. Additionally, the time period over which catches are averaged would need to be sufficient to observe trends in the fishery. Recognizing the data for the U.S. Caribbean do not meet these assumptions, the Council selected a proxy for MSY derived from recent catch (C), modified by estimates of the current biomass (B) and fishing mortality (F) ratios. This allows the Council to ensure that MSY reflects situations when B or F are above or below the level needed to produce MSY.

The Council's choice of targets and limit reference points is based on the recommendations of NMFS' Technical Guidance on the Use of Precautionary Approaches to Implementing National Standard 1 of the Magnuson-Stevens Fishery Conservation and Management Act (Technical Guidance). The Technical Guidance states ''in cases of severe data limitations, qualitative approaches may be necessary, including expert opinion and consensus-building methods,'' which was the approach used by the Council. The Council depended heavily on the recommendations of its Sustainable Fisheries Act (SFA) Working Group, which consisted of Council staff, NMFS scientists, representatives from various U.S. Virgin Islands and Puerto Rico fishery management agencies, and representatives from several environmental organizations. This expert group offered its best professional judgment to the Council regarding appropriate values, based on the available scientific and anecdotal information.

MSY values chosen for spiny lobster and reef fishes are the lowest values considered other than closing the fisheries and setting MSY at zero. MSY for queen conch is an intermediate value of the range of alternatives considered and provides a moderate level of fishing mortality on the stock. The Council chose to prohibit all take of queen conch in the exclusive economic zone (EEZ) except for a small area of Lang Bank, which will aid this species' recovery from an overfished condition.

Comment 2: Most Caribbean snapper and grouper species and many grunt species are overfished or at risk of being overfished. Establishing a proxy B ratio of 0.75 is less conservative than an option assuming the stocks are more depressed by providing a B ratio of 0.50.

Response: Only Snapper Unit 1 (4 species), Grouper Unit 4 (4 species), and the parrotfishes (10 species) are considered to be at risk. Four species are identified as being overfished. The selections of B and F ratios for these

species or species units follow the recommendations developed in the Technical Guidance for a default target control rule. Information is insufficient to determine a precise status for each species or species unit; establishing a more conservatively based B ratio could be unnecessarily restrictive. The Council is proposing several harvesting restrictions intended to reduce fishing mortality and improve the condition of these stocks.

Comment 3: One commenter suggested that establishing optimum yield (OY) as the average yield associated with fishing at F_{OY}, where $F_{OY} = 0.75\ F_{MSY}$, was unduly punishing to resource users, and assumes the relationship between fishing effort and catch is linear. Conversely, one commenter suggested this selection was not conservative as it allows yields at 94 percent of MSY.

Response: As noted for Comment 1, the Council's choice of targets and limit reference points is based on the recommendations of the Technical Guidance. The recommended default for a constant-F target strategy should restrain F to a level 20 to 30 percent below the maximum fishing mortality threshold. Establishing a target F at 75 percent of F_{MSY} results in yields of 94 percent of MSY or higher and creates a biomass level of at least 125 percent of B_{MSY} once the stock reaches equilibrium. This does not mean yields allowed on a depressed stock are 94 percent of MSY. A constant-F approach is more conservative because it restricts F on the stock at any size, whereas a constant catch approach could allow excessive harvest under low MSY values and be too restrictive under a larger MSY.

Comment 4: Establishing minimum stock size threshold (MSST) as $B_{MSY}(1–c)$ where ''c'' is natural mortality (M) or 0.50, whichever is smaller, is restrictive.

Response: The Council's choice for MSST follows the guidance for a default MSY control rule. Setting ''c'' equal to 1–M or 0.50 is expected to allow a stock fished at F_{MSY} to fluctuate its biomass around B_{MSY}, allowing for variation in natural mortality.

Comment 5: National Standard 8 of the Magnuson-Stevens Act allows managers to consider the potential socio-economic impacts as long as they are consistent with the primary goals of ending overfishing and rebuilding depleted populations. Nevertheless, the Council chose the most liberal alternative for maximum fishing mortality threshold (MFMT), citing the need to minimize short-term socio-economic impacts as its justification. The priority in setting MFMT is conservation of resource.

Response: The Council's preferred alternatives to reduce F and end overfishing are consistent with the choices for stock status determination criteria. The Council's proposed harvesting restrictions are intended to reduce F by as much as 30 percent, leading to improved conditions of these stocks.

Reducing Fishing Mortality

Comment 6: The Council should have selected the alternative requiring the establishment of a Memorandum of Understanding (MOU) between NMFS and the state governments to develop compatible regulations for all its managed species.

Response: The Council did select alternatives to develop MOUs for Nassau grouper and queen conch. The Council continually recognized the importance of compatible state regulations, given the vast majority of harvest occurs in state-controlled waters. The U.S. Virgin Islands state representatives on the Council have agreed to pursue implementing state regulations to prohibit harvest of Nassau grouper, and the Council's suite of preferred alternatives are based in large part on measures already in place in Puerto Rico.

Comment 7: The Council's choice of actions to reduce F through gear restrictions is not adequate. Gillnets would be prohibited in the EEZ, but continued limited use for non-managed baitfish would be allowed, thus contributing to bycatch. The Council rejected the alternative to prohibit fish traps--the dominant fishing gear used in the Caribbean.

Response: The Council estimates the prohibition on the use of gillnets and trammel nets may provide an overall F reduction of about 10 percent, with F on species such as parrotfish reduced as much as 30 percent. Bycatch issues will additionally be addressed through the proposed action. Many gillnets in the EEZ are set on the bottom, and a secondary benefit to their prohibition is a reduction in physical damage to the habitat. The restricted use of surface gillnets for baitfish, such as ballyhoo, is species-specific. The requirement to constantly tend the nets will reduce bycatch and the potential for lost gear that could continue to ''ghost'' fish. Additionally, most of this effort occurs in shallow state waters. The allowable use of gillnets to catch surface fishes such as ballyhoo should not have impacts to habitat.

The Council considered but rejected an alternative to ban fish traps in the EEZ. Such a ban could theoretically reduce F by 20 to 67 percent; however, the majority of fish trap effort occurs in state waters, and the actual reductions in F in the EEZ were likely to be much lower. Because there is limited fishable area for fish traps in the EEZ, the Council concluded a prohibition of this gear in the EEZ would likely transfer the limited effort in the EEZ to state waters, where more juveniles would be taken, thus negating any benefits of the Federal prohibition.

Comment 8: Species-specific seasonal closures will not be as effective as area closures to protect spawning aggregations of Grouper Unit 4, parrotfish, and Snapper Unit 1. These species will continue to be caught while fishing for other species occurs.

Response: The Council recognized there would be a regulatory discard issue when these species are taken during a closed season. However, closing specific areas would still allow the species to be taken in areas not closed to fishing. Allowing continued harvest would not reduce F as needed. A seasonal closure of the entire U.S. Caribbean during the peak spawning periods for each species group is necessary to achieve these reductions.

Comment 9: It is unnecessary to close the EEZ to queen conch fishing. Catches in St. Thomas have never approached 1 percent of MSY levels, whereas the fishery in St. Croix has landed queen conch in excess of MSY occasionally and in excess of OY consistently.

Response: The status of the queen conch resource was determined for the U.S. Caribbean as a whole. The stock is considered overfished, and reductions in fishing mortality are necessary. NMFS estimates the EEZ comprises only 14 percent of the fishable habitat of the U.S. Caribbean. Fishing for queen conch off Puerto Rico occurs almost entirely in state waters. Off the U.S. Virgin Islands, including state waters, landings are approximately 39,000 lb (17,690 kg). Because queen conch are generally harvested by hand, depth is another limiting factor, thus, most harvest occurs in inshore waters. Approximately 14,000 lb (6,350 kg) are harvested in the Lang Bank area off St. Croix, and only 22 percent of these landings are estimated to come from Federal waters. Given the importance of this area to the social and economic stability of St. Croix fishermen, the Council chose to allow fishing to continue in the small area known as Lang Bank.

Rebuilding Strategies

Comment 10: The Council chose the shortest rebuilding period for Nassau

and goliath grouper, and prohibited filleting fish at sea to help reduce illegal catches of these species. However, efforts should be made to protect sites in Federal waters where Nassau and goliath grouper aggregate to spawn.

Response: NMFS agrees a prohibition of filleting fish at sea will reduce illegal harvest of prohibited or undersized species. Identifying areas in the EEZ where Nassau and goliath grouper aggregate to spawn would not further reduce F on these species. The harvest and possession of Nassau and goliath grouper in or from the entire Caribbean EEZ is already prohibited.

Comment 11: The life history information used to develop the rebuilding schedules and recovery strategies is in error. The proposed rebuilding periods are longer than what is consistent with accepted life history information.

Response: The Council considered three alternatives to each rebuilding strategy. For Nassau grouper, goliath grouper, and queen conch, the Council chose the rebuilding time frame recognizing the lower generation time for these species. For Grouper Unit 4, the Council chose the longest time frame (10 years) to reduce the social and economic impacts that would have occurred under shorter (2 and 6 years) schedules. Each of the rebuilding strategies was developed using the best available scientific information on each species. These data were reviewed by NMFS and the Council's SFA Working Group comprised of representatives of NMFS, the Council, state agencies, and interested stakeholders. This Working Group provided technical guidance and recommendations to the Council during its deliberations, choosing the most appropriate time frame for each rebuilding strategy.

Comment 12: In the case of overfished species, the Magnuson-Stevens Act requires managers to specify a rebuilding period that is ''as short as possible.'' Although the Council chose the shortest rebuilding period for Nassau and goliath grouper, of the alternatives considered, they chose the longest period (10 years) for Grouper Unit 4.

Response: National Standard 8 of the Magnuson-Stevens Act requires managers to minimize socio-economic impacts as long as the actions are consistent with the primary goals of ending overfishing and rebuilding depleted populations. To that end, the National Standard Guidelines allow rebuilding strategies to be as long as 10 years as long as pertinent factors, such as the status of the stock and the needs of fishing communities, are appropriately considered. Under the proposed stock status criteria, Grouper Unit 4 is slightly overfished, with a stock size at 91 percent of MSST. The seasonal closure on this Unit is anticipated to achieve a 24–percent reduction in F, recovering the stock from an overfished condition under any of the alternative schedules considered (2, 6, or 10 years). To reduce the economic impacts of the shorter rebuilding schedules, the Council chose 10 years.

Comment 13: During its deliberations on the actions to be selected in this amendment, the Council changed its preferred alternative from the largest closed area of Grammanik Bank (23.57 square kilometers or 6.88 square nautical miles) to the smallest (1.50 square kilometers or 0.44 square nautical miles). A more moderate choice would provide better protection for yellowfin grouper spawning aggregations.

Response: The amendment also proposes to close the entire U.S. Caribbean EEZ to the harvest and possession of yellowfin grouper and other groupers in Grouper Unit 4 during February through April. However, such action does not preclude fishing in the EEZ for other species, whereby there will be incidental harvest and some mortality on yellowfin grouper and other grouper in Grouper Unit 4. Thus, the prohibition of all fishing on the Grammanik Bank is intended specifically to protect vulnerable aggregations of yellowfin grouper known to inhabit this distinct area during spawning season (February through April).

Comment 14: The amendment fails to establish a standardized bycatch reporting methodology. The proposed actions depend, in part, on MRFSS data, which is widely known to be flawed and inconclusive. Other alternatives could include observers, dockside interviews, or at-sea intercepts. One of the preferred alternatives only states that the Council will consult with Puerto Rico and the U.S. Virgin Islands to modify trip tickets into a standardized reporting mechanism. NMFS should require the Council to modify and update the trip ticket system to provide credible data.

Response: NMFS and the Council acknowledge there are data limitations regarding all Caribbean fisheries, but NMFS disagrees the MRFSS data are flawed and inconclusive. The MRFSS program only began in Puerto Rico in 2000, but it does routinely collect information on both catch and discards. Over 2,700 field intercept angler observations were made in the initial year, 2000, and sampling continues at a similar level. The proposed actions are intended to improve the existing databases in regard to both catch and bycatch in the Caribbean. Trip ticket programs are currently managed by the respective state agencies: the Department of Natural and Environmental Resources for Puerto Rico, and the Division of Fish and Wildlife for the U.S. Virgin Islands. Currently, Puerto Rico has no bycatch data collection program, and the U.S. Virgin Islands instituted their program in 2004. NMFS currently contributes $78,900 and $73,000 to commercial fisheries data gathering efforts in Puerto Rico and the U.S. Virgin Islands, respectively. The amendment establishes a standardized bycatch reporting methodology in partnership with both states. Both states have agreed to include standardized bycatch data collection within their trip ticket systems.

Comment 15: To reduce bycatch, the Council considered only one option: to amend regulations regarding trap construction to require one escape panel instead of maintaining the existing two-panel requirement.

Response: The Magnuson-Stevens Act defines bycatch as those fish which are harvested, but which are not sold or kept for personal use, and includes economic as well as regulatory discards. Data available for the Caribbean fisheries indicate that the vast majority of the catch is retained. Coupled to the preponderance of effort occurring in state waters, the Council concluded bycatch is a minor cause of fishing mortality in its fisheries. The Council did consider other options, such as increasing mesh size in fish traps and nets, but existing information indicates that even with increased mesh size, the quantity of discards remains the same. The Council is reverting to previous requirements to have only one escape panel based on public testimony. With two panels, there is a greater possibility of a panel breaking open during retrieval, losing the catch; thus, some fishermen are disabling the escape panels, negating any benefit of requiring two. The action to amend the escape panel requirement was agreed on by the fishermen, the state fishery management agencies, and the Council, and the states are interested in developing compatible regulations to reduce enforcement confusion. Therefore, the Council anticipates increased compliance with escape panel requirements, which will reduce bycatch mortality. In addition, many of the other actions in the amendment, such as seasonal closures, closed areas, and gear restrictions have

an ancillary benefit of reducing bycatch and bycatch mortality.

Comment 16: The designations of EFH are vague and overly broad. There is no consideration of designating EFH habitat areas of particular concern (EFH-HAPCs) for the Spiny Lobster and Queen Conch FMPs.

Response: The EFH regulations (50 CFR 600.815) contain guidance regarding the types and levels of information that should be used for describing and identifying EFH. These range from distribution; habitat-related densities; habitat-related growth, reproduction, or survival rates; and production rates by habitat. Where higher level information is sparse, such as with many fish species in the U.S. Caribbean, information is to be used in a risk-averse fashion to err on the side of conservation. Therefore, NMFS acknowledges designations of EFH are broad, but it is also important to realize that the area designated as EFH in U.S. waters comprises the aggregate of separate EFH designations for each life stage of each managed species. Unlike EFH, EFH-HAPCs are not a mandated component of an FMP. Councils are encouraged to designate EFH-HAPCs in order to focus conservation priorities on specific habitat areas that play a particularly important role in the life cycles of federally managed fish species. An HAPC is expected to be a localized area of EFH that is especially ecologically important, sensitive, stressed, or rare when compared to EFH. Seven alternative methods were considered for designating EFH-HAPCs; the preferred alternative relied upon expert opinion regarding factors related to EFH-HAPC selection. A panel of experts recommended HAPC sites. To designate HAPC sites in an efficient manner, it was necessary to determine which FMP the sites would be designated under. Sites with predominantly coral habitat were aligned with the Coral FMP, while sites with predominantly mangrove habitat were aligned with the Reef Fish FMP.

Comment 17: The amendment only generally states that anchors, pots/traps, gill/trammel nets, and bottom longlines have a potential adverse impact on EFH. This cursory evaluation does not cover all fishing activities undertaken in waters identified as EFH by the Council, nor does it adequately evaluate the impacts of fishing on EFH. We support the gear prohibitions and anchoring restrictions year round on Grammanik Bank, but do not believe these measures are sufficient to minimize adverse impacts on EFH. In addition, the amendment violates the National Environmental Policy Act (NEPA) by failing to analyze a broad range of management alternatives to minimize the adverse impacts of fishing on EFH.

Response: The impacts of fishing on EFH were analyzed in Sections 2.1.5, 3.5.1, 4.3, and 4.5 of the Final Environmental Impact Statement for the Generic EFH Amendment to the FMPs of the U.S. Caribbean (EFH FEIS). The EFH FEIS was prepared, in part, as a supporting document to the comprehensive amendment and was incorporated by reference. The EFH FEIS was prepared separately from the comprehensive amendment pursuant to a process outlined in the Joint Stipulation and Order filed in *American Oceans Campaign* v. *Evans*, Civil No. 99–982 (GK) (D.D.C. December 17, 2001). The EFH FEIS analyzed, within each fishery, a range of potential alternatives to: (1) describe and identify EFH for the fishery; (2) identify other actions to encourage the conservation and enhancement of such EFH; and (3) identify measures to minimize to the extent practicable the adverse effects of fishing on such EFH. In addition to pots/traps, gill/trammel nets, and bottom longlines, the other allowable gears in Caribbean fisheries include hook-and-line, handline, dip net, slurp gun, spear, and hand harvest. The EFH FEIS identified and evaluated the effects of all fishing gears, including prohibited gear, on EFH (See Section 3.5.1 and Tables 3.15, 4.1 and 4.2). Alternatives were not developed for gears whose effects on habitat were considered below a minimal and temporary threshold as determined by habitat/gear sensitivity and fishing effort. Six alternatives for preventing, mitigating, or minimizing adverse effects of fishing on EFH were presented in the EFH FEIS. The alternatives consisted of specific management actions that progressively increased the amount of restriction affecting the use of fishing gears allowed under the Reef Fish FMP and the Spiny Lobster FMP. Gear used under the Queen Conch FMP (hand harvest only) is not considered to have adverse impacts, and no harvest of coral is allowed under the Coral FMP. The gear prohibitions and anchoring restrictions proposed in the comprehensive SFA amendment are applicable to a large number of EFH sites throughout the Caribbean, not just Grammanik Bank. The two alternatives, a no-action alternative and a total year-round prohibition on the use of the predominant bottom-tending gears, represent the minimum and maximum action that could be taken. Other alternatives would have been less restrictive. Therefore, NMFS believes the Council did adequately consider a broad range of alternatives.

Classification

The Administrator, Southeast Region, NMFS, determined that the comprehensive amendment is necessary for the conservation and management of the reef fish, spiny lobster, queen conch, and coral fisheries of the Caribbean and that it is consistent with the Magnuson-Stevens Act and other applicable laws.

This final rule has been determined to be significant for purposes of Executive Order 12866.

NMFS prepared a final supplemental environmental impact statement (FSEIS) for this amendment. The FSEIS was filed with the Environmental Protection Agency on June 17, 2005. A notice of availability was published on June 24, 2005 (70 FR 36582). In approving the comprehensive amendment on September 14, 2005, NMFS issued a ROD identifying the selected alternatives. A copy of the ROD is available from NMFS (see **ADDRESSES**).

NMFS prepared a FRFA that incorporates the initial regulatory flexibility analysis (IRFA), a summary of the significant issues raised by the public comments in response to the IRFA, NMFS' responses to those comments, and a summary of the analyses completed to support the action. A summary of the FRFA follows. Copies of the FRFA are available from NMFS (see **ADDRESSES**).

The final rule will implement an integrated FMP amendment that will bring the Caribbean Council's FMPs for spiny lobster, queen conch, reef fish, corals, and reef associated plants and invertebrates into full compliance with requirements added to the Magnuson-Stevens Act through the 1996 Sustainable Fisheries Act. The objectives of the rule are to: (1) define fishery management units (FMUs) and FMU sub-units; (2) specify biological reference points and stock status determination criteria; (3) regulate fishing mortality; (4) rebuild overfished fisheries; (5) conserve and protect yellowfin grouper; (6) achieve bycatch mandates; and (7) achieve the essential fish habitat mandates.

There were two comments that specifically addressed the economic impacts of the proposed rule. One comment implied that a regulatory flexibility analysis had not been conducted for the proposed rule. However, a regulatory flexibility analysis was conducted, and a summary of the IRFA was included in the published proposed rule. The second comment from a trade association stated that NMFS had not considered the

adverse economic impact of the proposed seasonal closure of an area of Grammanik Bank to all fishing, except highly migratory species, on small commercial fishers from St. Thomas. The association noted that the recent temporary rule, which prohibited fishing for or possession of any species, except highly migratory species, within an area of Grammanik Bank from February 1, 2005, through April 30, 2005, had an adverse economic impact on the four St. Thomas fishers that operate in the area, and for one of these fishers, the impact was heavy. In the IRFA, NMFS evaluated the economic impact of the seasonal Grammanik Bank closure on all small commercial U.S. Virgin Island fishers and concluded that the seasonal Grammanik Bank closure could have a significant adverse economic impact on some of the small commercial fishers that operate in the EEZ. The impacts were not, however, separated by which island the fishers operated from. In response to this comment, the FRFA includes a statement that the seasonal closure will have an adverse economic impact on four commercial fishers from St. Thomas, and the impact will be large for one of the fishers. No changes, however, were made to the rule as a result of these comments.

The final rule will affect commercial and recreational fishers and charter fishing services in Puerto Rico and the U.S. Virgin Islands. There are approximately 1,758 commercial fishers in Puerto Rico and 349 commercial fishers in the U.S. Virgin Islands. Approximately 50 entities offer year-round for-hire charter services in the U.S. Caribbean, with the majority located in the U.S. Virgin Islands. NMFS expects that 88 Puerto Rican commercial fishers (5 percent), 35 U.S. Virgin Island commercial fishers (10 percent), and 3 for-hire charter services (5 percent) operate in the EEZ and may be affected by this final rule. The Small Business Administration (SBA) size standards for the finfish, shellfish, and other marine fishing industries are $3.5 million in annual sales. The SBA size standard for the charter fishing industry is $6.0 million in annual sales. NMFS assumes all of the entities that may be affected by this final rule are small businesses. Thus, NMFS expects a total of 123 small businesses in commercial fishing and 3 small businesses in charter fishing services will be affected by this final rule. The final rule will: (1) prohibit fishing for or possession of queen conch in the EEZ, with the exception of Lang Bank east of St. Croix; (2a) move aquarium trade species of Caribbean coral and reef fish from a management to a data collection only category; (2b) move all species of Caribbean conch, with the exception of queen conch, to a data collection only category, thereby removing fishery management restrictions on these species; (3) close the EEZ to the possession of red, black, tiger, yellowfin, and yellowedge grouper from February 1 through April 30 of each year; (4) close the EEZ off the west coast of Puerto Rico to the possession of red hind from December 1 through the last day of February each year; (5) close the EEZ to the possession of black, blackfin, vermilion, and silk snapper from October 1 through December 31 of each year; (6) close the EEZ to the possession of mutton snapper and lane snapper from April 1 through June 30 of each year; (7a) implement an immediate prohibition against the use of gill and trammel nets to fish for Caribbean reef fish or Caribbean spiny lobster in the EEZ; (7b) require gill nets used to fish for bait fish in the EEZ to be tended at all times; (8) prohibit the filleting of fish in the EEZ and require that fish captured or possessed in the EEZ be landed with heads and fins intact, with minor exceptions; (9) close an area of the Grammanik Bank to fishing for or possession of any species of fish, except highly migratory species, from February 1 through April 30 of each year; (10) amend current requirements for trap construction such that only one escape panel is required, which could be the door; (11a) require at least one buoy that floats on the surface for all traps/pots fished individually for all fishing vessels that fish for or possess Caribbean spiny lobster or Caribbean reef fish species in or from the EEZ; (11b) require at least one buoy at each end of trap lines linking traps/pots for all fishing vessels that fish for or possess Caribbean spiny lobster or Caribbean reef fish species in or from the EEZ; (11c) prohibit use of pots/traps, gill/trammel nets, and bottom longlines on coral or hard bottom year-round in the existing seasonally closed areas and Grammanik Bank in the EEZ; and (11d) require an anchor retrieval system for all vessels that fish for or possess Caribbean reef fish species in or from the EEZ. In addition, consistent with the provisions of the comprehensive amendment, a standardized bycatch reporting methodology is being established in partnership with both states. Both states have agreed to include standardized bycatch data collection within their trip ticket systems.

The queen conch fishery occurs primarily in state waters. Approximately 92 percent of queen conch harvested in Puerto Rico is reported to be obtained from state waters, while 60 percent of queen conch harvested in the U.S. Virgin Islands is reported to be taken from state waters. Only 18 fishers were reported to have harvested queen conch in the EEZ in 1999 (2 from the U.S. Virgin Islands and 16 from Puerto Rico). Together, the 18 queen conch fishers represent 7 percent of the 260 U.S. Caribbean queen conch fishers, or less than 1 percent of all commercial fishing businesses in the U.S. Caribbean. The 16 queen conch fishers from Puerto Rico represent 8 percent of the 209 queen conch fishers from that state, and the 2 from the U.S. Virgin Islands represent 4 percent of the 51 queen conch fishers from that territory. NMFS expects that the prohibition against fishing for or possession of queen conch in the Caribbean EEZ, with the exception of Lang Bank east of St. Croix, will not have a significant economic impact on queen conch fishers from Puerto Rico but will likely have a greater adverse economic impact on the U.S. Virgin Island queen conch fishers that harvest the species in the Caribbean EEZ. Any small business that harvests species of Caribbean conch, other than queen conch, or aquarium trade species of Caribbean coral or reef fish in the EEZ will benefit from the movement of these species to a data-collection-only category because this movement will eliminate existing Federal fishing restrictions on these species. However, as stated in the IRFA, because harvest of these species occurs primarily in state waters, NMFS expects that any economic benefit obtained will be negligible.

The U.S. Caribbean reef fish fishery is essentially a multi-species fishery in that fishers catch multiple species of reef fish on any given trip. Consequently, the harvest of any particular species likely represents a small proportion of total revenue and profit for any given trip. Up to 5.8 percent of commercial fishers and 5.0 percent of for-hire charter services will be affected by the ban on the possession of red, black, tiger, yellowfin, and yellowedge grouper in the EEZ from February 1 through April 30 of each year; the ban on the possession of red hind in the EEZ from December 1 through the last day of February of each year; the ban on the possession of black, blackfin, vermilion, and silk snapper in the EEZ from October 1 through December 31 of each year; and the ban on the possession of mutton snapper and lane snapper in the EEZ from April

1 through June 30 of each year. To mitigate any revenue and profit losses that may result from the seasonal closures, commercial fishers and charter fishing operations that fish for reef fish in the EEZ may intensify fishing before and after the seasonal closures and/or relocate to state waters. The mitigating effects of these behavioral changes cannot be forecast. Nonetheless, the combined seasonal closures may have a significant adverse impact on a substantial number of small businesses.

The immediate prohibition against the use of gillnets and trammel nets to fish for Caribbean reef fish or Caribbean spiny lobster will require the adoption of other gear, most likely traps/pots, to harvest these species. NMFS expects the prohibition will affect a small number of the 5 percent of Puerto Rican commercial fishers that operate in the EEZ because waters depths in the EEZ off Puerto Rico do not favor the use of gillnets or trammel nets. The prohibition will likely affect more U.S. Virgin Island commercial fishers because there is more fishable habitat that can be targeted by gillnets and trammel nets in the EEZ off the U.S. Virgin Islands, and the use of gillnets and trammel nets has increased among St. Croix fishers. Consequently, NMFS expects the immediate prohibition against the use of gillnets and trammel nets will have a greater adverse economic impact on the 10 percent of U.S. Virgin Island commercial fishers that operate in the EEZ.

The immediate prohibition against the use of gillnets and trammel nets in the EEZ will not apply to the harvest of ballyhoo, houndfish, and flying fish, which are commonly found near the surface. When used to harvest these species in the EEZ, the nets must be tended at all times. Ballyhoo and houndfish are used as bait. At present, there is insufficient information to determine the economic impact on any small business that may currently harvest ballyhoo, houndfish, or flying fish in the EEZ by using untended gillnets and/or trammel nets.

Since 1990 and 1993, there have been prohibitions against the harvest and possession of Nassau grouper and goliath grouper in the EEZ, respectively; however, anecdotal evidence suggests that illegal harvest and possession occur. Prohibiting the filleting of all species of fish in the U.S. Caribbean EEZ, except highly migratory species or species caught and used for bait or the crew's own consumption, and requiring that all fish captured or possessed in the EEZ be landed with heads and fins intact will improve enforcement of existing prohibitions and result in reduced illegal revenues. At the same time, the prohibition may reduce legal revenues for those who fish in the EEZ and fillet their fish due to limited storage capacity. Because whole fish take up more space in a vessel than fillets, harvest per trip may be reduced. However, because the typical fishing vessel in the Caribbean EEZ does not have fish holds and, in many cases, does not use coolers, it is expected that a substantial number of the small businesses do not fillet their catches from the EEZ and will not experience a significant adverse economic impact.

The final rule will prohibit fishing for or possession of any species of fish, except highly migratory species, within a 0.44 nm^2 (1.5 km^2) area of Grammanik Bank from February 1 through April 30 of each year. NMFS expects the greatest adverse economic impact of the 3-month Grammanik Bank closure will be on fishers who harvest yellowfin grouper because the reported spawning aggregation of yellowfin grouper is centered within the closed area during this time. As previously discussed, the final rule will prohibit the possession of red, black, tiger, yellowfin, and yellowedge grouper in the U.S. EEZ from February 1 through April 30. The combined impact of the 3-month Grammanik Bank closure and the 3-month ban against the possession of the above species of grouper in the EEZ on yellowfin grouper fishers will be no revenues from yellowfin grouper fished for or possessed anywhere in the EEZ, which includes the closed area, for 3 months. To mitigate losses due to the prohibitions, yellowfin grouper fishers and other commercial fishers may intensify fishing before and after the seasonal bans and/or move their fishing activities to state waters. Nonetheless, the adverse economic impact will be significant for some of the small commercial fishers that operate in the EEZ. According to one U.S. Virgin Island trade association, the seasonal closure will have an adverse economic impact on the four St. Thomas commercial fishers who operate in the area, and for one of them, the impact will be large. The one fisher represents 25 percent of St. Thomas commercial fishers that operate in the area and 3 percent of U.S. Virgin Island commercial fishers that operate in the EEZ.

The final rule will require only one escape panel for traps and pots. This action relaxes the current requirement of two escape panels and therefore does not impose any adverse economic impact on small businesses.

The use of traps and pots in the EEZ is expected to be infrequent because of water depth. Nevertheless, for those fishers who use traps and pots in the EEZ, the requirement to have at least one buoy that floats on the surface for all traps or pots fished individually and to have at least one buoy at each end of trap lines linking traps/pots is not expected to impose a significant adverse impact because the additional gear expenses should be minor.

The year-round ban on the use of traps, pots, gillnets, trammel nets, and bottom longlines on coral or hard bottom habitat in currently existing, seasonally closed areas and the 0.44 nm^2 (1.5 km^2) area of Grammanik Bank represents a prohibition against the use of traditional gear types in these areas. This prohibition could be especially burdensome to U.S. Virgin Islands commercial fishers from St. Croix because they have already lost fishing areas in state waters due to U.S. Virgin Island closures. The majority of fishable habitat off St. Croix is primarily restricted to Lang Bank and, currently, the eastern half of Lang Bank is closed to all fishing from December 1 through the last day of February of each year. The final rule will ban the use of traditional gear in an area that encompasses approximately the easternmost half of Lang Bank. Consequently, NMFS expects the ban will have a significant adverse economic impact on those St. Croix commercial fishers that currently use traps, pots, gillnets, trammel nets, and/or bottom longlines in the eastern half of Lang Bank.

The final rule will require that the owner or operator of any fishing vessel, recreational or commercial, that fishes for or possesses Caribbean reef fish in or from the EEZ ensure that the vessel uses only an anchor retrieval system that recovers the anchor by its crown, thereby preventing the anchor from dragging along the bottom during recovery and damaging habitat. NMFS assumes that most commercial and charter fishing vessels that operate in the EEZ do not currently have an anchor retrieval system that meets the requirement. For those fishers that have a grapnel hook, this will require incorporating an anchor rode reversal bar that runs parallel along the shank. For those fishers that have a fluke or plow-type anchor, a trip line consisting of a line from the crown of the anchor to a surface buoy would be required. There is currently insufficient information to quantify the number of fishing vessels that use the different types of anchors and the costs of making necessary modifications. However, NMFS expects the cost will not

represent a significant adverse economic impact on small businesses.

Although the current data collection system in the U.S. Caribbean, partially funded through Federal grants, does not require commercial fishers or charter fishing operations to report bycatch data, Puerto Rico has agreed to require that this information be reported, and the U.S. Virgin Islands has incorporated some bycatch data into its reporting requirements and will be improving the data collection. Consistent with the provisions of the comprehensive amendment, NMFS will consult with Puerto Rico in an effort to add data fields to Puerto Rico's existing mandatory landings reports in order to include consistent and standardized bycatch data. Consequently, the final rule does not directly impose any new reporting or recordkeeping requirements. However, the indirect economic impact of requiring additional reporting information will accrue to commercial fishing and charter fishing businesses in Puerto Rico through additional time to report bycatch information in the future. At present, there is insufficient information to quantify the amount of time necessary to report such information and how this might affect business operation; however, it is not expected to represent a significant adverse economic impact on a substantial number of small businesses.

Alternatives considered but rejected by the Council would have increased the adverse economic impact on small businesses. One alternative would have prohibited fishing for or possession of queen conch in the entire EEZ. Because the rejected alternative would have extended the prohibition to include Lang Bank east of St. Croix, it could have had a greater adverse economic impact on U.S. Virgin Island queen conch fishers. Alternatives to the seasonal bans on the possession of mutton snapper and lane snapper, red hind, and the respective snapper and grouper species would have banned the possession of all species managed by the Caribbean Council for 3 months, 6 months, or a year. Such bans would have had greater adverse economic impacts than the final rule because each rejected alternative would have banned the possession of more species for an equal or a longer period of time. The Council considered, but rejected, alternatives to the immediate prohibition against the use of gillnets and trammel nets to fish for Caribbean reef fish or Caribbean spiny lobster because the adverse economic impacts of the alternatives on small businesses could have been much greater than the final rule. Specifically, the rejected alternatives included the immediate prohibition against the use of fish traps in the Caribbean EEZ, the immediate prohibition against the use of gillnets or trammel nets in the Caribbean EEZ to fish for any species, and closing various areas of the EEZ to fishing for or possession of all species. Alternatives to the 3-month prohibition against fishing for or possession of any species of fish, except highly migratory species, within a 0.44 nm^2 (1.5 km^2) area of Grammanik Bank would have closed larger areas of the Bank or added a year-round ban against fishing for or possession of yellowfin grouper in the EEZ and, therefore, would have had greater adverse economic impacts on small commercial fishers than the final rule. Finally, the Council considered implementing a Federal permit system for commercial and charter fishing businesses that operate in the EEZ as an alternative to the recommendation that NMFS consult with Puerto Rico as the state modifies its mandatory landings reports; however, that alternative was rejected because it would have had a greater adverse economic impact than the alternative in the final rule.

List of Subjects

50 CFR Part 600

Administrative practice and procedure, Confidential business information, Fisheries, Fishing, Fishing vessels, Foreign relations, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Statistics.

50 CFR Part 622

Fisheries, Fishing, Puerto Rico, Reporting and recordkeeping requirements, Virgin Islands.

Dated: October 25, 2005.

John Oliver,

Deputy Assistant Administrator for Operations, National Marine Fisheries Service.

■ For the reasons set out in the preamble, 50 CFR parts 600 and 622 are amended as follows:

PART 600—MAGNUSON-STEVENS ACT PROVISIONS

■ 1. The authority citation for part 600 continues to read as follows:

Authority: 5 U.S.C. 561 and 16 U.S.C. 1801 *et seq.*

§ 600.725 [Amended]

■ 2. In § 600.725, amend the table in paragraph (v), section V., as follows:

a. Under the heading ''1. Caribbean Spiny Lobster Fishery (FMP)'', remove entry ''C'' from the first and second columns; redesignate entries ''D'' and ''E'' as ''C'' and ''D'', respectively, in the first and second columns; and remove the phrase ''gillnet, trammel net'' from the second column in the newly redesignated entry ''D≥; and

b. Under the heading ''2. Caribbean Shallow Water Reef Fish Fishery (FMP)'', remove entry ''C'' from the first and second columns; and redesignate entry ''D'' as ''C'' in the first and second columns.

PART 622—FISHERIES OF THE CARIBBEAN, GULF, AND SOUTH ATLANTIC

■ 3. The authority citation for part 622 continues to read as follows:

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

■ 4. In § 622.2, the definition of ''Caribbean conch resource'' is removed, and a definition of ''Caribbean queen conch'' is added in alphabetical order to read as follows:

§ 622.2 Definitions and acronyms.

* * * * *

Caribbean queen conch or *queen conch* means the species, *Strombus gigus*, or a part thereof.

* * * * *

■ 5. In § 622.6, paragraph (b)(1)(ii)(A) is revised to read as follows:

§ 622.6 Vessel and gear identification.

* * * * *

(b) * * *

(1) * * *

(ii) * * *

(A) *Caribbean EEZ.* Traps or pots used in the Caribbean spiny lobster or Caribbean reef fish fisheries that are fished individually, rather than tied together in a trap line, must have at least one buoy attached that floats on the surface. Traps or pots used in the Caribbean spiny lobster or Caribbean reef fish fisheries that are tied together in a trap line must have at least one buoy that floats at the surface attached at each end of the trap line. Each buoy must display the official number and color code assigned to the vessel by Puerto Rico or the U.S. Virgin Islands, whichever is applicable.

* * * * *

■ 6. In § 622.31, paragraph (l) is added to read as follows:

§ 622.31 Prohibited gear and methods.

* * * * *

(l) *Gillnets and trammel nets in the Caribbean EEZ.* A gillnet or trammel net may not be used in the Caribbean EEZ to fish for Caribbean reef fish or Caribbean spiny lobster. Possession of a

gillnet or trammel net and any Caribbean reef fish or Caribbean spiny lobster in or from the Caribbean EEZ is prima facie evidence of violation of this paragraph (l). A gillnet or trammel net used in the Caribbean EEZ to fish for any other species must be tended at all times.

■ 7. In § 622.32, paragraph (b)(1)(ii) is revised, and paragraph (b)(1)(iv) is added to read as follows:

§ 622.32 Prohibited and limited-harvest species.

* * * * *

(b) * * *

(1) * * *

(ii) No person may fish for or possess goliath grouper and Nassau grouper in or from the Caribbean EEZ. Such fish caught in the Caribbean EEZ must be released immediately with a minimum of harm.

* * * * *

(iv) No person may fish for, or possess on board a fishing vessel, a Caribbean queen conch in or from the Caribbean EEZ, except during October 1 through June 30 in the area east of 64°34′ W. longitude which includes Lang Bank east of St. Croix, U.S. Virgin Islands.

* * * * *

■ 8. In § 622.33, paragraph (a) introductory text is added and paragraph (a)(3) is revised, and paragraphs (a)(4) through (a)(7) are added to read as follows:

§ 622.33 Caribbean EEZ seasonal and/or area closures.

(a) *Seasonal closures.* In addition to the other restrictions specified in this paragraph (a), fishing with pots, traps, bottom longlines, gillnets or trammel nets is prohibited year-round in the closed areas specified in paragraphs (a)(1), (a)(2), and (a)(3) of this section.

* * * * *

(3) *Grammanik Bank closed area.* (i) The Grammanik Bank closed area is bounded by rhumb lines connecting, in order, the following points:

Point	North lat.	West long.
A	18°11.898′	64°56.328′
B	18°11.645′	64°56.225′
C	18°11.058′	64°57.810′
D	18°11.311′	64°57.913′
A	18°11.898′	64°56.328′

(ii) From February 1 through April 30, each year, no person may fish for or possess any species of fish, except highly migratory species, in or from the Grammanik Bank closed area. This prohibition on possession does not apply to such fish harvested and landed ashore prior to the closure. For the purpose of paragraph (a)(4) of this section, ''fish'' means finfish, mollusks, crustaceans, and all other forms of marine animal and plant life other than marine mammals and birds. ''Highly migratory species'' means bluefin, bigeye, yellowfin, albacore, and skipjack tunas; swordfish; sharks (listed in Appendix A to part 635 of this title); and white marlin, blue marlin, sailfish, and longbill spearfish.

(4) *Red, black, tiger, yellowfin, or yellowedge grouper.* From February 1 through April 30, each year, no person may fish for or possess red, black, tiger, yellowfin, or yellowedge grouper in or from the Caribbean EEZ. This prohibition on possession does not apply to such grouper harvested and landed ashore prior to the closure.

(5) *Additional red hind closure.* From December 1 through the last day of February, each year, no person may fish for or possess red hind in or from the Caribbean EEZ west of 67°10′ W. longitude. This prohibition on possession does not apply to red hind harvested and landed ashore prior to the closure.

(6) *Vermilion, black, silk, or blackfin snapper.* From October 1 through December 31, each year, no person may fish for or possess vermilion, black, silk, or blackfin snapper in or from the Caribbean EEZ. This prohibition on possession does not apply to such snapper harvested and landed ashore prior to the closure.

(7) *Lane or mutton snapper.* From April 1 through June 30, each year, no person may fish for or possess lane or mutton snapper in or from the Caribbean EEZ. This prohibition on possession does not apply to such snapper harvested and landed ashore prior to the closure.

* * * * *

■ 9. In § 622.38, paragraphs (a), (d), and (f) are revised to read as follows:

§ 622.38 Landing fish intact.

* * * * *

(a) The following must be maintained with head and fins intact: cobia, king mackerel, and Spanish mackerel in or from the Gulf, Mid-Atlantic, or South Atlantic EEZ, except as specified for king mackerel in paragraph (g) of this section; dolphin and wahoo in or from the Atlantic EEZ; South Atlantic snapper-grouper in or from the South Atlantic EEZ, except as specified in paragraph (h) of this section; finfish in or from the Caribbean EEZ, except as specified in paragraphs (c) and (d) of this section; and finfish in or from the Gulf EEZ, except as specified in paragraphs (c) and (d) of this section. Such fish may be eviscerated, gilled, and scaled, but must otherwise be maintained in a whole condition.

* * * * *

(d) In the Gulf EEZ or Caribbean EEZ:

(1) Bait is exempt from the requirement to be maintained with head and fins intact.

(i) For the purpose of this paragraph (d)(1), ''bait'' means--

(A) Packaged, headless fish fillets that have the skin attached and are frozen or refrigerated;

(B) Headless fish fillets that have the skin attached and are held in brine; or

(C) Small pieces no larger than 3 in3 (7.6 cm3) or strips no larger than 3 inches by 9 inches (7.6 cm by 22.9 cm) that have the skin attached and are frozen, refrigerated, or held in brine.

(ii) Paragraph (d)(1)(i) of this section notwithstanding, a finfish or part thereof possessed in or landed from the Gulf EEZ or Caribbean EEZ that is subsequently sold or purchased as a finfish species, rather than as bait, is not bait.

(2) Legal-sized finfish possessed for consumption at sea on the harvesting vessel are exempt from the requirement to have head and fins intact, provided—

(i) Such finfish do not exceed any applicable bag limit;

(ii) Such finfish do not exceed 1.5 lb (680 g) of finfish parts per person aboard; and

(iii) The vessel is equipped to cook such finfish on board.

* * * * *

(f) Queen conch in or from the Caribbean EEZ must be maintained with meat and shell intact.

* * * * *

■ 10. In § 622.40, paragraph (b)(1)(i) is revised to read as follows:

§ 622.40 Limitations on traps and pots.

* * * * *

(b) * * *

(1) * * *

(i) A fish trap used or possessed in the Caribbean EEZ must have a panel located on one side of the trap, excluding the top, bottom, and side containing the trap entrance. The opening covered by the panel must measure not less than 8 by 8 inches (20.3 by 20.3 cm). The mesh size of the panel may not be smaller than the mesh size of the trap. The panel must be attached to the trap with untreated jute twine with a diameter not exceeding 1/8 inch (3.2 mm). An access door may serve as the panel, provided it is on an appropriate side, it is hinged only at its

bottom, its only other fastening is untreated jute twine with a diameter not exceeding 1/8 inch (3.2 mm), and such fastening is at the top of the door so that the door will fall open when such twine degrades. Jute twine used to secure a panel may not be wrapped or overlapped.

* * * * *

■ 11. In § 622.41, paragraph (b) is revised to read as follows:

§ 622.41 Species specific limitations.

* * * * *

(b) *Caribbean reef fish anchoring restriction.* The owner or operator of any fishing vessel, recreational or commercial, that fishes for or possesses Caribbean reef fish in or from the Caribbean EEZ must ensure that the vessel uses only an anchor retrieval system that recovers the anchor by its crown, thereby preventing the anchor from dragging along the bottom during recovery. For a grapnel hook, this could include an incorporated anchor rode reversal bar that runs parallel along the shank, which allows the rode to reverse and slip back toward the crown. For a fluke- or plow-type anchor, a trip line consisting of a line from the crown of the anchor to a surface buoy would be required.

* * * * *

■ 12. In Appendix A to Part 622, Tables 1 and 2 are revised, and Table 5 is added to read as follows:

Appendix A to Part 622—Species Tables

TABLE 1 OF APPENDIX A TO PART 622—CARIBBEAN CORAL REEF RESOURCES

I. Coelenterates—Phylum Coelenterata
A. Hydrocorals—Class Hydrozoa
1. Hydroids—Order Athecatae
Family Milleporidae
Millepora spp., Fire corals
Family Stylasteridae
Stylaster roseus, Rose lace corals
B. Anthozoans—Class Anthozoa
1. Soft corals—Order Alcyonacea
Family Anthothelidae
Erythropodium caribaeorum, Encrusting gorgonian
Iciligorgia schrammi, Deepwater sea fan
Family Briaridae
Briareum asbestinum, Corky sea finger
Family Clavulariidae
Carijoa riisei
Telesto spp.
2. Gorgonian corals—Order Gorgonacea
Family Ellisellidae
Ellisella spp., Sea whips
Family Gorgoniidae
Gorgonia flabellum, Venus sea fan
G. mariae, Wide-mesh sea fan
G. ventalina, Common sea fan
Pseudopterogorgia acerosa, Sea plume
P. albatrossae
P. americana, Slimy sea plume
P. bipinnata, Bipinnate plume
P. rigida
Pterogorgia anceps, Angular sea whip
P. citrina, Yellow sea whip
Family Plexauridae
Eunicea calyculata, Warty sea rod
E. clavigera
E. fusca, Doughnut sea rod
E. knighti
E. laciniata
E. laxispica
E. mammosa, Swollen-knob
E. succinea, Shelf-knob sea rod
E. touneforti
Muricea atlantica
M. elongata, Orange spiny rod
M. laxa, Delicate spiny rod
M. muricata, Spiny sea fan
M. pinnata, Long spine sea fan
Muriceopsis spp.
M. flavida, Rough sea plume
M. sulphurea
Plexaura flexuosa, Bent sea rod
P. homomalla, Black sea rod
Plexaurella dichotoma, Slit-pore sea rod
P. fusifera
P. grandiflora
P. grisea
P. nutans, Giant slit-pore
Pseudoplexaura crucis
P. flagellosa
P. porosa, Porous sea rod
P. wagenaari
3. Hard Corals—Order Scleractinia
Family Acroporidae
Acropora cervicornis, Staghorn coral
A. palmata, Elkhorn coral
A. prolifera, Fused staghorn
Family Agaricidae
Agaricia agaricities, Lettuce leaf coral
A. fragilis, Fragile saucer
A. lamarcki, Lamarck's sheet
A. tenuifolia, Thin leaf lettuce
Leptoseris cucullata, Sunray lettuce
Family Astrocoeniidae
Stephanocoenia michelinii, Blushing star
Family Caryophyllidae
Eusmilia fastigiata, Flower coral
Tubastrea aurea, Cup coral
Family Faviidae
Cladocora arbuscula, Tube coral
Colpophyllia natans, Boulder coral
Diploria clivosa, Knobby brain coral
D. labyrinthiformis, Grooved brain
D. strigosa, Symmetrical brain
Favia fragum, Golfball coral
Manicina areolata, Rose coral
M. mayori, Tortugas rose coral
Montastrea annularis, Boulder star coral
M. cavernosa, Great star coral
Solenastrea bournoni, Smooth star coral
Family Meandrinidae
Dendrogyra cylindrus, Pillar coral
Dichocoenia stellaris, Pancake star
D. stokesi, Elliptical star
Meandrina meandrites, Maze coral
Family Mussidae
Isophyllastrea rigida, Rough star coral
Isophyllia sinuosa, Sinuous cactus
Mussa angulosa, Large flower coral
Mycetophyllia aliciae, Thin fungus coral
M. danae, Fat fungus coral
M. ferox, Grooved fungus
M. lamarckiana, Fungus coral
Scolymia cubensis, Artichoke coral
S. lacera, Solitary disk
Family Oculinidae
Oculina diffusa, Ivory bush coral
Family Pocilloporidae
Madracis decactis, Ten-ray star coral
M. mirabilis, Yellow pencil
Family Poritidae
Porites astreoides, Mustard hill coral
P. branneri, Blue crust coral
P. divaricata, Small finger coral
P. porites, Finger coral
Family Rhizangiidae
Astrangia solitaria, Dwarf cup coral
Phyllangia americana, Hidden cup coral
Family Siderastreidae
Siderastrea radians, Lesser starlet
S. siderea, Massive starlet
4. Black Corals—Order Antipatharia
Antipathes spp., Bushy black coral
Stichopathes spp., Wire coral
II. Sea grasses—Phylum Angiospermae
Halodule wrightii, Shoal grass
Halophila spp., Sea vines
Ruppia maritima, Widgeon grass
Syringodium filiforme, Manatee grass
Thalassia testudium, Turtle grass

Aquarium Trade Species in the Coral FMP—The following species are included for data collection purposes only.

I. Sponges—Phylum Porifera
A. Demosponges—Class Demospongiae
Aphimedon compressa, Erect rope sponge
Chondrilla nucula, Chicken liver sponge
Cynachirella alloclada
Geodia neptuni, Potato sponge
Haliclona spp., Finger sponge
Myriastra spp.
Niphates digitalis, Pink vase sponge
N. erecta, Lavender rope sponge
Spinosella policifera
S. vaginalis
Tethya crypta
II. Coelenterates—Phylum Coelenterata
A. Anthozoans—Class Anthozoa
1. Anemones—Order Actiniaria
Aiptasia tagetes, Pale anemone
Bartholomea annulata, Corkscrew anemone
Condylactis gigantea, Giant pink-tipped anemone
Hereractis lucida, Knobby anemone
Lebrunia spp., Staghorn anemone
Stichodactyla helianthus, Sun anemone
2. Colonial Anemones—Order Zoanthidea
Zoanthus spp., Sea mat
3. False Corals—Order Corallimorpharia
Discosoma spp. (formerly *Rhodactis*), False coral
Ricordia florida, Florida false coral
III. Annelid Worms—Phylum Annelida
A. Polychaetes—Class Polychaeta
Family Sabellidae, Feather duster worms
Sabellastarte spp., Tube worms
S. magnifica, Magnificent duster
Family Serpulidae

TABLE 1 OF APPENDIX A TO PART 622—CARIBBEAN CORAL REEF RESOURCES—Continued

Spirobranchus giganteus, Christmas tree worm

IV. Mollusks—Phylum Mollusca

A. Gastropods—Class Gastropoda

Family Elysiidae

Tridachia crispata, Lettuce sea slug

Family Olividae

Oliva reticularis, Netted olive

Family Ovulidae

Cyphoma gibbosum, Flamingo tongue

B. Bivalves—Class Bivalvia

Family Limidae

Lima spp., Fileclams

L. scabra, Rough fileclam

Family Spondylidae

Spondylus americanus, Atlantic thorny oyster

C. Cephalopods—Class Cephalopoda

1. Octopuses—Order Octopoda

Family Octopodidae

Octopus spp. (except the Common octopus, *O. vulgaris*)

V. Arthropods—Phylum Arthropoda

A. Crustaceans—Subphylum Crustacea

1. Decapods—Order Decapoda

Family Alpheidae

Alpheaus armatus, Snapping shrimp

Family Diogenidae

Paguristes spp., Hermit crabs

P. cadenati, Red reef hermit

Family Grapsidae

Percnon gibbesi, Nimble spray crab

Family Hippolytidae

Lysmata spp., Peppermint shrimp

Thor amboinensis, Anemone shrimp

Family Majidae, Coral crabs

Mithrax spp., Clinging crabs

M. cinctimanus, Banded clinging

M. sculptus, Green clinging

Stenorhynchus seticornis, Yellowline arrow

Family Palaemonida

Periclimenes spp., Cleaner shrimp

Family Squillidae, Mantis crabs

Gonodactylus spp.

Lysiosquilla spp.

Family Stenopodidae, Coral shrimp

Stenopus hispidus, Banded shrimp

S. scutellatus, Golden shrimp

VI. Echinoderms—Phylum Echinodermata

A. Feather stars—Class Crinoidea

Analcidometra armata, Swimming crinoid

Davidaster spp., Crinoids

Nemaster spp., Crinoids

B. Sea stars—Class Asteroidea

Astropecten spp., Sand stars

Linckia guildingii, Common comet star

Ophidiaster guildingii, Comet star

Oreaster reticulatus, Cushion sea star

C. Brittle and basket stars—Class Ophiuroidea

Astrophyton muricatum, Giant basket star

Ophiocoma spp., Brittlestars

Ophioderma spp., Brittlestars

O. rubicundum, Ruby brittlestar

D. Sea Urchins—Class Echinoidea

Diadema antillarum, Long-spined urchin

Echinometra spp., Purple urchin

Eucidaris tribuloides, Pencil urchin

Lytechinus spp., Pin cushion urchin

Tripneustes ventricosus, Sea egg

TABLE 1 OF APPENDIX A TO PART 622—CARIBBEAN CORAL REEF RESOURCES—Continued

E. Sea Cucumbers—Class Holothuroidea

Holothuria spp., Sea cucumbers

VII. Chordates—Phylum Chordata

A. Tunicates—Subphylum Urochordata

TABLE 2 OF APPENDIX A TO PART 622—CARIBBEAN REEF FISH

Lutjanidae—Snappers

Unit 1

Silk snapper, *Lutjanus vivanus*

Blackfin snapper, *L. buccanella*

Black snapper, *Apsilus dentatus*

Vermilion snapper, *Rhomboplites aurorubens*

Unit 2

Queen snapper, *Etelis oculatus*

Wenchman, *Pristipomoides aquilonaris*

Unit 3

Gray snapper, *Lutjanus griseus*

Lane snapper, *Lutjanus synagris*

Mutton snapper, *Lutjanus analis*

Dog snapper, *Lutjanus jocu*

Schoolmaster, *Lutjanus apodus*

Mahogany snapper, *Lutjanus mahogani*

Unit 4

Yellowtail snapper, *Ocyurus chrysurus*

Serranidae—Sea basses and Groupers

Unit 1

Nassau Grouper, *Epinephelus striatus*

Unit 2

Goliath grouper, *Epinephelus itajara*

Unit 3

Red hind, *Epinephelus guttatus*

Coney, *Epinephelus fulvus*

Rock hind, *Epinephelus adscensionis*

Graysby, *Epinephelus cruentatus*

Creole-fish, *Paranthias furcifer*

Unit 4

Red grouper, *Epinephelus morio*

Yellowedge grouper, *Epinephelus flavolimbatus*

Misty grouper, *Epinephelus mystacinus*

Tiger grouper, *Mycteroperca tigris*

Yellowfin grouper, *Mycteroperca venenosa*

Haemulidae—Grunts

White grunt, *Haemulon plumieri*

Margate, *Haemulon album*

Tomtate, *Haemulon aurolineatum*

Bluestriped grunt, *Haemulon sciurus*

French grunt, *Haemulon flavolineatum*

Porkfish, *Anisotremus virginicus*

Mullidae—Goatfishes

Spotted goatfish, *Pseudupeneus maculatus*

Yellow goatfish, *Mulloidichthys martinicus*

Sparidae—Porgies

Jolthead porgy, *Calamus bajonado*

Sea bream, *Archosargus rhomboidalis*

Sheepshead porgy, *Calamus penna*

Pluma, *Calamus pennatula*

Holocentridae—Squirrelfishes

Blackbar soldierfish, *Myripristis jacobus*

Bigeye, *Priacanthus arenatus*

Longspine squirrelfish, *Holocentrus rufus*

Squirrelfish, *Holocentrus adscensionis*

Malacanthidae—Tilefishes

Blackline tilefish, *Caulolatilus cyanops*

Sand tilefish, *Malacanthus plumieri*

Carangidae—Jacks

Blue runner, *Caranx crysos*

Horse-eye jack, *Caranx latus*

Black jack, *Caranx lugubris*

Almaco jack, *Seriola rivoliana*

TABLE 2 OF APPENDIX A TO PART 622—CARIBBEAN REEF FISH—Continued

Bar jack, *Caranx ruber*

Greater amberjack, *Seriola dumerili*

Yellow jack, *Caranx bartholomaei*

Scaridae—Parrotfishes

Blue parrotfish, *Scarus coeruleus*

Midnight parrotfish, *Scarus coelestinus*

Princess parrotfish, *Scarus taeniopterus*

Queen parrotfish, *Scarus vetula*

Rainbow parrotfish, *Scarus guacamaia*

Redfin parrotfish, *Sparisoma rubripinne*

Redtail parrotfish, *Sparisoma chrysopterum*

Stoplight parrotfish, *Sparisoma viride*

Redband parrotfish, *Sparisoma aurofrenatum*

Striped parrotfish, *Scarus croicensis*

Acanthuridae—Surgeonfishes

Blue tang, *Acanthurus coeruleus*

Ocean surgeonfish, *Acanthurus bahianus*

Doctorfish, *Acanthurus chirurgus*

Balistidae—Triggerfishes

Ocean triggerfish, *Canthidermis sufflamen*

Queen triggerfish, *Balistes vetula*

Sargassum triggerfish, *Xanthichthys rigens*

Monacanthidae—Filefishes

Scrawled filefish, *Aluterus scriptus*

Whitespotted filefish, *Cantherhines macrocerus*

Black durgon, *Melichthys niger*

Ostraciidae—Boxfishes

Honeycomb cowfish, *Lactophrys polygonia*

Scrawled cowfish, *Lactophrys quadricornis*

Trunkfish, *Lactophrys trigonus*

Spotted trunkfish, *Lactophrys bicaudalis*

Smooth trunkfish, *Lactophrys triqueter*

Labridae—Wrasses

Hogfish, *Lachnolaimus maximus*

Puddingwife, *Halichoeres radiatus*

Spanish hogfish, *Bodianus rufus*

Pomacanthidae—Angelfishes

Queen angelfish, *Holacanthus ciliaris*

Gray angelfish, *Pomacanthus arcuatus*

French angelfish, *Pomacanthus paru*

Aquarium Trade—The following aquarium trade species are included for data collection purposes only:

Frogfish, *Antennarius* spp.

Flamefish, *Apogon maculatus*

Conchfish, *Astrapogen stellatus*

Redlip blenny, *Ophioblennius atlanticus*

Peacock flounder, *Bothus lunatus*

Longsnout butterflyfish, *Chaetodon aculeatus*

Foureye butterflyfish, *Chaetodon capistratus*

Spotfin butterflyfish, *Chaetodon ocellatus*

Banded butterflyfish, *Chaetodon striatus*

Redspotted hawkfish, *Amblycirrhitus pinos*

Flying gurnard, *Dactylopterus volitans*

Atlantic spadefish, *Chaetodipterus faber*

Neon goby, *Gobiosoma oceanops*

Rusty goby, *Priolepis hipoliti*

Royal gramma, *Gramma loreto*

Creole wrasse, *Clepticus parrae*

Yellowcheek wrasse, *Halichoeres cyanocephalus*

Yellowhead wrasse, *Halichoeres garnoti*

Clown wrasse, *Halichoeres maculipinna*

Pearly razorfish, *Hemipteronotus novacula*

Green razorfish, *Hemipteronotus splendens*

Bluehead wrasse, *Thalassoma bifasciatum*

Chain moray, *Echidna catenata*

TABLE 2 OF APPENDIX A TO PART 622—CARIBBEAN REEF FISH—Continued

Green moray, *Gymnothorax funebris*
Goldentail moray, *Gymnothorax miliaris*
Batfish, *Ogcocepahalus* spp.
Goldspotted eel, *Myrichthys ocellatus*
Yellowhead jawfish, *Opistognathus aurifrons*
Dusky jawfish, *Opistognathus whitehursti*
Cherubfish, *Centropyge argi*
Rock beauty, *Holacanthus tricolor*
Sergeant major, *Abudefduf saxatilis*
Blue chromis, *Chromis cyanea*
Sunshinefish, *Chromis insolata*
Yellowtail damselfish, *Microspathodon chrysurus*
Dusky damselfish, *Pomacentrus fuscus*
Beaugregory, *Pomacentrus leucostictus*
Bicolor damselfish, *Pomacentrus partitus*
Threespot damselfish, *Pomacentrus planifrons*

TABLE 2 OF APPENDIX A TO PART 622—CARIBBEAN REEF FISH—Continued

Glasseye snapper, *Priacanthus cruentatus*
High-hat, *Equetus acuminatus*
Jackknife-fish, *Equetus lanceolatus*
Spotted drum, *Equetus punctatus*
Scorpaenidae—Scorpionfishes
Butter hamlet, *Hypoplectrus unicolor*
Swissguard basslet, *Liopropoma rubre*
Greater soapfish, *Rypticus saponaceus*
Orangeback bass, *Serranus annularis*
Lantern bass, *Serranus baldwini*
Tobaccofish, *Serranus tabacarius*
Harlequin bass, *Serranus tigrinus*
Chalk bass, *Serranus tortugarum*
Caribbean tonguefish, *Symphurus arawak*
Seahorses, *Hippocampus* spp.
Pipefishes, *Syngnathus* spp.
Sand diver, *Synodus intermedius*
Sharpnose puffer, *Canthigaster rostrata*
Porcupinefish, *Diodon hystrix*

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TABLE 5 OF APPENDIX A TO PART 622—CARIBBEAN CONCH RESOURCES

Queen conch, *Strombus gigas*

The following species are included for data collection purposes only:

Atlantic triton's trumpet, *Charonia variegata*
Cameo helmet, *Cassis madagascarensis*
Green star shell, *Astrea tuber*
Hawkwing conch, *Strombus raninus*
Milk conch, *Strombus costatus*
Roostertail conch, *Strombus gallus*
West Indian fighting conch, *Strombus pugilis*
True tulip, *Fasciolaria tulipa*

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