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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 050408096-5096-01; I.D. 033105A]

RIN 0648-AS69

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Reef Fish Fishery of the Gulf of Mexico; Gulf Reef Fish Limited Access System

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 implement Amendment 24 to the Fishery Management Plan (FMP) for the Reef Fish Resources of the Gulf of Mexico (Amendment 24) prepared by the Gulf of Mexico Fishery Management Council (Council). This proposed rule would establish a limited access system for the commercial reef fish fishery in the Gulf of Mexico by capping participation at the current level. The intended effect of this proposed rule is to provide economic and social stability in the fishery by preventing speculative entry into the fishery.

DATES: Written comments on the proposed rule must be received no later than 5 p.m., eastern time, on June 9, 2005.

ADDRESSES: You may submit comments on the proposed rule by any of the following methods:

- E-mail: 0648-

AS69.Proposed@noaa.gov. Include in the subject line the following document identifier: 0648-AS69.

- Federal e-Rulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.

- Mail: Peter Hood, Southeast Regional Office, NMFS, 263 13th Avenue South, St. Petersburg, FL 33701.
- Fax: 727-824-5308; Attention: Peter Hood.

Copies of Amendment 24, which includes a Regulatory Impact Review (RIR), Initial Regulatory Flexibility Analyses (IRFA), and an Environmental Assessment, may be obtained from the Gulf of Mexico Fishery Management Council, The Commons at Rivergate, 3018 U.S. Highway 301 North, Suite

1000, Tampa, FL 33619-2266; telephone: 813-228-2815; fax: 813-225-7015; e-mail: gulfcouncil@gulfcouncil.org. Copies of Amendment 24 can also be downloaded from the Council's website at www.gulfcouncil.org.

FOR FURTHER INFORMATION CONTACT:

Peter Hood, telephone: 727-551-5728, fax: 727-824-5308, 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.

Background

Prior to 1992, the commercial reef fish fishery in the EEZ of the Gulf of Mexico operated under open access. In 1992, due to concerns about increasing levels of participation in the fishery, a 3-year moratorium on the issuance of new commercial vessel permits for Gulf reef fish was implemented under Amendment 4 to the FMP (April 8, 1992; 57 FR 11914). The moratorium was designed to stabilize the level of participation in the fishery and to allow for evaluation and development of a more comprehensive controlled access system for the commercial reef fish fishery. The moratorium was subsequently extended through 1995 (Amendment 9) (August 2, 1994; 59 FR 39301); through 2000 (Amendment 11) (December 15, 1995; 60 FR 64350); and through 2005, or until replaced by a more comprehensive access/effort control program (Amendment 17) (July 3, 2000; 65 FR 41016).

The effects of the existing permit moratorium have been to prevent increases in effort, reduce the number of permittees in the reef fish fishery, and help stabilize the economic performance of current participants. Under the moratoria, the number of commercial vessel reef fish permits has declined from 1,718 in 1993 to 1,129 in 2004.

Current commercial reef fish fishery participants have demonstrated the capability of harvesting the applicable quotas well in advance of the end of the fishing season, resulting in early closures of the fishery. Allowing the fishery to revert to open access would result in an increased number of participants in the fishery, most likely negating any reductions in effort that have been achieved as a result of the current moratorium. An increase in

participants would lead to even earlier fishery closures and would have an adverse impact on the economic performance of current participants. Increased participation would also compound the complexity of any future consideration by the Council to develop a more comprehensive controlled access or effort limitation system for this fishery. For these reasons, the Council has concluded that a limited access system to continue restrictions on participation levels in the fishery is appropriate.

Limited Access System

Amendment 24 would establish a limited access system for the commercial fishery for Gulf reef fish by capping participation at the current level. Under the proposed limited access system, an owner of a vessel with a valid commercial vessel permit for Gulf reef fish on the date that Amendment 24 is approved (assuming approval) would be issued the applicable permits under the limited access system. Commercial vessel permits for Gulf reef fish would become limited access permits upon their renewal. Other than the changes in the terminology, i.e., "limited access" versus "moratorium," there would be no changes to the current procedures for application, qualification, issuance, renewal, or transferability of these permits.

Classification

At this time, NMFS has not determined that Amendment 24, which this proposed rule would implement, is consistent with the national standards of the Magnuson-Stevens Act and other applicable laws. In making that determination, NMFS will take into account the data, views, and comments received during the comment period on Amendment 24 ending June 6, 2005, and the comment period on this proposed rule ending June 9, 2005.

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

NMFS prepared an IRFA as required by section 603 of the Regulatory Flexibility Act. The IRFA describes the economic impact this proposed rule, if adopted, would have on small entities. A description of the action, why it is being considered, and the legal basis for this action are contained in this Classification section and in the **SUMMARY** of this proposed rule. A summary of the analysis follows.

This proposed rule would establish a limited access system for the commercial reef fish fishery in the Gulf of Mexico. The purpose of the proposed

rule is to provide stability in the Gulf of Mexico commercial reef fish fishery as part of the strategy to achieve optimum yield (OY) and maximize the overall benefits to the Nation provided by the fishery. The Magnuson-Stevens Act provides the statutory basis for the proposed rule.

No duplicative, overlapping, or conflicting Federal rules have been identified.

An estimated 1,161 vessels were permitted to fish commercially for Gulf reef fish in 2003, down from 1,718 in 1993, and 61 percent to 74 percent of those vessels had logbook-reported landings during 1993 through 2003. The median annual gross revenue from all logbook-reported sales of finfish by those vessels ranged from approximately \$12,000 to \$23,000 during this period. The median percentage of gross revenues attributable to Gulf reef fish ranged from 95 percent to 98 percent. Although participation in the fishery has declined since 1993, this decline has been voluntary and presumed attributable to economic conditions in the fishery and fishing in general and not due to regulatory requirements. Although a limited access program has been in place in this fishery since 1992, transfer of permits is not restricted, and those seeking to enter the fishery can purchase a permit from a permit holder. Such transfers in fact occur, and 253 of the 1,175 valid permits as of February 6, 2004 were permits that had been transferred at some time since 1998. Thus, entry into the fishery occurs. However, total participation, in terms of both the number of permits and the number of permitted vessels that land fish, has consistently declined since 1993, indicating that entry is not limited by a lack of available permits.

This proposed rule will affect all current participants in the fishery and all entities that may be interested in entering the fishery. Although the number of current participants is known, no estimate of the number of prospective participants can be provided, although it is not expected to be substantial due to a decline in total participation in the fishery even though permit transfer and entry opportunities are available.

This proposed rule would not change current reporting, recordkeeping, and other compliance requirements under the FMP. These requirements include qualification criteria for the commercial vessel permit, and logbook landing reports. All of the information elements required for these processes are standard elements essential to the successful operation of a fishing business and should, therefore, already

be collected and maintained as standard operating practice by the business. The requirements do not require professional skills and, therefore, are determined not to be onerous.

One general class of small business entities would be directly affected by the final rule: commercial fishing vessels. 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, and has annual receipts up to \$3.5 million per year. Based on the revenue profiles provided above, all commercial entities operating in the Gulf reef fish fishery are considered small entities.

This proposed rule will apply to all entities that operate in the Gulf of Mexico commercial reef fish fishery and those entities interested in or seeking to enter the fishery. The proposed rule will, therefore, affect a substantial number of small entities.

The outcome of "significant economic impact" can be ascertained by examining two issues: disproportionality and profitability. The disproportionality question is, do the regulations place a substantial number of small entities at a significant competitive disadvantage to large entities? All the vessel operations affected by the proposed rule are considered small entities, so the issue of disproportionality does not arise in the present case.

The profitability question is, do the regulations significantly reduce profit for a substantial number of small entities? The proposed rule would continue the limited access system in the fishery. Continuation of this system would be expected to increase profitability for the entities remaining in the fishery if participation continues to decline, as has occurred since 1993. Should the decline in participation cease, profits would be expected to continue at current levels. Should the fishery revert to open access, participation would be expected to increase, and average profit per participant would be expected to decline, possibly to the point of elimination of all profits from this fishery.

This proposed rule would continue the requirement to have a vessel permit in order to participate in the commercial reef fish fishery. The cost of the permit is \$50, and renewal is required every other year (the permit is automatically renewed the second year). Because this is a current requirement, there would be no additional impacts on participant profits as a result of this requirement.

Three alternatives were considered to the proposed rule. The first, status quo alternative would allow the fishery to revert to open access. Open access conditions would be expected to lead to an increase in the number of permitted vessels, or, at least, slow the rate of decline in participation that has occurred. Any increase in the number of permitted vessels landing Gulf reef fish would lead to an expected decrease in producer surplus from that in 2003, estimated at \$404,500 to \$647,200.

The two remaining alternatives would continue the current moratorium on issuing new Gulf reef fish permits for five years and 10 years, respectively, compared to the proposed rule, which would continue the moratorium indefinitely. Thus, the fishery would continue as a limited access fishery under each alternative. It is not possible to distinguish these alternatives empirically in terms of fishery behavior using available data. However, it is reasonable to assume that fishermen believe that regardless of the duration of the program specified, a precedent for indefinite use of private market mechanisms to allow entry into the fishery has been established, given the history of successfully functioning private markets for vessel permits. Thus, the outcomes of these three alternatives are expected to be functionally equivalent. As stated previously, under the current limited access program, the fishery is estimated to have generated \$404,500 to \$647,200 in producer surplus in 2003. Assuming the increase in producer surplus mirrors that of fleet contraction exhibited recently (1.15 percent), the resultant estimates of producer surplus are approximately \$450,000 to \$720,000 by 2010, and \$484,000 to \$775,000 by 2015. Each alternative would also continue to provide for market-based compensation for vessels that exit the fishery, and the permit market would continue to provide an economically rational basis for regulating the entry of vessels into the commercial Gulf reef fish fishery and allocating access to fishery resources among competing users in the commercial fisheries.

It should be noted that although this proposed rule would imply a more permanent system than the alternatives, the system established under any alternative could be suspended at any time through appropriate regulatory action. Adopting an indefinite duration, however, eliminates the need for action at specific intervals to continue the system, thereby eliminating the costs associated with the additional regulatory process. The administrative and development cost of the current

action is estimated to be \$200,000. Further, the proposed rule may better address the Council's purpose of providing stability in the commercial and recreational fisheries for Gulf reef fish, preventing speculative entry into the commercial fisheries, and achieving OY. The status quo alternative would not achieve the Council's objectives.

Copies of the IRFA are available (see ADDRESSES).

List of Subjects in 50 CFR Part 622

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

Dated: April 20, 2005.

Rebecca Lent, Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 622 is proposed to be 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, revise the last sentence of paragraph (a)(2)(v) and introductory paragraph (m) to read as follows:

§ 622.4 Permits and fees.

(a) * * *

(2) * * *

(v) * * * See paragraph (m) of this section regarding a limited access system for commercial vessel permits for Gulf reef fish and limited exceptions to the earned income requirement for a permit.

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(m) Limited access system for commercial vessel permits for Gulf reef fish.

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