

to withdraw any PIC freeze that may be in place. The notification provided by the IXC to the LEC must contain the customer account information necessary to properly execute the cancellation Report and Order including but not limited to:

(1) The customer's billing telephone number or working telephone number associated with the lines or terminals that are affected;

(2) The date of the IXC-submitted PIC removal Report and Order;

(3) The jurisdictional scope of the PIC removal Report and Order (*i.e.*, intraLATA and/or interLATA and/or international); and

(4) The carrier identification code of the submitting IXC.

§ 64.4004 Timeliness of required notifications.

Carriers subject to the requirements of this section shall provide the required notifications promptly and without unreasonable delay.

§ 64.4005 Unreasonable terms or conditions on the provision of customer account information.

To the extent that a carrier incurs costs associated with providing the notifications required by this section, the carrier may recover such costs, consistent with federal and state laws, through the filing of tariffs, via negotiated agreements, or by other appropriate mechanisms. Any cost recovery method must be reasonable and must recover only costs that are associated with providing the particular information. The imposition of unreasonable terms or conditions on the provision of information required by this section may be considered an unreasonable carrier practice under section 201(b) of the Communications Act of 1934, as amended, and may subject the carrier to appropriate enforcement action.

§ 64.4006 Limitations on use of customer account information.

A carrier that receives customer account information under this section shall use such information to ensure timely and accurate billing of a customer's account and to ensure timely and accurate execution of a customer's preferred interexchange carrier instructions. Such information shall not be used for marketing purposes without the express consent of the customer.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 040804277-5143-02; I.D. 072604A]

RIN 0648-AP02

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Reef Fish Fishery of the Gulf of Mexico; Red Snapper Rebuilding Plan

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

ACTION: Final rule.

SUMMARY: NMFS issues this final rule to implement Amendment 22 to the Fishery Management Plan (FMP) for the Reef Fish Resources of the Gulf of Mexico (Amendment 22) prepared by the Gulf of Mexico Fishery Management Council (Council). This final rule provides the regulatory authority to implement a mandatory observer program for selected commercial and for-hire (charter vessel/headboat) vessels in the Gulf of Mexico reef fish fishery. In addition, consistent with the requirements of the Magnuson-Stevens Act, Amendment 22 establishes a stock rebuilding plan, biological reference points, and stock status determination criteria for red snapper in the Gulf of Mexico. The intended effect of this final rule is to contribute to ending overfishing and rebuilding the red snapper resource. Finally, NMFS informs the public of the approval by the Office of Management and Budget (OMB) of the collection-of-information requirements contained in this final rule and publishes the OMB control numbers for those collections.

DATES: This final rule is effective July 5, 2005.

ADDRESSES: Copies of the Regulatory Impact Review (RIR), Final Regulatory Flexibility Analyses (FRFA), Final Supplemental Environmental Impact Statement (FSEIS), and Record of Decision (ROD) may be obtained from Peter Hood, Southeast Regional Office, NMFS, 9721 Executive Center Drive N., St. Petersburg, FL 33702; telephone 727-570-5305; fax 727-570-5583; e-mail peter.hood@noaa.gov.

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this rule must be submitted to Robert Sadler, Southeast Region, NMFS, at the above

address, and by e-mail to David_Rostker@omb.eop.gov, or 202-395-7285 (fax).

FOR FURTHER INFORMATION CONTACT: Peter Hood, telephone: 727-570-5305, fax: 727-570-5583, e-mail: peter.hood@noaa.gov.

SUPPLEMENTARY INFORMATION: The reef fish fishery in the exclusive economic zone (EEZ) of the Gulf of Mexico is managed under the FMP. The FMP was prepared by the Council and is implemented under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) by regulations at 50 CFR part 622.

On August 3, 2004, NMFS published a notice of availability of Amendment 22 (69 FR 46518) and requested public comment on Amendment 22. On November 23, 2004, NMFS published the proposed rule to implement Amendment 22 (69 FR 68119) and requested public comment on the proposed rule. NMFS approved Amendment 22 on October 27, 2004. The rationale for the measures in Amendment 22 is provided in the amendment and in the preamble to the proposed rule and is not repeated here.

Comments and Responses

This section presents a summary of comments received on Amendment 22 and the associated proposed rule along with NMFS' responses. In addition, please see the section entitled Discussion of Potential Future Action which follows this section and addresses new preliminary information received after the approval of Amendment 22; the types of additional measures that may be required; and the procedures, consistent with the red snapper stock rebuilding plan, for consideration and future implementation of such measures as appropriate.

Comment 1: Placing observers on for-hire vessels could be a problem if carrying an observer would cause the number of persons on the vessel to exceed the passenger limits defined by the applicable United States Coast Guard (USCG) issued license for the vessel and operator. Unless one paying customer is denied a trip to make room for the observer, the vessel could be out of compliance with USCG regulations. This could cause economic harm.

Response: Amendment 22 directs NMFS to develop and manage an observer program for the commercial and for-hire reef fish fishery. When selecting vessels to carry observers, NMFS will consider appropriate factors, such as the suitability of vessels for

carrying observers, and adequately sampling the universe of vessels representative of all statistical sub-zones in the Gulf.

The cost of carrying an observer should be minimal for fishermen. Based on discussions with USCG personnel, vessel owners would not need to deny a customer a trip to make room for an observer unless carrying an observer would cause the total number of persons onboard the vessel to exceed the limit of persons the USCG has determined for that vessel. While the cost to NMFS of the proposed observer program is high (up to 5.98 million dollars per year based on a per day cost of 1,200 dollars for an observer), the cost to vessel owners or operators is relatively low and would only require them to provide the costs of food and accommodations while on a selected fishing trip. Additionally, the probability of being selected for a trip would likely be at or less than one percent for charter vessels and at or less than four percent of headboat trips.

Of course failure or refusal to carry observers in accordance with this process could lead to a vessel's reef fish permit not being renewed. Thus, non-compliance could result in an additional economic impact on the industry.

Comment 2: One commenter expressed concern that extra trips might be necessary in the for-hire fishery to satisfy the sampling requirements of the observer program.

Response: The purpose of the reef fish observer program is to better monitor bycatch in the commercial and for-hire reef fish fisheries. Vessels will be randomly selected to carry observers ensuring the universe of vessels included is representative of all statistical sub-zones in the Gulf. Vessel selection will be done in a manner best capturing the behaviors of the respective reef fish fisheries. Forcing owners or operators of reef fish vessels to take additional trips would alter the behavior of the fishery and bias the information collected through the program, and nothing in the program requires additional trips.

Comment 3: One commenter expressed concern that observers might ally themselves with commercial fishermen and not report data accurately.

Response: To ensure observers collecting fishery information are qualified, NMFS, through its National Observer Program, contracts with or certifies private observer provider companies to recruit, hire, and deploy observers. Existing guidelines for observer candidates include a bachelor's

degree from an accredited college or university with a major in one of the natural sciences, or a combination of marine science and fisheries course work with specialized experience. Observer candidates must complete required training by passing written and/or oral tests, demonstrate their potential to collect accurate field data, and demonstrate their ability to react to unfamiliar situations at sea in a professional manner. Data collected by observers are reviewed for accuracy.

Comment 4: Twelve comments were received in support of a mandatory observer program for commercial and for-hire reef fish fisheries. They indicated these programs would provide bycatch information improving future stock assessments and resulting management measures.

Response: The Magnuson-Stevens Act requires the agency to establish a standardized methodology to assess the amount and type of bycatch occurring in the fishery. An observer program will improve the bycatch information being collected through on-the-water observations. Additionally, this information could be used for ground-truthing data collected through current and future reef fish logbook reporting programs.

Comment 5: Relying only on potential reductions in shrimp trawl bycatch of juvenile red snapper through bycatch reduction devices (BRD) or from future downsizing of the shrimp fleet due to changing economic conditions, is not sufficient to end overfishing and help rebuild this species in the Gulf of Mexico. Other management measures must be included, like reducing directed catch and minimizing bycatch from all sources, including related recreational and commercial reef fish fisheries. New information from fishermen and other sources has emerged indicating bycatch from various sources can contribute to red snapper depletion and should be considered.

Response: The shrimp trawl fishery accounts for over 90 percent of the total red snapper bycatch. Based on the most recent peer-reviewed stock assessment conducted in 1999, the red snapper stock cannot rebuild to the stock biomass capable of producing the maximum sustainable yield (B_{MSY}) unless some bycatch reduction from the shrimp fishery occurs, even if harvest is prohibited for the directed fishery. Using the 1999 stock assessment and estimates of shrimp bycatch reductions from BRDs (40 percent) and a predicted contraction of the shrimp fleet of 30–50 percent, it was determined the stock had a greater than 50 percent chance of rebuilding if total allowable catch (TAC)

was held constant at the current 9.12 million-lb (4.14 million-kg) level. Based on that assessment and the best scientific information available at the time, no additional management measures would be required to rebuild the stock. However, a preliminary new assessment report is now undergoing scientific review. This assessment may show that additional management measures are required. Once finalized, that report will be reviewed by NMFS and the Council in developing an appropriate action. Such action could include: changing bag, size, or trip limits; creating areas closed to reef fish or shrimp fishing; creating bycatch quotas; or changing seasonal closures.

Comment 6: Eleven commenters suggested rebuilding the stock could be accomplished by reducing TAC from the current 9.12 million lb (4.14 million kg).

Response: According to the best scientific information available at the time Amendment 22 was approved, given the significance of shrimp trawl bycatch to the ability of the red snapper stock to rebuild, changes in TAC do very little towards rebuilding the stock. If TAC is reduced to 6 million lb (2.7 million kg), the stock is estimated to reach B_{MSY} only 1 to 3 years sooner than if TAC is maintained at 9.12 million lb (4.14 million kg) over the 31-year rebuilding period. However, ending overfishing sooner through reductions in TAC could adversely affect the recreational and commercial fisheries, and coastal fishing communities dependent on them, due to this forgone yield. Economic analyses suggest these losses could be as great as 84 million dollars from 2005–2009 for the commercial and for-hire fisheries.

In choosing the preferred alternative, the Council weighed rebuilding the stock within NMFS's technical guidance and the economic harm the directed fishery would incur from reductions in TAC. The decision to maintain TAC at 9.12 million lb (4.14 million kg) is consistent with the Council's rebuilding obligations and the national standards.

Comment 7: The amendment contains an impermissibly narrow range of management choices and does not consider the use of various measures identified and supported during scoping and other comment periods, including reductions in bag or trip limits, compatible seasons for species caught together, and area closures.

Response: Initially, a variety of rebuilding time frames and rebuilding plans were developed and are detailed in Appendix 1 of Amendment 22. However, it became evident the rebuilding times proposed could not be achieved unless there were large

reductions in red snapper bycatch in the shrimp fishery. A closure of both the red snapper and shrimp fisheries was considered but rejected because it would close down two fisheries important to the United States' economy. Even with a prohibition of harvest for the directed fishery, projections indicated the red snapper stock could not recover to B_{MSY} unless bycatch reductions of greater than the current 40 percent could be achieved. Therefore, rebuilding the stock in less than the maximum 31 years, would require even greater reductions in shrimp bycatch. With a recent economic downturn in the domestic shrimp fleet, further restrictions on shrimp harvest could have severe social and economic consequences. In light of these social and economic impacts, the 31-year rebuilding schedule was deemed the most practicable and was incorporated into the rebuilding plans.

Because projections of shrimp fishery effort showed needed reductions in shrimp bycatch mortality could be achieved via existing regulations without the need to impose further regulations on the directed red snapper fishery, other management measures such as closed areas were considered but rejected. Additional measures to reduce bycatch in the shrimp fishery such as bycatch quotas and time/area closures were not considered in Amendment 22 to the Reef Fish FMP. The Council determined these would be more appropriately considered in the Shrimp FMP.

As the red snapper stock increases in size, the catchability of this species is likely to increase. This may mean future regulations would be needed to constrain recreational and commercial harvests to levels consistent with the rebuilding plan. Currently, an individual fishing quota (IFQ) system is being developed by the Council to give commercial fishermen more flexibility in how they harvest red snapper and to reduce the need for regulations. However, for the recreational fishery, the necessary effort reductions could be more difficult to address. Fishing seasons may need to be shortened, or other measures such as more restrictive bag limits may need to be put in place. Moreover, these restrictions would increase in severity over time to keep catches within the TAC limit as the stock abundance increased. Any new regulations would be based on future stock assessments, including the aforementioned assessment currently being finalized.

Comment 8: Preferred rebuilding plan alternative 2 in Amendment 22 does not

end overfishing or rebuild the Gulf red snapper population as soon as possible.

Response: Magnuson-Stevens Act § 304(e)(4)(A)(i) states "For a fishery that is overfished, any fishery management plan, amendment, or proposed regulations prepared pursuant to paragraph (3) or paragraph (5) for such fishery shall specify a time period for ending overfishing and rebuilding the fishery that shall be as short as possible, taking into account the status and biology of any overfished stocks of fish, the needs of fishing communities, recommendations by international organizations in which the United States participates, and the interaction of the overfished stock of fish within the marine ecosystem."

As discussed in Comment 7, other alternatives that would shorten the rebuilding period for red snapper or end overfishing sooner would require a decrease in TAC for the directed fishery or additional reductions in shrimp trawl bycatch. However, these alternatives were not selected because they would have a severe socioeconomic effect on the fishery. For example, it was estimated a reduction in TAC from 9.12 million lb (4.14 million kg) to 6 million lb (2.7 million kg) would result in losses of 84 million dollars for just the 5-year period of 2005–2009 alone.

Comment 9: Amendment 22 ignores the best available science.

Response: Amendment 22 is based on a 1999 stock assessment which was certified by the Southeast Fisheries Science Center as representing the best available scientific information.

The commenter is correct that new data have become available on issues such as release mortality and regulatory discards; however, the peer review process for that information is not yet complete. Stock assessments are based on complex models that take in a variety of fishery information, integrating estimates of stock abundance with fishing effort to project how many fish may be caught for various time periods. It is extremely difficult to evaluate accurately the effects of new information without conducting a new assessment. The new data the commenter refers to are currently being reviewed and used in a new stock assessment in the SEDAR process. The results of this assessment will be presented to the Council and NMFS later in 2005, and based on the assessment outcome, could lead to the development of new management measures. A description of how the Council and NMFS would review and adjust the rebuilding plan, either through a plan amendment, regulatory

amendment, interim rule, or emergency action is contained in the amendment.

Comment 10: There are no provisions to address potential overages in the recreational sector.

Response: Unlike the commercial fishery where landings are reported through dealers who can provide real-time landings, recreational landings are estimated using Marine Recreational Fishery Statistics Survey (MRFSS) data for 2-month intervals called waves. Because survey information needs to be tabulated, there is a delay of several months between when a wave ends and the landings for that wave can be estimated. Therefore, NMFS and the Council have tried to constrain the recreational harvest on average to the quota by using measures such as bag limits, size limits, and seasonal closures rather than attempt to directly monitor the quota.

Since the 1999 assessment upon which current fishing regulations are based, the recreational harvest has fluctuated around the quota. In 2000, the recreational harvest was well below the quota, while the harvest was well above the quota in 2002. For 2001 and 2003, the harvest was very close to the quota, only exceeding it by less than 3 percent for each year. The cumulative catch during 1999–2003 was less than the cumulative quota for that period. Thus, current constraints on the fishing mortality rate appear to be limiting the recreational harvest to near the quota. However, should harvest levels increase, or should new information provided through a stock assessment indicate these measures are inadequate, the Council and NMFS would need to develop and implement new rules.

Comment 11: Amendment 22 does not adequately address bycatch.

Response: Amendment 22 evaluates in detail the practicability of additional management measures to reduce bycatch and bycatch mortality. The practicability analysis conducted in the amendment indicates it would not be practical to further reduce bycatch in the directed red snapper fishery due to the high levels of red snapper bycatch in the shrimp fishery. Based on the 1999 assessment, the shrimp fishery is estimated to account for 99.5 percent of the red snapper bycatch. The practicability analysis also determined bycatch reduction from the shrimp fishery would be more appropriately addressed through an amendment to the Shrimp FMP rather than the Reef Fish FMP.

Although the peer review process is not yet complete, the red snapper stock was assessed through the SEDAR process and that assessment

incorporated new information. This information included 5 years of observer data on shrimp trawl bycatch, fishery-dependent data on observed changes in lengths of harvested fish, better characterizations of discard mortality rates, and estimates of changes in age one recruitment from scientific surveys. The information, combined with 4 years of data on the fishery under the same management regulations, is expected to provide a better understanding of the impacts of BRDs, the regulations on the directed fishery, and the effects of new regulations. NMFS and the Council plan to use the results of this assessment to develop logical and defensible measures to reduce shrimp trawl bycatch and/or directed fishery discards as necessary and practicable. Shrimp trawl bycatch would be addressed in an amendment to the Shrimp FMP. Additional measures to reduce bycatch in the directed red snapper fishery would be evaluated in future reef fish actions if deemed necessary.

Comment 12: The anticipated long-term drop in shrimping effort and juvenile snapper bycatch - described in the plan as the most important contribution to red snapper recovery - is exaggerated.

Response: The commenter bases this statement on a non-peer reviewed study suggesting the contribution to the total fishing mortality rate by the shrimp fishery is lower than the rate assumed in the 1999 stock assessment. However, the projections based on the 1999 stock assessment for the rebuilding plan were constructed using the best available data and underwent extensive peer review. This assessment predicts red snapper will rebuild within the time frame specified by NMFS' technical guidance if TAC is held at 9.12 million lb (4.14 million kg) and bycatch from the shrimp fleet is reduced sufficiently. This prediction relies on some assumptions about anticipated changes in the shrimp fishery, but those assumptions are based on current economic circumstances and thus are neutral with respect to the biology of red snapper.

Amendment 22 provides a detailed summary of past, current, and future economic conditions in the shrimp fishery and is based on peer-reviewed economic analyses. These analyses indicate the conditions for the shrimp fishery took an abrupt change in the latter half of 2001 when imports surged and macroeconomic conditions deteriorated. The industry was also hit by sharply declining prices and higher insurance premiums. At least for the large vessel sector, where most of the red snapper bycatch occurs, profits turned into losses by the end of 2001.

The deteriorating trend appears to have continued through 2002 and 2003, exacerbated by increased fuel prices of over 20 percent beginning in the latter part of 2002 and continuing through 2005. As a consequence of these changes, red snapper bycatch from the shrimp fishery is anticipated to be reduced sufficiently for the stock to rebuild within the allowable time frame.

However, the Council is aware that better information is needed on the shrimp fishery. Amendment 13 to the Shrimp FMP has alternatives that establish bycatch reporting methodologies and improve collection of shrimping effort data in the exclusive economic zone through the use of logbooks, electronic logbooks, and observers; require the completion of a Gulf Shrimp Vessel and Gear Characterization Form; and require reporting and certification of landings during a moratorium to control effort by the shrimp fishery. This moratorium, also being developed in Amendment 13, would establish a moratorium on the issuance of commercial shrimp vessel permits as a way to begin comprehensively addressing shrimp effort.

Comment 13: The high level of red snapper bycatch mortality from minimum size limit and closed season regulations is not addressed.

Response: Projections from the 1999 red snapper stock assessment indicate the stock could be rebuilt to B_{MSY} under the current regulations. Also, the practicability analysis contained in the amendment reviewed the best available scientific information available on bycatch in the fishery and concluded that it is currently being reduced to the extent practicable in the directed fishery. Therefore, there is no need to address minimum size limits or closed seasons at this time. However, an assessment of the red snapper stock through the SEDAR process is currently in the peer review process. This assessment will evaluate and use new information detailed above. Should the results of this assessment indicate different regulatory measures are needed to better manage this fishery, the Council and NMFS will address these changes in the appropriate management vehicle.

Discussion of Potential Future Action

Amendment 22 clearly stated that the rebuilding plan would be subject to periodic reviews of the actual progress made toward rebuilding the stock, and pursuant to such reviews relevant management measures would be adjusted as necessary to accommodate new scientific information and ensure

stock recovery. Also, the amendment noted that a new assessment was scheduled to begin in 2004, which would likely lead to improved scientific information and the need for adjustments related to red snapper rebuilding.

The SEDAR process has produced a preliminary assessment report for the red snapper stock in the Gulf of Mexico. While the report has yet to complete the full peer review process, the results of this assessment process in conjunction with other new scientific information, highlight the potential need for adjustments to related management measures, just as envisioned in Amendment 22. Precisely which management measures should be adjusted and the appropriate extent of potential changes, have yet to be determined by the Gulf Council and NMFS, but it is clear that some adjustment may be appropriate.

Initially, it is possible that reductions in the TAC for the fishery may be considered necessary. This could result in reductions for both the commercial and recreational sectors of the fishery. However, the need for such a reduction in TAC will depend on the appropriateness and effectiveness of other potential measures intended to benefit red snapper.

Much of the new information and measures critical to red snapper rebuilding relate to bycatch reduction in the Gulf shrimp fishery. New scientific information indicates the bycatch reduction achieved under actual fishing conditions with currently approved BRDs is less than estimated in the previous assessment upon which Amendment 22 was based. As a result, BRD performance will need to be addressed. This issue may be addressed a number of ways, including decertifying existing BRDs, facilitating the development and approval of more effective BRDs through changes to the testing protocol, achieving increased bycatch reduction via other measures, or more accurately accounting for the current levels of bycatch in adjusting other associated management measures.

Given the obvious implications for overall levels of shrimp trawl bycatch, accurately assessing potential reductions in shrimping effort in the Gulf has been a source of debate for red snapper rebuilding. New scientific information as to observed reductions in effort will be incorporated into new management measures to more accurately account for the related benefits to the red snapper stock.

Estimating the stock level that would produce maximum sustainable yield is extremely difficult given the poor

understanding of recruitment at stock sizes that are substantially greater than any that have been observed. Consequently, the B_{MSY} estimates that are produced by the previous stock assessment model are highly uncertain. Models are prone to great uncertainty when they are required to project beyond a range of data on which they are based. The red snapper stock has been assessed only at a limited range of abundance levels, all of which are characterized by conditions of heavy exploitation. As a result, estimates of B_{MSY} that are based on these data indicate the stock is capable of producing a yield that is much higher than any observed in the past. Recruitment levels at much greater stock size will need to be observed to gain a better understanding of the true value of B_{MSY} .

Also, current analysis indicates that the existing minimum size limit may be resulting in unacceptably high bycatch and bycatch mortality in the directed red snapper fishery. As a result, some reduction or even potential elimination of the minimum size limit may be deemed appropriate.

Finally, the Gulf Council is in the process of developing an IFQ program for the commercial red snapper fishery. While this program is not directly related to red snapper rebuilding, it is anticipated that the program will result in reductions in red snapper bycatch via the elimination of closed seasons. Therefore, in assessing the likely success of the rebuilding plan, there must be some consideration of the potential impacts of the impending IFQ program.

Using the best scientific information available, the Council and NMFS will work together in developing the most appropriate combination of the above measures to ensure the timely recovery of the red snapper stock in the Gulf of Mexico.

Classification

The Administrator, Southeast Region, NMFS, has determined Amendment 22 is necessary for the conservation and management of the Gulf red snapper fishery and is consistent with the national standards of the Magnuson-Stevens Act and other applicable laws.

The Council and NMFS prepared an FSEIS for Amendment 22. The FSEIS was filed with the Environmental Protection Agency on August 20, 2004. A notice of availability was published on August 27, 2004 (69 FR 52668). In approving Amendment 22, on October 27, 2004, NMFS issued a ROD identifying the selected alternative. A

copy of the ROD is available from NMFS (see **ADDRESSES**).

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

NMFS prepared a FRFA for this action. The FRFA incorporates the IRFA, and a summary of the analyses completed to support the action. A copy of the FRFA is available from NMFS (see **ADDRESSES**). Following is a summary of the analysis.

The Magnuson-Stevens Act provides the statutory basis for this final rule. This final rule will provide the regulatory authority to establish an observer program for the reef fish fishery, with full implementation to be achieved upon obtaining sufficient funding. Additionally, consistent with the requirements of the Magnuson-Stevens Act, Amendment 22 will establish biological reference points and stock status criteria for red snapper, establish a rebuilding plan for the overfished red snapper stock, and develop and enhance the MRFSS through the inclusion of headboats in that survey.

The objectives of this final rule are to bring management of the red snapper fishery into compliance with requirements of the Magnuson-Stevens Act, to address the overfished and overfishing conditions of the red snapper stock, and to establish a standardized methodology to collect bycatch information in the fishery.

Two issues were raised by public comments in relation to potential costs associated with the observer requirements. NMFS' responses to Comment 1 and Comment 2 in this rule address these concerns and explain the potential for increased cost to a vessel owner is quite low given NMFS' flexibility in structuring the vessel selection process and the overall small percentage of vessels that are likely to be selected for observer coverage. Therefore, no changes were made in the final rule as a result of those comments.

This final rule will impact both the commercial and recreational participants in the Gulf reef fish fishery. At present, both the commercial and for-hire reef fish vessel permits are under a moratorium, and no new permits will be issued during the moratorium. There are 1,158 vessels with active commercial reef fish permits. Of these commercial permittees, 131 entities hold Class 1 licenses that allow a vessel trip limit of up to 2,000 lb (907 kg) of red snapper, and approximately 357 entities hold Class 2 licenses that allow a trip limit of up to 200 lb (91 kg) of red snapper. There are 1,515 for-hire vessels with permits for both reef fish and coastal

migratory pelagics. Also, there are 431 dealers who purchase reef fish from various vessels in the Gulf of Mexico. This final rule is expected to affect all these reef fish commercial and for-hire vessels and dealers.

According to a survey of commercial fishing vessels in the Gulf, average gross receipts ranged from \$24,095 for low-volume vertical line vessels to \$116,989 for high-volume longline vessels. Also, according to a survey of reef fish processors in the Southeast, employment by reef fish processors totaled 700 individuals, both part- and full-time. Given this total and the likelihood that fish dealers are generally of smaller size than processors, employment by any of the affected dealers is very likely to be less than 100 individuals. Furthermore, according to two surveys of for-hire vessels in the Gulf, average gross receipts for charterboats range from \$58,000 in the eastern Gulf of Mexico to \$81,000 in the western Gulf while gross receipts for headboats range from \$281,000 in the eastern Gulf to \$550,000 in the western Gulf. A fishing business is considered a small entity if it is independently owned and operated and is not dominant in its field of operation, and if it has annual receipts not in excess of \$3.5 million in the case of commercial harvesting entities or \$6.0 million in the case of for-hire entities, or if it has fewer than 500 employees in the case of fish processors, or fewer than 100 employees in the case of fish dealers. Given these data on earnings and employment, all of the business entities affected by this final rule are determined to be small business entities.

Specification of sustainable fishing parameters has no economic impacts on small entities because it does not alter the current harvest or use of component stocks. The specification merely establishes benchmarks for fishery and resource evaluation from which future management actions would be based. As benchmarks, these parameters do not limit how, when, where, or with what frequency participants in the fishery engage the resource. For rebuilding the red snapper stock, a TAC of 9.12 million lb (4.14 million kg) is selected, and because this is the same as the current TAC, this measure has no impacts on small entities. The selected alternative in the final rule for bycatch reporting is an observer program for the commercial and for-hire reef fish fishery. An observer program would be new to the Gulf of Mexico reef fish fishery and is expected to potentially affect all commercial and for-hire vessels, although each year only a sample of these vessels would be selected to carry

observers. An observer program can lessen the reporting burden for bycatch to the extent that this task would be carried out by a trained observer. Assuming the observer program covers 8 percent of commercial vessel trips, 1 percent of charterboat trips, and 4 percent of headboat trips, total costs would be about \$5.92 million annually, including the total costs for all observers' food and accommodations, which are estimated to range between \$98,640 and \$123,300 annually. Owners of vessels selected for observer coverage will be responsible only for the cost associated with providing food and accommodations for the observer. NMFS will cover the cost of providing the observer. Because there will be no expected reduction in harvests as a result of bycatch reporting, and the bycatch reporting through an observer program will be imposed only on vessels, dealers are not expected to be adversely affected by the final rule.

Four basic alternatives were considered for the rebuilding plan; two are constant catch strategies and two are constant fishing mortality rate (F) strategies. The no action alternative is not a viable alternative because the Magnuson-Stevens Act requires that a rebuilding plan be instituted for overfished stocks such as the red snapper stock. Under the constant catch strategies, the selected alternative for the final rule will hold TAC constant at 9.12 million lb (4.14 million kg), while the other alternative would keep TAC constant at 6.0 million lb (2.7 million kg). For the constant F strategies, one alternative would hold the TAC at 9.12 million lb (4.14 million kg) for a period of years and gradually increase it over time, while the other would hold the TAC constant at 6.0 million lb (2.7 million kg) for a period of years and increase it over time. In essence, the significant alternative to the selected constant TAC of 9.12 million lb (4.14 million kg) is a constant TAC of 6.0 million lb (2.7 million kg). Over the first 5 years, this lower TAC would reduce commercial vessel profits by \$3.92 million and for-hire vessel profits by \$18.35 million. The profit reduction for dealers cannot be estimated. Thus, the final rule will enable the achievement of the goal to rebuild the stock while minimizing the impacts on small entities.

Five alternatives were considered to the final rule for reporting bycatch in the commercial and for-hire reef fish fisheries. The final rule will provide the regulatory authority to establish an observer program for randomly selected reef fish permitted vessels. Alternative 1 is the no action alternative. Alternative

2 would require all permitted reef fish vessels in the Gulf of Mexico to participate in an electronic logbook program that includes bycatch reporting. Alternative 3 is similar to Alternative 2, but the electronic logbook program would be required only for a randomly selected sample of reef fish permitted vessels. Alternative 5 would expand the current bycatch reporting program for commercial reef fish and mackerel permitted vessels to cover 100 percent of such vessels and all Federally permitted for-hire vessels. Alternative 6 would enhance the MRFSS to include the headboat sector using the same sampling methodology as for charter vessels.

Among the bycatch reporting alternatives, Alternative 1 (no action) is the least costly since it would require no additional burden on the fishermen and the Federal government other than what is currently being incurred in generating bycatch information. The cost of Alternative 2 would range from \$0.87 million to \$2.9 million, with burden time ranging from 3,764 to 4,053 hours for commercial vessels and from \$1.16 million to \$3.88 million, with burden time of 89,240 hours for for-hire vessels. The cost of Alternative 3 is proportional to that of Alternative 2 based on sample size. Alternative 5 would affect 926 additional commercial vessels, with burden time ranging from 3,009 to 3,241 hours, and 1,552 for-hire vessels, with burden time of about 89,240 hours. Alternative 6 would mainly affect headboat vessels. Using the same sampling technique as for charter vessels, approximately 85 headboats would be sampled per wave (two-month period). The selected alternative of the final rule, Alternative 4, is estimated to cost \$5.92 million per year, though the majority of the cost will be borne by the government, any additional reporting and record-keeping activities for the individual business entities are less likely to increase under an observer program since most would be conducted by the observer. Under the observer program, the owner of a vessel selected for observer coverage would be responsible only for the cost associated with providing food and accommodations for the observer. NMFS would cover the cost of providing the observer. Thus, the final rule is expected to best achieve the Council's objectives for bycatch reporting at the least possible cost to the fishery participants.

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 states that, for each rule or group of related rules for which an agency is required to prepare a FRFA, the agency

shall publish one or more guides to assist small entities in complying with the rule, and shall designate such publications as "small entity compliance guides." As part of this rulemaking process, NMFS prepared a fishery bulletin, which also serves as a small entity compliance guide. The fishery bulletin will be sent to all vessel permit holders for the Gulf reef fish fishery.

Notwithstanding any other provision of law, no person is required to respond to, and no person shall be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act (PRA) unless that collection of information displays a currently valid OMB control number.

This rule contains a collection-of-information requirement subject to the PRA which has been approved by OMB under control number 0648-0205. Public reporting burden for notification requirements for the purpose of accommodating observer coverage is estimated to average 5 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding these burden estimates or any other aspect of this data collection, including suggestions for reducing the burden, to NMFS (see ADDRESSES) and by e-mail to David_Rostker@omb.eop.gov, or fax to 202-395-7285.

List of Subjects in 50 CFR Part 622

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

Dated: May 26, 2005.

John Oliver,

Deputy Assistant Administrator for Operations, 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 § 622.4, the second sentence of paragraph (h)(1) introductory text and the first sentence of paragraph (h)(1)(ii) are revised to read as follows:

§ 622.4 Permits and fees.

* * * * *

(h) * * *

(1) * * * In the interim years, renewal is automatic (without application) for a vessel owner or a dealer who has met the specific requirements for the requested permit, license, or endorsement; who has complied with all reporting and data collection requirements, including observer requirements, under the Magnuson-Stevens Act; and who is not subject to a sanction or denial under paragraph (j) of this section. * * *

* * * * *

(ii) * * * If the RA's notification indicates that the owner's or dealer's permit, license, or endorsement is ineligible for automatic renewal, the

notification will specify the reasons and, if applicable, will provide an opportunity for correction of any deficiencies. * * *

* * * * *

■ 3. In § 622.8, paragraph (a)(3) is added and paragraphs (c)(4) and (c)(5) are revised to read as follows:

§ 622.8 At-sea observer coverage.

(a) * * *

(3) *Gulf reef fish*. A vessel for which a Federal commercial vessel permit for Gulf reef fish or a charter vessel/headboat permit for Gulf reef fish has been issued must carry a NMFS-approved observer, if the vessel's trip is selected by the SRD for observer

coverage. Vessel permit renewal is contingent upon compliance with this paragraph (a)(3).

* * * * *

(c) * * *

(4) Allow the observer free and unobstructed access to the vessel's bridge, working decks, holding bins, weight scales, holds, and any other space used to hold, process, weigh, or store fish.

(5) Allow the observer to inspect and copy the vessel's log, communications logs, and any records associated with the catch and distribution of fish for that trip.

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