

we do not recognize the taxonomic validity of the bearded and ringed seal subspecies or the spotted seal species as described in this petition, the petitioner requests that we evaluate whether the spotted, ringed and bearded seals of the Bering, Chukchi, and Beaufort seas that are the subject of this petition constitute a DPS of the full species and/or represent a significant portion of the range of the full species and are therefore eligible for listing on such basis.

It is the petitioner's contention that ice seals face global extinction in the wild, and therefore, constitute a threatened or endangered species as defined under 16 U.S.C. 1532(6) and (20). The petition presents information on (1) "global warming which is resulting in the rapid melt of the seals' sea-ice habitat;" (2) "high harvest levels allowed by the Russian Federation;" (3) "oil and gas exploration and development;" (4) "rising contaminant levels in the Arctic;" and (5) "bycatch mortality and competition for prey resources from commercial fisheries." The petition also presents information on the species' taxonomy, distribution, habitat requirements, reproduction, diet, natural mortality, and demographics, as well as a discussion of the applicability of the five factors listed under ESA section 4(a)(1). We have reviewed the petition, the literature cited in the petition, and other literature and information available in our files. Based on our review of the petition and other available information, we find that the petition meets the aforementioned requirements of the regulations under 50 CFR 424.14(b)(2) and therefore determine that the petition presents substantial information indicating that the requested listing action may be warranted.

Status Review

As a result of this finding, we will continue our ongoing status review to determine whether listing ringed, bearded, and spotted seals under the ESA is warranted. We intend that any final action resulting from this status review will be as accurate and as effective as possible. Therefore, we are opening a 60-day public comment period to solicit comments, suggestions, and information from the public, government agencies, the scientific community, industry, and any other interested parties on the status of the ice seals throughout their range, including:

(1) Information on taxonomy, abundance, reproductive success, age structure, distribution, habitat selection, food habits, population density and

trends, habitat trends, and effects of management on ice seals;

(2) Information on the effects of climate change and sea ice change on the distribution and abundance of ice seals, and their principal prey over the short- and long-term;

(3) Information on the effects of other potential threat factors, including oil and gas development, contaminants, hunting, poaching, and changes in the distribution and abundance of ice seals and their principal prey over the short-term and long-term;

(4) Information on management programs for ice seal conservation, including mitigation measures related to oil and gas exploration and development, hunting conservation programs, anti-poaching programs, and any other private, tribal, or governmental conservation programs which benefit ice seals; and

(5) Information relevant to whether any populations of the ice seal species may qualify as distinct population segments.

We will base our findings on a review of the best scientific and commercial information available, including all information received during the public comment period.

Authority

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

Dated: August 29, 2008.

James W. Balsiger,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 0808051052-81144-01]

RIN 0648-AW85

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Reef Fish Fishery of the Gulf of Mexico; Referendum Procedures for a Potential Gulf of Mexico Grouper and Tilefish Individual Fishing Quota Program

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 to provide potential participants information concerning a referendum for an individual fishing quota (IFQ) program for the Gulf of Mexico (Gulf) commercial grouper and tilefish fisheries. This rule informs the potential participants of the procedures, schedule, and eligibility requirements that NMFS would use in conducting the referendum. If the IFQ program, as developed by the Gulf of Mexico Fishery Management Council (Council), is approved through the referendum process, the Council may choose to submit the IFQ program to the Secretary of Commerce (Secretary) for review, approval, and implementation. The intended effect of this proposed rule is to implement the referendum consistent with the requirements of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

DATES: Written comments must be received on or before October 6, 2008.

ADDRESSES: You may submit comments on the proposed rule, identified by "0648-AW85", by any of the following methods:

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

Instructions: 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. Attachments will be accepted in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

Copies of supporting documentation for this proposed rule, which includes a regulatory impact review (RIR) and a Regulatory Flexibility Act Analysis (RFAA), are available from NMFS at the address above.

FOR FURTHER INFORMATION CONTACT: Susan Gerhart, 727-824-5305.

SUPPLEMENTARY INFORMATION: The reef fish fishery in the exclusive economic

zone (EEZ) of the Gulf is managed under the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico (FMP). The FMP was prepared by the Council and is implemented under the authority of the Magnuson-Stevens Act by regulations at 50 CFR part 622.

Background

The Council first considered an IFQ program for the Gulf grouper fishery in 2004. At that time, the Council anticipated future action was needed to further control effort in the Gulf grouper fishery. At its October 2004 meeting, the Council requested NMFS publish a control date to discourage speculative participation in the grouper fishery for the purpose of developing a catch history. The Council chose October 15, 2004, as the control date. NMFS published the control date in the **Federal Register** on November 16, 2004 (69 FR 67106) and requested public comment.

The Council is currently developing Amendment 29 to the FMP, which includes a multi-species IFQ program as the preferred management approach to address overcapacity issues and to rationalize effort in the Gulf commercial grouper and tilefish fisheries.

Section 303A of the Magnuson-Stevens Act specifies general requirements for limited access privilege (LAP) programs implemented in U.S. marine fisheries. A LAP is defined as a Federal limited access permit that provides a person the exclusive privilege to harvest a specific portion of a fishery's total allowable catch. This definition includes exclusive harvesting privileges allocated to participants under IFQ programs.

Section 303A(c)(6)(D) of the Magnuson-Stevens Act outlines specific requirements for IFQ program proposals developed by the Council. The Magnuson-Stevens Act requires such program proposals, as ultimately developed, be approved through referenda before they may be submitted for review and implementation by the Secretary. The Magnuson-Stevens Act also mandates the Secretary publish referendum guidelines to determine procedures for initiating, conducting, and deciding IFQ program referenda, as well as voting eligibility requirements. These procedures and guidelines are intended to ensure referenda conducted on IFQ program proposals are fair and equitable and will provide the Council the flexibility to define IFQ program referenda voting eligibility requirements on a fishery-specific basis, yet within the constraints of the Magnuson-Stevens Act and other applicable law. NMFS

published proposed guidelines in the **Federal Register** on April 23, 2008 (73 FR 21893) and requested public comment.

Purpose of the Proposed Rule and the Referendum

NMFS, in accordance with the provisions of section 303A(c)(6)(D) of the Magnuson-Stevens Act, will conduct a referendum to determine whether the plan amendment for an IFQ program for the Gulf commercial grouper and tilefish fisheries, as developed by the Council, should be submitted to the Secretary for review, and possible approval and implementation. The determination will be based on a majority vote of eligible voters. The primary purpose of this proposed rule is to notify potential participants in the referendum, and members of the public, of the procedures, schedule, and eligibility requirements that NMFS would use in conducting the referendum. The procedures and eligibility criteria used for the purposes of conducting the referendum are independent of the procedures and eligibility requirements in the proposed IFQ program for the Gulf commercial grouper and tilefish fisheries contained in Amendment 29 to the FMP. The proposed IFQ program is being developed by the Council through the normal plan amendment and rulemaking processes and involves extensive opportunities for public review and comment during Council meetings, public hearings, and public comment on any proposed rule.

Referendum Process

How Would the Referendum Be Initiated?

According to the guidelines, a Council must have held public hearings on an IFQ program proposal, considered public comment on the proposal, and selected preferred alternatives for the proposed IFQ program, before submitting an initiation request letter to NMFS. The initiation request letter would allow NMFS to initiate the referendum process. As the above requirements have been fulfilled, the Council submitted an initiation request letter to NMFS on August 18, 2008.

The referendum initiation request letter must include recommended eligibility criteria for voting in the referendum, rationale for the recommendation, any alternatives to the recommendation, and supporting analyses for the recommendation. For a fishery managed with multi-species permits, the initiation request letter must also include recommended criteria

for defining those permit holders who have substantially fished the species to be included in the referendum process.

If the referendum fails to approve the proposed IFQ program, any request from the Council for a new referendum in the same fishery must include an explanation of the substantive changes to the proposed IFQ program or the changes of circumstances in the fishery that would warrant initiation of an additional referendum.

Who Would Be Eligible to Vote in the Referendum?

Section 303A(c)(6)(D) of the Magnuson-Stevens Act establishes criteria regarding eligibility of persons who may vote in the referendum. For referenda conducted in New England fisheries, section 303A(c)(6)(D)(v) of the Magnuson-Stevens Act includes using income-dependent criteria when determining voter eligibility, i.e. crew members who derive a significant percentage of their total income from the fishery under the proposed IFQ program would be eligible to vote in the referendum. However, for Gulf fisheries managed with multi-species permits, such as the Gulf commercial grouper and tilefish fisheries, the Magnuson-Stevens Act states that those participants who have substantially fished the species considered for the IFQ program, would be eligible to vote in the referendum. The Council and NMFS interpret "substantially fished" to represent substantial contribution to the overall fishery production in total harvest. Therefore, the Council has established voter eligibility criteria in terms of annual grouper and tilefish landings thresholds. The decision to identify participants in terms of average annual harvest does not consider dependency on the fishery. A fishery participant may not meet the average annual grouper and tilefish landings threshold, but still be dependent on the fishery as a source of income.

In the Council's referendum initiation request letter, the definition of "substantially fished" states, "Only commercial reef fish permit holders, with active or renewable permits (within one year of the grace period immediately following expiration), who have combined average annual grouper and tilefish landings from logbooks during the qualifying years of at least 8,000 pounds (per permit) be considered as having substantially fished." The qualifying years selected by the Council are 1999 through 2004, with an allowance for dropping one year. Therefore, NMFS will use landings data from logbooks submitted to and received by the Science and Research

Director, Southeast Fisheries Science Center by December 31, 2006, for the years 1999 through 2004, with the allowance for dropping one year, as the sole basis to determine those permit holders that meet the Council's eligibility criterion and will be eligible to vote in the referendum.

Would Votes Be Weighted?

The Council has proposed assigning one vote for each permit associated with qualifying landings from the years 1999 through 2004, with no additional vote weighting based on catch history.

How Would Votes Be Conducted?

On or about December 1, 2008, NMFS would mail eligible voters a ballot for each permit associated with qualifying landings from the years 1999 through 2004. NMFS would mail the ballots and associated explanatory information, via certified mail return receipt requested, to the address of record indicated in NMFS' permit database for eligible permit holders. The completed ballot must be mailed to Susan Gerhart, Southeast Regional Office, NMFS, 263 13th Ave South, St. Petersburg, FL 33701. A referendum ballot must be received at that address by 4:30 p.m., eastern time, no later than 30 days after the postmark date on the envelope containing the ballots provided by NMFS; ballots received after that deadline would not be considered in determining the outcome of the referendum. Although it would not be required, voters may want to consider submitting their ballots by registered mail.

How Would the Outcome of the Referendum Be Determined?

Vote counting would be conducted by NMFS. Approval or disapproval of the referendum would be determined by a majority (i.e., a number greater than half of a total) of the votes cast. NMFS would prepare a media release announcing the results of the referendum and would distribute the release to all Gulf reef fish permittees, including dealers, and other interested parties within 60 days of the deadline for receiving the ballots from eligible voters. The results would also be posted on NMFS' Southeast Regional Office's website at <http://sero.nmfs.noaa.gov>.

What Will Happen After the Referendum is Conducted?

NMFS would present the results of the referendum at the April 13–17, 2009, Council meeting. If the referendum fails, the Council cannot proceed with submission of Amendment 29 and regulations to

implement an IFQ program for the Gulf commercial grouper and tilefish fisheries. If the referendum is approved, the Council would be authorized, if it so decides, to submit Amendment 29 and regulations to NMFS for review and possible approval and implementation of an IFQ program for the Gulf commercial grouper and tilefish fisheries. The proposed IFQ program was developed through the normal Council process that involved extensive opportunities for industry and public review and input at various Council meetings. The public will have additional opportunities to comment during public comment periods on the plan amendment and the proposed regulations.

Will the Referendum Be Conducted in a Fair and Equitable Manner?

The Magnuson-Stevens Act requires the Secretary to conduct referenda for potential IFQ programs in a fair and equitable manner. NMFS' referendum guidelines outline criteria that NMFS must consider when reviewing the Council's referendum initiation request letter and supporting analyses to ensure the referenda will be conducted in a fair and equitable manner and are consistent with the national standards and other provisions of the Magnuson-Stevens Act, and other applicable law. NMFS has reviewed these documents from the Council and has concluded that the proposed referendum criteria are consistent with the guidelines. NMFS has preliminarily concluded that:

1. The Council's referendum criteria are rationally connected to and further the objectives of the proposed IFQ program. The Council's definition of "substantially fished" includes those permit holders with both past and present participation in the grouper and tilefish fisheries and allows those who account for the majority of grouper and tilefish landings to vote in the referendum. The definition includes use of catch histories from a qualifying time period that would also be used for initial apportionment of IFQ shares in the proposed IFQ program.

2. Referendum voting eligibility requirements are designed to prevent any one person or single entity from obtaining an excessive share of the voting privileges. The Council has proposed assigning one vote for each permit associated with qualifying landings from the years 1999 through 2004, instead of weighting the votes.

3. The voter eligibility criteria enable validating a participant's eligibility. Landings data from logbooks submitted to NMFS and NMFS permit history records will be used to validate

participants' eligibility to vote in the referendum.

4. The time period and format proposed to conduct the referendum is consistent with the referendum guidelines and provides for a fair and equitable process. NMFS would mail referendum ballots to eligible voters as soon as practicable after the final referendum rule is published. Eligible voters would have to submit their ballots to be received by NMFS no later than 30 days from the postmark date on the envelope containing the ballots provided by NMFS. NMFS would tally the votes and post the results within 60 days of receiving the ballots.

Summary Information About the Potential IFQ Program

The current management of Gulf commercial grouper and tilefish fisheries is based on a traditional command and control approach. This management approach has resulted in overcapitalization of the commercial grouper and tilefish fisheries which has caused increased derby fishing conditions and in some years has led to closures of these fisheries prior to the end of the fishing year. The purpose of implementing an IFQ program for the commercial grouper and tilefish fisheries is to rationalize effort and reduce overcapacity in the fleet. Amendment 29 to the FMP includes several management programs that would be capable of achieving these management goals, an IFQ program being the Council's preferred approach. The actions included in Amendment 29 include: Initial eligibility in the IFQ program, initial apportionment of IFQ shares, IFQ share categories, multi-use allocation and trip allowances, transfer eligibility requirements, IFQ share ownership caps, IFQ allocation ownership caps, adjustment to the commercial quota, establishment and structure of an appeals process, a "use it or lose it" policy for IFQ shares, a cost recovery plan, and approval of landing sites. The Council has selected its preferred alternatives for each of these actions through the normal Council process. If the referendum is approved, the Council, if it so decides, may continue with the submission of Amendment 29 for review, approval, and implementation.

Classification

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

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this

rule would not have a significant economic impact on a substantial number of small entities. The basis for this certification follows:

The Magnuson-Stevens Act provides the statutory basis for the proposed rule. The proposed rule would implement a referendum on a potential IFQ program for the Gulf commercial grouper and tilefish fisheries, consistent with the requirements of the Magnuson-Stevens Act. The primary purpose of this proposed rule is to notify potential participants in the referendum, and members of the public, of the procedures, schedule, and eligibility requirements that NMFS would use in conducting the referendum.

Participation in the Gulf commercial grouper and tilefish fisheries requires a Federal reef fish permit. There are currently 1,080 Federal reef fish permits that are either active (non-expired) or expired but renewable. Within this fleet, over the 2005–2006 fishing years, 895 vessels recorded landings of reef fish species, valued at a total of approximately \$46.3 million (2007 dollars), or an average of approximately \$52,000 per vessel. Some fleet activity occurs in the reef fish fishery, such that some entities own multiple permits and vessels. The extent of such activity is unknown, however, and, for the purpose of this analysis, all permits or vessels are assumed to be independent entities.

One class of small business entities would be directly affected by the rule: Commercial fishing operations. The Small Business Administration defines a small business that engages in commercial fishing as a firm 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 (NAICS code 114111, finfish fishing) for all its affiliated operations worldwide. The proposed referendum qualifying criteria would allow 333 of the 1,080 entities with Federal reef fish permits to participate in the referendum. Economic profiles of these entities are not available. However, assuming all the reef fish revenues discussed above were attributable to just the 333 qualifiers, which is known with certainty to not be true, the average annual revenue from reef fish sales, based on 2005–2006 harvest data, would be less than \$140,000 per qualifier. Thus, the average annual revenue per qualifying entity is determined to be less than \$140,000 and all commercial entities that would qualify for participation in the referendum are determined, for the purpose of this proposed rule, to be small entities.

The proposed rule defines the procedures, schedule, and eligibility requirements that NMFS would use in conducting the referendum. There are no implementing regulations associated with the proposed rule. Because there are no implementing regulations, there would be no direct effects on current fishery participation, effort, harvests, or other use of the grouper and tilefish resources. All current entities can continue to participate in the fishery in the manner in which they currently operate. Therefore, all current harvests, costs, and profits would remain unchanged. Any effects, adverse or otherwise, on small entities that participate in the fishery would only occur if in the future an IFQ program is implemented as a result of subsequent rulemaking. The final expected impacts of

the IFQ program are unknown since final approval of the specific program has not occurred. Estimates of variable costs savings attributable to the implementation of an IFQ system in the Gulf commercial grouper and tilefish fisheries are between \$2.1 and \$2.9 million per year, as well as unquantified reductions in fixed costs and increased ex-vessel prices. Final estimates of expected impacts will be identified should an IFQ program be proposed. Since the proposed rule would not directly affect fishery participation or harvest in any way, the rule would not reduce business profit for any fishery participants or related businesses. Profits are, therefore, not expected to be significantly reduced by the proposed rule. On this basis, it is determined that the proposed rule would not have a significant economic impact on a substantial number of small entities.

Accordingly, an initial regulatory flexibility analysis was not required or prepared. Copies of the RIR and RFAA are available (see **ADDRESSES**).

IFQ program referenda conducted under section 303A(c)(6)(D)(iv) of the Magnuson-Stevens Act are exempt from the Paperwork Reduction Act.

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

Dated: August 29, 2008.

James W. Balsiger,

*Acting Assistant Administrator for Fisheries,
National Marine Fisheries Service.*

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