

species identified by professional scientific societies as rare or vulnerable (e.g., the American Fisheries Society and National Audubon Society/Partners in Flight). The most comprehensive single source of information on rare or imperilled species is the Natural Heritage Central Database, developed by TNC and the network of State Natural Heritage programs, which ranks the conservation status of species at the global, national, and state levels. This information is available from TNC and the State Heritage programs.

When all available information has been evaluated, the Service will determine if a particular species meets the information standards and status criteria for recognition as a candidate species, and if so, the Regional Director will recommend to the Service's Director that the species be added to the candidate list. Other species may warrant further review or monitoring or not warrant further consideration for candidate status at that time. Non-candidate species petitioned for listing will require initiation of a status review when the Service makes a 90-day finding of "substantial information." If the Service makes a 12-month finding of "warranted" or "warranted but precluded," the species would then become a candidate. The annual update of the candidate notice of review will serve as recycled petition findings until such time as a final determination can be made on whether a proposed listing rule should be published.

#### National Environmental Policy Act

As stated in the September 17, 1996, notice (61 FR 48875), the Service does not consider its decision to discontinue the maintenance of a list of category-2 species in Notices of Review to be a major Federal action significantly affecting the quality of the human environment for purposes of the NEPA.

Further, the Department of the Interior's Departmental Manual (DM) categorically excludes from consideration under NEPA, "activities which are educational, informational, advisory or consultative to other agencies, public or private entities, visitors, individuals, or the general public" (516 DM 2, Appendix 1, item 1.11). Notices of Review serve the purpose of informing Federal agencies, state agencies, and the general public of species that are candidates for possible addition to the lists of endangered or threatened wildlife and plants. They also serve as data-gathering tools to assist the Service in developing the best available scientific and commercial data on such species. There is no statutory or regulatory mandate on how to structure

or when to publish these notices. Therefore, even if the Service's decision to discontinue maintenance of a list of category-2 species in Notices of Review were considered an "action" for purposes of the NEPA, this categorical exclusion would apply. The Service also believes that the exceptions to categorical exclusions (516 DM 2, Appendix 2) would not be applicable to this decision, especially in light of the absence of environmental effects for such action.

#### Authority

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: November 27, 1996.  
John G. Rogers,  
*Acting Director, Fish and Wildlife Service.*  
[FR Doc. 96-30947 Filed 12-4-96; 8:45 am]  
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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 622

[Docket No. 961008282-6332-02; I.D. 092796A]

RIN 0648-A197

#### Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Reef Fish Fishery of Puerto Rico and the U.S. Virgin Islands; Red Hind Spawning Aggregations

**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 regulatory amendment prepared by the Caribbean Fishery Management Council (Council) in accordance with framework procedures for adjusting management measures of the Fishery Management Plan for the Reef Fish Fishery of Puerto Rico and the U.S. Virgin Islands (FMP). The regulatory amendment adjusts the boundary of the existing red hind spawning aggregation seasonal/area closure in the EEZ off western Puerto Rico and adds two additional red hind spawning aggregation seasonal/area closures. The intended effect is to protect red hind spawning aggregations by prohibiting fishing in these areas during the spawning season. This rule also contains a technical change to the regulations to alter minimally the

boundary of the mutton snapper spawning aggregation area off the southwest coast of St. Croix, U.S. Virgin Islands (USVI), to make it compatible with USVI regulations.

**EFFECTIVE DATE:** December 7, 1996.

**FOR FURTHER INFORMATION CONTACT:** Georgia Cranmore, 813-570-5305.

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

The background and rationale for the measures in the regulatory amendment were included in the preamble to the proposed rule (61 FR 55127, October 24, 1996) and are not repeated here.

#### Comments and Responses

*Comment:* The Center for Marine Conservation (CMC) supports management measures to protect two additional spawning aggregations for red hind but is concerned about the reduction in the size of the existing spawning aggregation seasonal/area closure around Tourmaline Bank. CMC wants the Council to reconsider a rejected measure to prohibit the sale of red hind during the closed season. In addition, CMC notes the need for additional conservation measures, such as the establishment of marine reserves, to protect red hind critical habitat.

*Response:* NMFS agrees with CMC's assessment of the need for additional protective measures to address the continuing decline in red hind populations off Puerto Rico. Closed areas are one of the best ways to protect the spawning stocks and prevent overfishing. Puerto Rico is currently considering a series of marine reserves, including one in the Tourmaline Bank area, to protect reef fish, corals, and reef invertebrates in its waters (0 to 9 nautical miles offshore). The Council is working with the fishing industry to identify and establish closed areas in Federal waters throughout the U.S. Caribbean. The Council intends to reassess the need for a possible prohibition on the sale of red hind during the spawning season if the spawning area closures are unsuccessful in arresting population declines.

The decision to establish the original spawning aggregation closure off western Puerto Rico was based on the best information available at that time. New information now demonstrates that the area originally established includes habitat unsuitable for red hind, such as

hard sandy bottom. NMFS concurs with the Council's decision to reopen this area because it places an unfair burden on commercial fishermen with no specific benefit for conservation. NMFS and the Council continue to explore options for increased conservation of red hind and other reef fish in Puerto Rico, including additional gear restrictions and a proposed fish trap reduction program. NMFS welcomes CMC's advice and assistance in these efforts.

**Classification**

This final rule has been determined to be not significant under E.O. 12866.

The Assistant General Counsel for Legislation and Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that the proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. The reasons for this certification were published in the preamble to the proposed rule (61 FR 55127, October 24, 1996) and are not repeated here. No comments were received concerning this certification.

The spawning season for red hind off Puerto Rico begins by early December. Existing regulations make the red hind spawning aggregation seasonal/area closure effective December 1 of each year. To ensure as soon as possible the conservation benefits of the revised red hind spawning aggregation seasonal/area closures, these closures should be implemented as soon as possible. Accordingly, the Assistant Administrator for Fisheries, NOAA, finds good cause, namely that it would be contrary to the public interest to delay the effectiveness of this rule for 30 days, and under 5 U.S.C. 553 (d)(3), makes this rule effective as of December 7, 1996. While this will provide fishermen with only a few days notice of the closure, the fishermen have had considerable notice through the Council public hearing process and the public comment period on the notice of proposed rulemaking that an early December closing was imminent. Therefore, given the relatively small area of the closures, it will be easy for fishermen to leave the area by the effective date of this rule.

**List of Subjects in 50 CFR Part 622**

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

Dated: November 29, 1996.  
 Gary Matlock,  
*Acting Assistant Administrator for Fisheries,  
 National Marine Fisheries Service.*

For the reasons set out in the preamble, 50 CFR part 622 is amended as follows:

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

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

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

2. In § 622.33, paragraph (a), paragraph (b) introductory text, and paragraph (b)(3) are revised to read as follows:

**§ 622.33 Caribbean EEZ seasonal and/or area closures.**

(a) *Mutton snapper spawning aggregation area.* From March 1 through June 30, each year, fishing is prohibited in that part of the following area that is in the EEZ. The area is bounded by rhumb lines connecting, in order, the points listed:

Point	North latitude	West longitude
A .....	17°37.8'	64°53.0'
B .....	17°39.0'	64°53.0'
C .....	17°39.0'	64°50.5'
D .....	17°38.1'	64°50.5'
E .....	17°37.8'	64°52.5'
A .....	17°37.8'	64°53.0'

(b) *Red hind spawning aggregation areas.* From December 1 through February 28, each year, fishing is prohibited in those parts of the following areas that are in the EEZ. Each area is bounded by rhumb lines connecting, in order, the points listed:

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(3) *West of Puerto Rico—(i) Bajo de Cico.*

Point	North latitude	West longitude
A .....	18°15.7'	67°26.4'
B .....	18°15.7'	67°23.2'
C .....	18°12.7'	67°23.4'
D .....	18°12.7'	67°26.4'
A .....	18°15.7'	67°26.4'

(ii) *Tourmaline Bank.*

Point	North latitude	West longitude
A .....	18°11.2'	67°22.4'
B .....	18°11.2'	67°19.2'
C .....	18°08.2'	67°19.2'
D .....	18°08.2'	67°22.4'
A .....	18°11.2'	67°22.4'

(iii) *Abrir La Sierra Bank.*

Point	North latitude	West longitude
A .....	18°06.5'	67°26.9'
B .....	18°06.5'	67°23.9'
C .....	18°03.5'	67°23.9'
D .....	18°03.5'	67°26.9'
A .....	18°06.5'	67°26.9'

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**50 CFR Part 630**

[Docket No. 960314073-6335-03; I.D. 112696C]

RIN 0648-A123

**Atlantic Swordfish Fishery; Drift Gillnet Emergency Closure**

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

**ACTION:** Fishery closure and final rule.

**SUMMARY:** NMFS closes the drift gillnet fishery for swordfish in the Atlantic Ocean, including the Gulf of Mexico and Caribbean Sea, from December 1, 1996, through May 29, 1997. NMFS has reinitiated consultation under the Endangered Species Act for Atlantic swordfish fisheries due to new information concerning the status of the northern right whale. This closure will ensure that no irreversible and irretrievable commitment of resources is made that has the effect of foreclosing the formulation or implementation of any reasonable and prudent alternative measures while the consultation on this fishery is pending.

**EFFECTIVE DATES:** The closure will be effective from December 1, 1996, through 2400 hours, local time, May 29, 1997. The amendment to part 630 will be effective November 29, 1996.

**FOR FURTHER INFORMATION CONTACT:** John Kelly, 301-713-2347.

**SUPPLEMENTARY INFORMATION:** The Atlantic swordfish fishery is managed under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*) and the Atlantic Tunas Convention Act (16 U.S.C. 971 *et seq.*). Because this is a Federally managed fishery, it is subject to the requirements of section 7 of the Endangered Species Act (ESA), which provides for a consultation to ensure that threatened or endangered species are not jeopardized. NMFS reinitiated consultation on the Atlantic swordfish fisheries on September 25, 1996, due to new information concerning the status of the northern right whale (*Eubaleana glacialis*).