

Species		Historic range	Family name	Status	When listed	Critical habitat	Special rules
Scientific name	Common name						
*	*	*	*	*	*		*
LICHENS							
*	*	*	*	*	*		*
<i>Gymnoderma lineare</i>	Rock gnome lichen	U.S.A. (NC, TN)	Cladoniaceae	E	572	NA	NA
*	*	*	*	*	*		*

Dated: December 6, 1994.
Mollie H. Beattie,
 Director, Fish and Wildlife Service.
 [FR Doc. 95-1174 Filed 1-17-95; 8:45 am]
 BILLING CODE 4310-55-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 646

[Docket No. 950110009-5009-01; I.D. 120594B]

RIN 0648-AH45

Snapper-Grouper Fishery Off the Southern Atlantic States; Landing Gag

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

ACTION: Emergency interim rule.

SUMMARY: NMFS publishes this emergency interim rule at the request of the South Atlantic Fishery Management Council (Council) to require that selected vessels in the commercial snapper-grouper fishery land gag in a whole condition. The intended effect of this rule is to facilitate the collection of biological data necessary for the management of gag.

EFFECTIVE DATE: January 18, 1995, through April 18, 1995.

ADDRESSES: Copies of documents supporting this action, including an environmental assessment, may be obtained from Peter J. Eldridge, Southeast Regional Office, NMFS, 9721 Executive Center Drive N., St. Petersburg, FL 33702.

FOR FURTHER INFORMATION CONTACT: Peter J. Eldridge, 813-570-5305.

SUPPLEMENTARY INFORMATION: Snapper-grouper species off the southern Atlantic states are managed under the Fishery Management Plan for the Snapper-Grouper Fishery of the South Atlantic (FMP). The FMP was prepared by the Council and is implemented through regulations at 50 CFR part 646

under the authority of the Magnuson Fishery Conservation and Management Act (Magnuson Act).

Gag, *Mycteroperca microlepis*, is a protogynous hermaphrodite in the family Serranidae (sea basses) that is found throughout the South Atlantic region. It is a relatively long-lived species that is highly prized by fishermen. Gag form spawning aggregations consisting of a few dominant males and many females. Male gag are very aggressive during spawning and are particularly vulnerable to overfishing during the spawning season. Several related species in the Caribbean have experienced recruitment failure due to excessive fishing during the spawning season.

Whereas the average sex ratio (male to female) of gag previously was 1:10, recently it appears to be approaching 1:100. This is coincident with increasing fishing pressure on gag, declining landings, and smaller average size of gag landed. Recent public testimony indicates a growing concern that the gag stock is declining.

The Council is concerned that a reduction in abundance of males is adversely affecting the reproductive capacity of the resource. The Council considered management measures for gag in Amendments 6 and 7 to the FMP, but deferred action because of the lack of definitive, current information on the sex ratio and other reproductive characteristics. That information has been difficult to obtain because gag are eviscerated at sea, as specifically authorized at 50 CFR 646.21(b)(1). Hence, their reproductive organs have been unavailable for sampling by NMFS biologists.

In October 1994, NMFS biologists reported the inadequacy of current data to the Council. Because of that inadequacy of data, the Council requested this emergency interim rule so that the reproductive organs of gag could be sampled during the 1994-95 spawning season that begins in December. Sampling is expected to occur through April, the end of the spawning season.

A significant reduction in the reproductive capacity of gag will result in recruitment overfishing and consequent long-term adverse impacts on the resource. The availability of gag reproductive organs under this emergency interim rule will enable NMFS biologists to obtain information necessary for the Council to determine changes in the reproductive capacity of gag and to formulate management measures to avert recruitment overfishing, if necessary. The Council requests this action now to take advantage of the 1994-95 spawning season, during which gag are more readily available. If the data are not collected under this emergency interim rule, the 1994-95 spawning season will be over before an FMP amendment can be implemented to collect the data. Thus the data would not be available for at least another year. Such delay is not in the best interests of effective management of the gag resource and may require more severe measures to avert recruitment overfishing. Based on data obtained during the forthcoming spawning season, the Council will be able to devise appropriate management measures for implementation by NMFS prior to the 1995-96 spawning season.

The NMFS Science and Research Director will select permitted vessels for sampling and notify vessel owners in writing. Sampling will occur at dockside or in dealer establishments. Sampling schedules will be coordinated among vessel owners, dealers, and NMFS port agents to ensure effective, representative sampling of landings and to minimize disruption of off-loading procedures. The cooler weather during the sampling program will minimize possible deterioration of product quality because bacterial activity is markedly reduced at lower temperatures.

Compliance with NMFS Guidelines for Emergency Rules

The Council and NMFS have concluded that the present situation constitutes a biological emergency, which is properly addressed by this emergency interim rule, and that the situation meets NMFS's policy

guidelines for the use of emergency rules as published on January 6, 1992 (57 FR 375). The situation: (1) Results from recent, unforeseen events or recently discovered circumstances; (2) presents a serious management problem; and (3) can be adequately handled only by an emergency rule for which the immediate benefits would outweigh the value of advance notice, public comment, and deliberative consideration provided under the normal FMP amendment and rulemaking process. The basis for the conclusions regarding these emergency guidelines is summarized above.

NMFS concurs with the Council's findings about the biological emergency and the need for immediate regulatory action. Accordingly, NMFS publishes this emergency interim rule, effective initially for 90 days, as authorized by section 305(c) of the Magnuson Act. By agreement of NMFS and the Council, this emergency interim rule may be extended for an additional period of 90 days.

Classification

The Assistant Administrator for Fisheries, NOAA (AA), has determined that this rule is necessary to respond to an emergency situation and is consistent with the Magnuson Act and other applicable law.

This emergency interim rule has been determined to be not significant for purposes of E.O. 12866.

The AA finds that the immediate need to commence the necessary data collection on the sex ratio of gag during the current spawning season constitutes good cause to waive the requirement to provide prior notice and an opportunity for public comment, pursuant to authority set forth at 5 U.S.C. 553(b)(B), as such procedures would be contrary to the public interest. Similarly, the need to implement these measures in a timely manner to address the biological emergency described above constitutes good cause, under authority contained in 5 U.S.C. 553(d)(3), to waive the 30-day delay in effective date.

List of Subjects in 50 CFR Part 646

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: January 10, 1995.

Charles Karnella,

*Acting Program Management Officer,
National Marine Fisheries Service.*

For the reasons set out in the preamble, 50 CFR part 646 is amended, effective January 18, 1995 through April 18, 1995, as follows:

PART 646—SNAPPER-GROUPER FISHERY OFF THE SOUTHERN ATLANTIC STATES

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

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

2. In § 646.7, paragraph (zz) is added to read as follows:

§ 646.7 Prohibitions.

* * * * *

(zz) Fail to maintain gag in a whole condition, as specified in § 646.21(b)(3).

3. In § 646.21, paragraph (b)(3) is added to read as follows:

§ 646.21 Harvest limitations.

* * * * *

(b) * * *

(3) The provisions of paragraph (b)(1) of this section notwithstanding, the owner or operator of a vessel for which a permit for snapper-grouper, excluding wreckfish, has been issued, as required by § 646.4(a)(1), and that is selected in writing by the Science and Research Director, must maintain gag in a whole condition, that is, not eviscerated, through off-loading and after off-loading for such time as will provide a reasonable opportunity for the Science and Research Director to collect biological samples.

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[FR Doc. 95-1070 Filed 1-17-95; 8:45 am]

BILLING CODE 3510-22-F