

subscriber the signal of a significantly viewed station only if that subscriber receives local-into-local service, pursuant to § 76.66.

(2) *Receipt in HD format.* A satellite carrier may retransmit to a subscriber in high definition (HD) format the signal of a significantly viewed station only if such carrier also retransmits in HD format the signal of a station located in the local market of such subscriber and affiliated with the same network whenever such format is available from such station. This condition does not apply to, nor prohibit, the retransmission to a subscriber of a significantly viewed station in standard definition (SD) format.

(3) *Exception if no network affiliate in local market.* The limitations in paragraphs (g)(1) and (g)(2) of this section will not prohibit a satellite carrier from retransmitting a significantly viewed network station to a subscriber located in a local market in which there are no network stations affiliated with the same television network as the significantly viewed station.

(4) *Exception if waiver granted by local station.* The limitations in paragraphs (g)(1) and (g)(2) of this section will not apply if, and to the extent that, the local network station affiliated with the same television network as the significantly viewed station has granted a waiver in accordance with 47 U.S.C. 340(b)(4).

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Parts 600 and 622

[Docket No. 0907201152-91188-01]

RIN 0648-AY05

#### Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Regulatory Amendment to the Fishery Management Plan for the Reef Fish Fishery of Puerto Rico and the U.S. Virgin Islands

**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 that would implement a regulatory

amendment to the Fishery Management Plan for the Reef Fish Fishery of Puerto Rico and the U.S. Virgin Islands (FMP) prepared by the Caribbean Fishery Management Council (Council). This proposed rule would modify the Bajo de Sico seasonal closure from a 3-month closure to a 6-month closure, and prohibit fishing for and possession of Caribbean reef fish in or from the exclusive economic zone (EEZ) portion of Bajo de Sico during the closure. The proposed rule would also prohibit anchoring in the EEZ portion of Bajo de Sico year-round. In addition to the measures contained in the regulatory amendment, this proposed rule would also add spear to the list of allowable gears in the commercial sector of the Caribbean reef fish fishery. The intended effect of this proposed rule is to provide further protection for red hind spawning aggregations and large snappers and groupers, and better protect the essential fish habitat (EFH) where these species reside.

**DATES:** Written comments must be received on or before August 27, 2010.

**ADDRESSES:** You may submit comments on the proposed rule identified by 0648-AY05, by any of the following methods:

- Electronic Submissions: Submit all electronic public comments via the Federal e-Rulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.
- Mail: Britni Tokotch, Southeast Regional Office, NMFS, 263 13th Avenue South, St. Petersburg, FL 33701.
- Fax: 727-824-5308; Attention: Britni Tokotch.

Instructions: No comments will be posted for public viewing until after the comment period has closed. All comments received are a part of the public record and will generally be posted to <http://www.regulations.gov> without change. All personal Identifying Information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

NMFS will accept anonymous comments (enter N/A in the required fields if you wish to remain anonymous). You may submit attachments to electronic comments in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

Copies of the regulatory amendment--which includes an Environmental Assessment (EA), an initial regulatory flexibility analysis (IRFA), and a regulatory impact review (RIR)--may be obtained from Britni Tokotch, Southeast

Regional Office, NMFS, 263 13th Avenue South, St. Petersburg, FL 33701 or may be downloaded from the Southeast Regional Office website at <http://sero.nmfs.noaa.gov>.

**FOR FURTHER INFORMATION CONTACT:** Britni Tokotch, 727-824-5305.

**SUPPLEMENTARY INFORMATION:** The Caribbean reef fish fishery is managed under the FMP. The FMP was prepared by the Council and is implemented through regulations at 50 CFR part 622 under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

#### Background

The Bajo de Sico area closure was first implemented in 1996 to protect spawning aggregations of red hind. Currently, the EEZ portion of Bajo de Sico is closed to all fishing activities from December 1 through the end of February, each year. Within the EEZ portion of the Bajo de Sico closed area, the use of bottom-tending gear, including traps, pots, gillnets, trammel nets, and bottom longlines, is prohibited year-round.

Recently, Bajo de Sico has been identified as an important spawning site, especially for red hind, and possibly for other resident groupers, including Nassau and yellowfin groupers. Bajo de Sico is also an important foraging site for these and other Caribbean reef fish. The Bajo de Sico closed area has been described as a well developed and diverse coral and sponge habitat, which provides EFH for Caribbean reef fish within Bajo de Sico. The purpose of this proposed rule is to protect red hind spawning aggregations and large snappers and groupers from directed fishing mortality to achieve a more natural sex ratio, age, and size structure, and to protect associated EFH, while minimizing adverse social and economic effects.

#### Management Measures Contained in this Proposed Rule

Within the EEZ portion of Bajo de Sico, this proposed rule would establish a seasonal closure from October 1 through March 31, each year, during which fishing for and possession of Caribbean reef fish in or from the area would be prohibited. The proposed revision of the Bajo de Sico closure would provide additional protection for Caribbean reef fish inhabiting Bajo de Sico.

This proposed rule would also prohibit anchoring by fishing vessels year-round while in the EEZ portion of the Bajo de Sico closed area. Prohibiting

anchoring will provide added protection to the EFH utilized by Caribbean reef fish. This measure will minimize potential damage to coral reef populations and will protect reef fish and habitat important to the overall health of Bajo de Sico.

#### **Additional Measures Contained in this Proposed Rule**

This rule proposes to add spear to the list of allowable gears in § 600.725 for the commercial sector of the Caribbean reef fish fishery. At its March 2009 Caribbean Council meeting, the Council voted to add spear to the list of allowable gears for this fishery, and in a letter dated May 27, 2009, the Council requested that NMFS implement this measure. Spear is currently on the list of allowable gears for the recreational sector, and this rule would implement the same measure for the commercial sector.

NMFS proposes to revise the title for the FMP in the list of authorized fisheries and gears. In § 600.725, the FMP is incorrectly named the "Shallow Water Reef Fish Fishery FMP." Amendment 2 to the FMP renamed the FMP, from the "Shallow Water Reef Fish Fishery FMP" to the "Reef Fish Fishery FMP," however, this title was not revised in the part 600 regulations. This rule corrects the FMP title. These minor revisions are unrelated to the actions contained in the Bajo de Sico regulatory amendment.

#### **Classification**

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the Assistant Administrator has determined that this proposed rule is consistent with the regulatory amendment, other provisions of the Magnuson-Stevens Act, and other applicable law, subject to further consideration after public comment.

This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

NMFS prepared an IRFA, as required by section 603 of the Regulatory Flexibility Act, for this proposed rule. The IRFA describes the economic impact this proposed rule, if adopted, would have on small entities. A description of the action, why it is being considered, and the objectives of, and legal basis for this action are contained at the beginning of this section in the preamble and in the **SUMMARY** section of the preamble. A copy of the full analysis is available from the NMFS (see **ADDRESSES**). A summary of the IRFA follows.

The Magnuson-Stevens Act provides the statutory basis for the proposed rule. The proposed rule would modify the

Bajo de Sico seasonal closure by extending it from a 3-month closure to a 6-month closure, and prohibit fishing for and possession of Caribbean reef fish in or from the EEZ portion of Bajo de Sico during the closure. The proposed rule would also prohibit anchoring by fishing vessels in the EEZ portion of Bajo de Sico year-round. This rule also proposes minor revisions to the codified text, including adding spear to the list of allowable gears in the commercial sector of the reef fish fishery, and revising the title of the FMP in the list of authorized fisheries and gears in § 600.725. The purposes of this proposed rule are to provide further protection for red hind spawning aggregations and large snappers and groupers from directed fishing mortality to achieve a more natural sex ratio, age, and size structure, and to better protect the EFH where these species reside.

No duplicative, overlapping or conflicting Federal rules have been identified.

At present, Federal permits are not required to participate in Council-managed fisheries on Puerto Rico's west coast, and, therefore, it is unknown how many fishermen or vessels participate in the Federal component of these fisheries. However, landings data from Puerto Rico's trip ticket program indicate that 294 fishermen had commercial landings on Puerto Rico's west coast in 2007. Some of these fishermen do not possess commercial fishing licenses, and the vessels used by these fishermen are not identified in the landings data. Preliminary fisherman Census data for 2008 indicates that 95 percent of commercial fishermen own one vessel, and thus it is assumed for current purposes that each commercial fisherman represents a single commercial fishing vessel. Further, all charter and headboat vessels used to fish for, take, retain, or possess Atlantic billfish, tunas, swordfish, or sharks must possess an Atlantic Highly Migratory Species (HMS) charter/headboat permit. In 2008, eight charter vessels on Puerto Rico's west coast held HMS charter/headboat permits.

In Puerto Rico's west coast fisheries, commercial fishing vessels average 20 ft (6.3 m) in length, but range between 12 to 51 ft (3.8–15.9 m), with the vast majority being between 15 and 25 ft (4.7–7.8 m). These vessels have an average horsepower (HP) of approximately 77, though considerable variability exists within the fleet, even among vessels of comparable length. The age of these vessels is approximately 19 years on average. The majority of vessels are made of fiberglass (63 percent), though wood

hulls and wood and fiberglass composite hulls are relatively common, accounting for 19 percent and 18 percent of the fleet, respectively. On average, each vessel carries two individuals, the captain and one crewman.

According to the 2008 fisherman Census, 72 percent of Puerto Rico's west coast commercial fishermen possess some type of commercial fishing license while 28 percent do not. Of those fishermen who hold a commercial fishing license, the vast majority (78 percent) possess a full-time license, while the others possess either a beginner's license (18 percent) or a part-time license (4 percent). These fishermen are approximately 47 years old on average and have nearly 27 years of commercial fishing experience. Each fisherman supports approximately three dependents on average, which translates to an average household family size of four persons. Each fisherman spends an average of approximately 51 hours per week on commercial fishing related activities. These individuals are highly dependent on income from commercial fishing, which represents more than 85 percent of their household income on average. More than half of these fishermen (54 percent) have less than a high school level of education, 35 percent have a high school level of education, and 11 percent have some additional education beyond high school.

As a result of non-reporting, reported landings and, thus, revenue for Puerto Rico's commercial fisheries underestimate actual landings and revenue. Therefore, landings and revenue must be adjusted in order to generate more accurate estimates. Based on corrected landings estimates, average gross revenue per commercial fisherman was \$5,431 and \$9,168 in 2006 and 2007 respectively, or \$7,076 across both years. The maximum gross revenue for a single commercial fisherman in either year was approximately \$138,000. Commercial fishermen are mainly dependent on revenue from spiny lobster, queen conch, and reef fish, particularly queen snapper and silk snapper. However, harvest of queen conch is prohibited in the EEZ around Puerto Rico and bottom-tending gear (e.g. fish traps, lobster traps, and bottom longline) is prohibited in Bajo de Sico. Scuba diving and bottom line are the predominant gears used by commercial fishermen. The bottom line fishery for reef fish is most relevant for the actions in this proposed rule.

In 2008, eight vessels on Puerto Rico's west coast possessed HMS charter/headboat permits. All eight charter

vessels are made of fiberglass. The majority of the HMS charter vessels (seven) use rod and reel gear, while one vessel uses handline gear. Furthermore, these vessels are 27 ft (8.4 m) in length and have 358 HP on average and thus are slightly longer and considerably more powerful on average than commercial fishing vessels. These vessels are approximately 8 years old on average and are thus also much newer on average than commercial fishing vessels. Charter vessels also typically carry more individuals in terms of crew and passengers (approximately seven on average) than commercial vessels. Charter vessels most frequently target dolphin, blue marlin, wahoo, and yellowfin tuna. Charter fishermen have approximately 25 years of fishing experience on average. Charter vessels in Puerto Rico take approximately 190 trips per year, though recent survey data suggest that charter vessels on the west coast may average only 150–160 trips per year. These data also suggest that west coast charter vessels specialize in half-day trips rather than full-day trips, the latter of which was reported to cost \$526 on average in 2005. Annual landings and revenue data for west coast charter vessels are not presently available. However, the available information regarding number of trips per year and cost per trip indicates that these charter operations are similar to those in the Gulf of Mexico and South Atlantic regions. Therefore, it is assumed that these vessels' maximum and average annual revenues are also similar to those operating in the Gulf of Mexico and South Atlantic regions.

The Small Business Administration defines a small business in the commercial fishing industry as an entity that is independently owned and operated, is not dominant in its field of operation (including its affiliates), and has combined annual receipts not in excess of \$4.0 million annually (NAICS codes 114111 and 114112, finfish and shellfish fishing). For charter vessels, the other qualifiers apply and the annual receipts threshold is \$6.5 million (NAICS code 713990, recreational industries). Based on the annual revenue and related information for the fisheries provided above, all vessels expected to be directly impacted by this proposed rule are determined, for the purpose of this analysis, to be small entities.

The action to modify the Bajo de Sico closure is expected to directly benefit all eight charter vessels on Puerto Rico's west coast by giving them access to Bajo de Sico's HMS and pelagic resources during the 3 months (December, January, and February) the area is

currently closed to all fishing. The magnitude of these economic benefits depends on the extent to which these vessels take additional trips to Bajo de Sico as opposed to reallocating current trips from other areas. An estimate of how many additional trips these charter vessels might take is not currently available. However, additional trips would be expected to result in higher revenue and thus higher profit.

Conversely, 64 of the 294 (22 percent) commercial fishing vessels actively participating in Puerto Rico's west coast fisheries in 2007 are expected to experience direct, adverse economic effects as a result of the action to modify the Bajo de Sico closure. Specifically, since these vessels will experience additional loss of access to Bajo de Sico's fisheries resources, particularly reef fish, during the months of October, November, and March under this action, their landings, revenue, and, therefore, profit are expected to decrease. Based on an extrapolation of landings data from Puerto Rico's trip ticket data, the 64 directly affected vessels averaged approximately 6,400 lb (2,303 kg) in landings and \$17,300 in gross revenue in 2007. Detailed cost data and, therefore, profit estimates are not currently available for these commercial vessels. Therefore, the reduction in profit arising from this action cannot be directly estimated for the directly affected vessels.

However, surveys of the directly affected commercial fishermen indicate that these vessels are expected to experience a 48-percent reduction in landings and a 47-percent reduction in gross revenue, or approximately \$8,130 per vessel. Most of these losses are due to reductions in the harvest of reef fish, particularly deepwater snappers. However, the harvest of other species (e.g. baitfish) caught on trips that target reef fish are also expected to be foregone. Since these relatively small vessels will not be able to transit through Bajo de Sico with reef fish on board and may have to travel to more distant fishing grounds in order to harvest deepwater snappers, operating costs are expected to increase by 57 percent. Further, the affected fishermen are expected to experience a 55-percent reduction in household income. Since the fisherman's household income is generally indicative of net revenue or profit to the vessel, this figure represents the best available estimate of the expected percentage reduction in profit for these entities.

On the other hand, since October and November are off-season for many commercial vessels due to poor weather and sea conditions, and given that the

harvest of their primary target species, silk snapper, is already prohibited during these months, the reductions in landings, revenue, household income and, therefore, profit are likely overestimated. Furthermore, vessels with the appropriate gear, the number of which cannot be determined with available data, may be able to partially mitigate these losses by reallocating some of their fishing effort out of the bottom line fishery for reef fish into the troll line fishery for HMS and pelagic species during the months that Bajo de Sico will be closed to fishing for Caribbean reef fish.

The action to prohibit anchoring by fishing vessels in Bajo de Sico year-round is not expected to generate adverse economic impacts on the eight charter vessels because they use troll or handline gear and do not drop anchor when fishing. It is possible, though not likely, that a few of the commercial vessels expected to be affected by the proposed action to modify the Bajo de Sico closure may experience additional minimal adverse economic effects as a result of the proposed anchoring prohibition. Though it is not necessary for vessels using bottom line gear to drop anchor when fishing, such behavior may occur on occasion. Since dropping anchor in Bajo de Sico would no longer be permissible under the proposed action, vessels would be required to move out of the area, and thereby expend additional fuel, if they want to drop anchor. The effects resulting from the occasional need for a few vessels to expend additional fuel would likely be imperceptible and, therefore, probably have no impact on these vessels' profitability.

The action to add spear to the list of allowable gears in the commercial sector of the reef fish fishery is not expected to generate any adverse economic effects on commercial reef fish vessels. This action is administrative in nature, the purpose of which is to correct an oversight with respect to the current list of allowable gears for the commercial reef fish fishery. Since spear is and has been an historically used gear in the commercial reef fish fishery, the Council intended for it to be included in the list of allowable gears. This action would formally legalize its use in the fishery but have no effect on its current or expected future use in the fishery and thus, in turn, have no effect on the operations of commercial reef fish vessels.

Four alternatives, including the status quo, were considered for the action to modify the Bajo de Sico seasonal closure. Three of the alternatives include multiple options that determine

which species and specific activities are covered by the closure. The first alternative, the status quo, would not have modified the seasonal closure for Bajo de Sico or prohibited possession of reef fish onboard when transiting through the area during the closure. Further, the seasonal closure would have continued to apply to all fishing, including fishing for non-reef fish species such as HMS and pelagics. The status quo alternative is inconsistent with the Council's objective of providing greater protection for spawning aggregations of reef fish in the area as well as well developed coral that provide critical habitat for these species.

The second alternative, which would extend the seasonal closure by 3 months to the months of October, November, and March, had three options other than the proposed action. The first option would have prohibited fishing for all species, including those not managed by the Council, during the closure. The second option would have prohibited fishing for and possession of all species, including those not managed by the Council, during the closure. The third option would have prohibited fishing for reef fish during the closure. The first two options were not selected because fishing for HMS and pelagic species using troll, rod and reel, and handline gear near the surface is not expected to result in the incidental harvest of reef fish or damage to coral. As such, prohibiting fishing for and possession of these species would generate unnecessary economic and social impacts on charter, private recreational, and commercial vessels. The third option was not selected because it would still effectively allow transit through Bajo de Sico during the closure with reef fish onboard. Allowing possession of reef fish onboard would make it difficult to prove where they were harvested from, which would in turn cause enforcement of the closure to be more difficult and thereby less effective.

The third alternative, which would extend the seasonal closure by 3 months to the months of March, April, and May, had four options. Although this alternative would close Bajo de Sico for 6 months, and thereby generate comparable biological benefits in terms of protecting red hind spawning aggregations and larger individuals of snapper and grouper, as well as protecting well developed coral and sponge habitat (EFH), it would create greater adverse social and economic impacts on commercial vessels and associated onshore businesses since commercial fishing activity is considerably greater in March, April,

and May than in October, November, and March. Thus, this alternative would result in lower net benefits to society compared to the proposed action.

The fourth alternative, which would implement a year-round closure of Bajo de Sico, had four options. This alternative would have generated greater biological benefits with respect to protecting coral and reef fish populations. However, the additional benefits of a year-round closure to reef fish spawning aggregations were not believed to be significantly greater compared to a 6-month closure, and additional protections to coral habitat are being accomplished by the proposed anchoring prohibition. Further, by completely prohibiting access to Bajo de Sico's reef fish and, in effect, baitfish resources, this alternative would have generated much greater adverse social and economic impacts on commercial and charter vessels and associated onshore businesses. Given the proposed rule's objectives, the Council concluded these considerably larger social and economic costs outweighed the additional biological benefits and, thus, would have resulted in lower net benefits to society compared to the proposed action.

Three alternatives, including the status quo, were considered for the action to prohibit anchoring in Bajo de Sico. The first alternative, the status quo, would not have implemented any restrictions on anchoring in Bajo de Sico. Anchoring is thought to cause substantial and long lasting damage to coral populations. Anchoring can also indirectly impact the long-term growth of coral populations. Coral populations are an essential part of the ecology of reef environments. If coral populations are decreased, reef fish populations could also be indirectly impacted by lack of essential habitat. Thus, this alternative is contrary to the Council's objective of providing additional protections to important coral habitat.

The second alternative would have prohibited anchoring for 6 months. Anchoring has a high probability of damaging essential coral reef populations. These coral populations are very vulnerable and slow growing, and even slight damage can require years of recovery. Anchoring during the open season could damage coral beyond recovery. Coral populations are an essential part of the ecology of reef environments. If coral populations are decreased, reef fish populations could also be indirectly impacted by lack of essential habitat. Thus, this alternative is contrary to the Council's objective of providing additional protections to important coral habitat.

Copies of the RIR and IRFA are available from NMFS (see ADDRESSES).

**List of Subjects**

*50 CFR Part 600*

Administrative practice and procedures, 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: July 23, 2010.

**Samuel D. Rauch III,**

*Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.*

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

**PART 600—MAGNUSON—STEVENS ACT PROVISIONS**

1. The authority citations for part 600 continue to read as follows:

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

2. In § 600.725, in paragraph (v), in the table under heading "V. Caribbean Fishery Management Council," the heading for entry 2. is revised, and a new entry 2.D. is added to read as follows:

**§ 600.725 General prohibitions.**

\* \* \* \* \*  
(v) \* \* \*

Fishery	Authorized gear types
* * * * *	*
V. Caribbean Fishery Management Council	*
2. Caribbean Reef Fish Fishery (FMP)	*
D. Other commercial fishery.	D. Spear.
* * * * *	*

**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 § 622.33, paragraph (a)(2)(ii)(A) is removed and reserved, introductory

paragraph (a) is revised and paragraph (a)(8) is 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), (a)(3), and (a)(8) of this section.

\* \* \* \* \*

(8) *Bajo de Sico closed area.* The Bajo de Sico closed area is bounded by rhumb lines connecting, in order the following points:

Point A	North lat.	West long.
A	18°15.7'	67°26.4'
B	18°15.7'	67°23.2'
C	18°12.7'	67°23.2'
D	18°12.7'	67°26.4'
A	18°15.7'	67°26.4'

(ii) From October 1 through March 31, each year, no person may fish for or possess any Caribbean reef fish, as listed

in Table 2 of Appendix A to part 622, in or from those parts of the Bajo de Sico closed area that are in the EEZ. The prohibition on possession does not apply to such Caribbean reef fish harvested and landed ashore prior to the closure.

(iii) Anchoring, by fishing vessels, is prohibited in those parts of the Bajo de Sico closed area that are in the EEZ year-round.

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