

Modification of Fishing Access in Eastern Gulf of Mexico Marine Protected Areas



Framework Action to the Fishery Management Plan for Reef Fish Resources of the Gulf of Mexico

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FRAMEWORK ACTION COVER SHEET

Name of Action

Framework Action to the Fishery Management Plan for Reef Fish Resources of the Gulf of Mexico: Modification of Fishing Access in Eastern Gulf of Mexico Marine Protected Areas, including Environmental Assessment, Regulatory Impact Review and Regulatory Flexibility Act Analysis.

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Type of Action

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() Final

ABBREVIATIONS USED IN THIS DOCUMENT

CFR	code of federal regulations
CHTS	Coastal Household Telephone Survey
CMP	coastal migratory pelagic
Council	Gulf of Mexico Fishery Management Council
CS	consumer surplus
EEZ	exclusive economic zone
E.O.	executive order
FES	fishing effort survey
FHS	for-hire survey
FMP	Fishery Management Plan
GDP	gross domestic product
Gulf	Gulf of Mexico
MRIP	Marine Recreational Information Program
NMFS	National Marine Fisheries Service
NOAA	National Oceanic and Atmospheric Administration
NOR	net operating revenue
PS	producer surplus
RIR	regulatory impact review
SEFSC	Southeast Fisheries Science Center
TPWD	Texas Parks and Wildlife Department
USCG	United States Coast Guard

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CHAPTER 1. INTRODUCTION

1.1 Background

The Madison-Swanson and Steamboat Lumps marine protected areas (MPAs) were established in June 2000 through a 1999 Regulatory Amendment to the Fishery Management Plan for Reef Fish Resources of the Gulf of Mexico (Gulf) (Reef Fish FMP). The two sites combined cover 219 square nautical miles near the 40-fathom contour, off west central Florida (Figure 1.1.1). The MPAs provide protection to a portion of the gag spawning aggregations and offshore male population in response to the 1999 determination by the National Marine Fisheries Service (NMFS) that gag was undergoing overfishing and approaching an overfished condition (RFSAP 1999). Gag is a protogynous hermaphrodite, starting adult life as female and later transitioning to male. Since males constitute the older age classes in a stock, male gag may be vulnerable to declines from targeted fishing effort when heavily exploited. Gag form harems when spawning, and in spawning aggregations, males may feed more aggressively than females, making males more likely to be caught via hook-and-line (Gilmore and Jones 1992; Koenig et al. 1996). A low ratio of male to female gag in the Gulf has been an ongoing concern (RFSAP 1999b; SEDAR 33 2014; SEDAR 33 Update 2016). Scientific information at the time suggested that the proportion of male gag in the stock had declined substantially since the 1970s. The MPAs were to be in effect for 4 years to allow NMFS and the Gulf of Mexico Fishery Management Council (Council) to evaluate whether the closures were providing the desired protection.

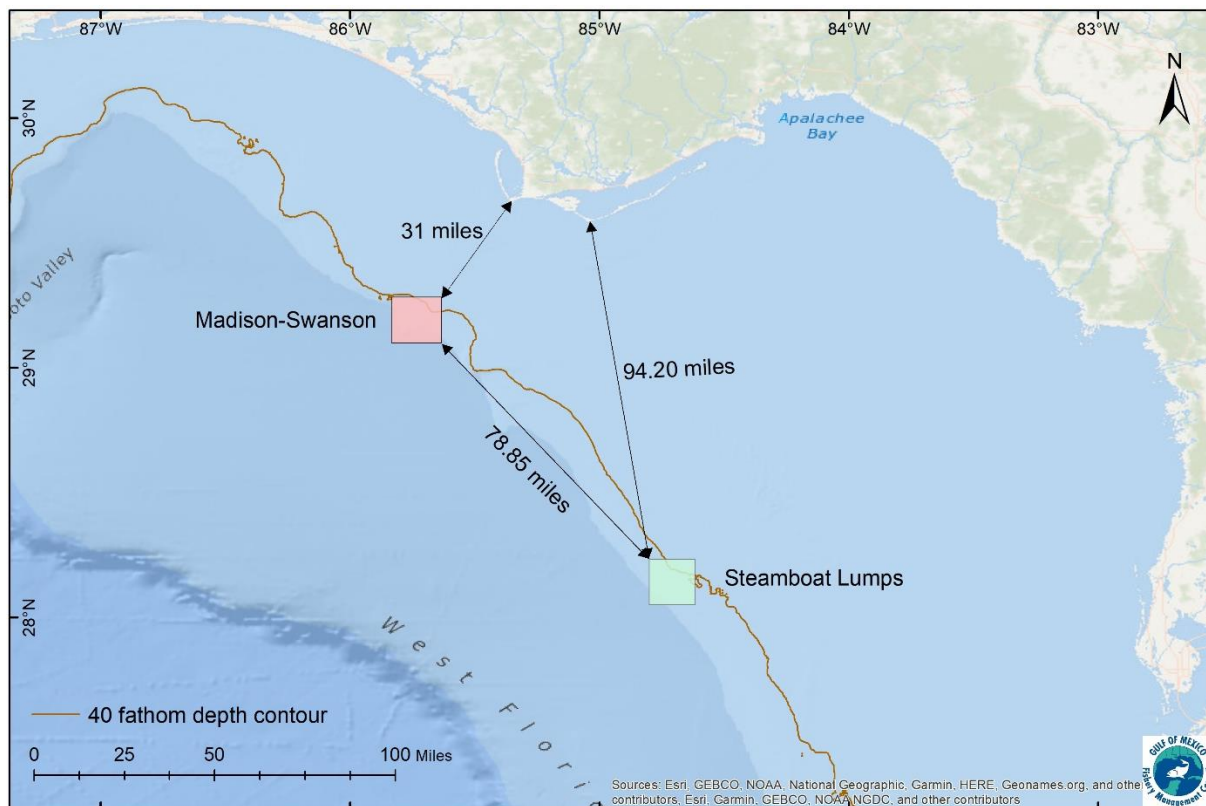


Figure 1.1.1. Madison-Swanson (red square to the northwest) and Steamboat Lumps (green square to the southeast) MPAs in the eastern Gulf of Mexico.

At the time the MPAs were established, the areas were closed to all fishing except fishing for highly migratory species (tunas, marlin, sailfish, swordfish, and oceanic sharks). The Council requested that NMFS' Highly Migratory Species Division (HMS Division) issue a compatible rule prohibiting fishing for all Atlantic highly migratory species in these two areas. However, as part of a settlement to a legal challenge to the closures, NMFS agreed to hold the Council's request to implement an HMS closure in abeyance, while research is conducted into the impact of the regulations, the effect of pelagic trolling on and ability to reach reef fish species, and the impact on enforceability by allowing pelagic trolling in the MPAs.

In 2002, NMFS reclassified gag as neither overfished nor undergoing overfishing; however, the stock's estimate of total biomass was below its optimum yield (OY) level. In Amendment 21, the Council considered whether to continue the MPAs and whether to ease the fishing restrictions in the MPAs (GMFMC 2003). The Council decided to continue the MPAs for an additional 6 years, to continue the protections afforded to the gag stock and spawning habitat, and to allow time for additional research into the effects of the MPAs. Based on the research on the effects of pelagic trolling, the Council also modified the fishing prohibition. The Council decided to allow trolling from May through October. However, the Council prohibited possession, except on vessels in transit with fishing gear stowed, of all fish species from November through April and all reef fish any time during the year. In 2009, the Council extended the MPAs indefinitely in Amendment 30B to the Reef Fish FMP (GMFMC 2009). Complementary measures for HMS vessels were implemented in 2006, with a sunset provision effective in June 2010 (71 FR 58058, Oct. 2, 2006). The sunset provision was removed before its effective date (74 FR 66585, Dec. 16, 2009).

At its October 2019 meeting, the Council's Reef Fish Advisory Panel (AP) discussed observations of illegal harvest of reef fish species under the guise of trolling within the boundaries of the MPAs. Reef Fish AP members were of the opinion that the MPAs are not a legitimate trolling destination and that rampant reef fish poaching is occurring. Reef Fish AP members also acknowledged that it was possible to drift through the MPAs with fishing tackle weighted deep below the vessel to increase the probability of hooking a reef fish. A Florida Fish and Wildlife Conservation Commission law enforcement officer present at that meeting noted that enforcement is difficult due to the remote location of the MPAs (see Figure 1.1.1). The Council discussed the AP's ultimate recommendation to prohibit all fishing (other than for HMS) in the MPAs year-round to combat the current occurrence of bottom fishing under the guise of trolling within the MPAs. The United States Coast Guard representative at the Council meeting concurred that enforcement in the MPAs can be difficult due to distance from port.

1.2 Purpose and Need

The purpose of this action is to modify fishing access in the Madison-Swanson and Steamboat Lumps MPAs in the eastern Gulf.

The need for this action is to reduce illegal fishing activities within the Madison-Swanson and Steamboat Lumps MPAs, whose purpose is to protect critical spawning aggregations of large, mature reef fish species.

1.3 History of Management

This history of management focuses on events pertinent to the creation of, and regulations applying to, the Madison-Swanson and Steamboat Lumps MPAs. A complete history of management for the Reef Fish FMP is available on the Council's website at <http://gulfcouncil.org/fishery-management/implemented-plans/reef-fish/>.

The final rule for the **Reef Fish FMP** (GMFMC 1981) was effective November 8, 1984, and defined the reef fish fishery management unit.

The Madison-Swanson and Steamboat Lumps MPAs were initially created in June 2000 under an **August 1999 Regulatory Amendment**, on areas suitable for gag and other reef fish spawning aggregations, and were closed year-round to fishing for all species under the Council's jurisdiction. The two sites cover 219 square nautical miles near the 40-fathom contour, off west central Florida. The MPAs were initially created for a four-year period which was extended an additional six years through July 2010 in **Amendment 21**; this amendment also modified the fishing restrictions within the MPAs to allow surface trolling from May 1 – October 31 each year. The MPAs and their accompanying fishing restrictions were extended indefinitely in May 2009 by **Amendment 30B**.

CHAPTER 2. PROPOSED MANAGEMENT ALTERNATIVES

2.1 Action 1: Modification of Surface Trolling Provisions for Madison-Swanson and Steamboat Lumps Marine Protected Areas (MPAs)

Alternative 1: No Action – Surface trolling is allowed from May 1 through October 31 within the boundaries of the Madison-Swanson and Steamboat Lumps MPAs. Surface trolling is defined as fishing with lines trailing behind a vessel which is in constant motion at speeds in excess of four knots with a visible wake, and may not involve the use of downriggers, wire lines, planers, or similar devices.

Alternative 2: Prohibit fishing year-round in the Madison-Swanson and Steamboat Lumps MPAs.

Discussion:

All fishing was prohibited within the Madison-Swanson and Steamboat Lumps MPAs when the MPAs were originally created under the August 1999 Regulatory Amendment to the Fishery Management Plan (FMP) for Reef Fish Resources in the Gulf of Mexico (Gulf) (Reef Fish FMP; GMFMC 1999). The prohibition on fishing applies to all fish species, except those managed by the National Marine Fisheries Service's Highly Migratory Species Division (NMFS HMS)¹, which has since implemented complementary regulations for HMS species. Amendment 21 to the Reef Fish FMP (GMFMC 2004) revised the original fishing restrictions by creating an allowance for surface trolling (except for reef fish species) from May 1 – October 31, with all forms of fishing prohibited from November 1 – April 30 (**Alternative 1**).

Reverting the fishing restrictions back to prohibit all fishing as established in the August 1999 Regulatory Amendment would be expected to reduce fishing pressure in the MPAs (**Alternative 2**). Prohibiting all fishing within the MPAs would also make enforcing the law easier on law enforcement officers, who during Gulf of Mexico Fishery Management Council (Council) meetings have remarked about the difficulty of enforcing the current regulations in the MPAs due to their remote locations. Presently, vessels are able to engage in surface trolling within the MPAs between May 1 – October 31, which can act as a cover for illegal bottom fishing activity. Members of the Council's Reef Fish Advisory Panel have noted observing such behavior while on state-sponsored research trips within the MPAs; these observations have been corroborated by law enforcement officers. Conversely, eliminating the May 1 – October 31 trolling provision could reduce surface trolling opportunities for anglers who currently take advantage of that allowance. However, as stated by the Council's Reef Fish Advisory Panel at its October 2019 meeting, the MPAs do not constitute a viable destination for successful trolling activity.

¹ A complete list of HMS species can be found at <https://www.fisheries.noaa.gov/national/atlantic-highly-migratory-species/atlantic-highly-migratory-species-minimum-sizes-and-bag>.

Council Conclusions:

2.2 Action 2: Modification of Prohibitions on Possession of Fish in Madison Swanson and Steamboat Lumps MPAs

Alternative 1: No Action – Possession of Gulf reef fish year-round, or any other species of fish from November through April including coastal migratory pelagic species, is prohibited in the Madison-Swanson and Steamboat Lumps MPAs, except on a vessel in transit with fishing gear stowed. This prohibition does not apply to highly migratory species.

Alternative 2: The possession of any species of fish, other than highly migratory species, is prohibited year-round in the Madison-Swanson and Steamboat Lumps MPAs, with no exception for vessels in transit.

Alternative 3: The possession of any species of Gulf reef fish is prohibited year-round in the Madison-Swanson and Steamboat Lumps MPAs, with no exception for vessels in transit.

Discussion:

Presently, fishing vessels with fish on board may transit through the boundaries of the Madison-Swanson and Steamboat Lumps MPAs so long as all fishing gear is stowed (**Alternative 1**). This provision allows transiting fishing vessels to proceed unencumbered between destinations, without the need to reroute to avoid any specific areas, while also potentially being in possession of reef fish. Transiting with gear stowed means non-stop progression through the area with fishing gear properly stowed in accordance with §622.34 (a)(4)(i-iv). The regulations are listed in Appendix A. During its October 2019 meeting, the Reef Fish Advisory Panel heard from a law enforcement representative that enforcement is generally difficult in the MPAs due to their remote nature. This assertion was further supported by the US Coast Guard during the Council's October 2019 meeting. The MPAs are slightly larger than 100 square miles each, measuring approximately 10 miles by 10 miles. The relatively small size of the MPAs, and the distance between them (approximately 78.85 miles) and from shore, may mean that they can be avoided by transiting vessels altogether (Figure 1.1.1).

Alternative 2 would prohibit all fishing vessel transit through both MPAs if those vessels have any species of fish on board. Prohibiting all possession of fish in the MPAs would greatly reduce uncertainty about activities in the MPAs by law enforcement, as any vessels with fish aboard in the MPAs would be in violation of the area closure. Concurrently, vessels that normally transit through the MPA boundaries would need to expend additional time and fuel to avoid the MPAs. This alternative would not apply to vessels possessing species managed by the National Marine Fisheries Service (NMFS) Highly Migratory Species Division (HMS), but would apply to other federally managed species, species managed by the states, and any unmanaged species.

Vessels within or transiting through the Madison-Swanson and Steamboat Lumps MPA boundaries under **Alternative 3** would be prohibited from possessing any species of Gulf reef fish year-round. This alternative differs from **Alternative 2** in that possession of species not managed by the Council's Reef Fish FMP could still be possessed onboard vessels within the MPA boundaries under **Alternative 3**. Examples of exempt species under **Alternative 3** include, but are not limited to: those in the FMPs for Shrimp and for Coastal Migratory Pelagic (CMP) Resources in the Gulf and Atlantic Regions, species managed by NMFS HMS, and species managed by the Florida Fish and Wildlife Conservation Commission or the Alabama Marine Resources Division.

Section 303(b)(2)(C) of the Magnuson-Stevens Fishery Conservation and Management Act requires that when a FMP designates zones where all fishing is prohibited or restricted to types of vessels or fishing gear, the following provisions apply: (i) is based on the best scientific information available; (ii) includes criteria to assess the conservation benefit of the closed area; (iii) establishes a timetable for review of the closed area's performance that is consistent with the purposes of the closed area; and (iv) is based on an assessment of the benefits and impacts of the closure, including its size, in relation to other management measures (either alone or in combination with such measures), including the benefits and impacts of limiting access to: users of the area, overall fishing activity, fishery science, and fishery and marine conservation. These provisions were enacted when the Madison-Swanson and Steamboat Lumps MPAs were created. The goals and expected impacts of the area restrictions of the MPAs are the protection of spawning aggregations of gag, protection of spawning habitat, and protection of a portion of the offshore male population of gag. In addition, incidental benefits to other reef fish that occupy the same area are likely.

Council Conclusions:

CHAPTER 3. REFERENCES

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APPENDIX A. CURRENT REGULATIONS

§622.34 Seasonal and area closures designed to protect Gulf reef fish.

(a) Closure provisions applicable to the Madison and Swanson sites and Steamboat Lumps, and the Edges -

(1) Descriptions of Areas.

(i) The Madison and Swanson sites are bounded by rhumb lines connecting, in order, the following points:

Point	North lat.	West long.
A	29°17'	85°50'
B	29°17'	85°38'
C	29°06'	85°38'
D	29°06'	85°50'
A	29°17'	85°50'

(ii) Steamboat Lumps is bounded by rhumb lines connecting, in order, the following points:

Point	North lat.	West long.
A	28°14'	84°48'
B	28°14'	84°37'
C	28°03'	84°37'
D	28°03'	84°48'
A	28°14'	84°48'

(iii) The Edges is bounded by rhumb lines connecting, in order, the following points:

Point	North lat.	West long.
A	28°51'	85°16'
B	28°51'	85°04'
C	28°14'	84°42'
D	28°14'	84°54'
A	28°51'	85°16'

(2) Within the Madison and Swanson sites and Steamboat Lumps, possession of Gulf reef fish is prohibited, except for such possession aboard a vessel in transit with fishing gear stowed as specified in paragraph (a)(4) of this section.

(3) Within the Madison and Swanson sites and Steamboat Lumps during November through April, and within the Edges during January through April, all fishing is prohibited, and possession of any fish species is prohibited, except for such possession aboard a vessel in transit with fishing gear stowed as specified in paragraph (a)(4) of this section. The provisions of this paragraph, (a)(3), do not apply to highly migratory species.

(4) For the purpose of paragraph (a) of this section, transit means non-stop progression through the area; fishing gear appropriately stowed means -

(i) A longline may be left on the drum if all gangions and hooks are disconnected and stowed below deck. Hooks cannot be baited. All buoys must be disconnected from the gear; however, buoys may remain on deck.

(ii) A trawl net may remain on deck, but trawl doors must be disconnected from the trawl gear and must be secured.

(iii) A gillnet must be left on the drum. Any additional gillnets not attached to the drum must be stowed below deck.

(iv) A rod and reel must be removed from the rod holder and stowed securely on or below deck. Terminal gear (i.e., hook, leader, sinker, flasher, or bait) must be disconnected and stowed separately from the rod and reel. Sinkers must be disconnected from the down rigger and stowed separately.

(5) Within the Madison and Swanson sites and Steamboat Lumps, during May through October, surface trolling is the only allowable fishing activity. For the purpose of this paragraph (a)(5), surface trolling is defined as fishing with lines trailing behind a vessel which is in constant motion at speeds in excess of four knots with a visible wake. Such trolling may not involve the use of down riggers, wire lines, planers, or similar devices.

(6) For the purpose of this paragraph (a), 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 tuna species, marlin (*Tetrapturus spp.* and *Makaira spp.*), oceanic sharks, sailfishes (*Istiophorus spp.*), and swordfish (*Xiphias gladius*).