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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 622

[Docket No. 050408096-5182-02; 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:** Final rule.

**SUMMARY:** NMFS issues this final 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 final rule establishes 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 final rule is to provide economic and social stability in the fishery by preventing speculative entry into the fishery.

**DATES:** This final rule is effective August 17, 2005.

**ADDRESSES:** Copies of the Regulatory Impact Review (RIR) and Final Regulatory Flexibility Analyses (FRFA) are available from Peter Hood, NMFS, Southeast Regional Office, 263 13th

Avenue South, St. Petersburg, FL 33701; telephone 727-824-5305; fax 727-824-5308; e-mail [peter.hood@noaa.gov](mailto:peter.hood@noaa.gov).

**FOR FURTHER INFORMATION CONTACT:** Peter Hood, telephone: 727-824-5305; fax: 727-824-5308; e-mail: [peter.hood@noaa.gov](mailto: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 April 6, 2005, NMFS published a notice of availability of Amendment 24 and requested public comment on that amendment (70 FR 17401). On April 25, 2005, NMFS published the proposed rule to implement Amendment 24 and requested public comment (70 FR

21170). NMFS received no comments on Amendment 24 or the associated proposed rule. NMFS approved Amendment 24 on July 5, 2005. The rationale for the measures in Amendment 24 is provided in the amendment and in the preamble to the proposed rule and is not repeated here. This final rule is implemented with no changes from the proposed rule.

#### Classification

The Administrator, Southeast Region, NMFS, has determined Amendment 24 is necessary for the conservation and management of the Gulf reef fish fishery and is consistent with the Magnuson-Stevens Act and other applicable laws.

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

NMFS prepared a FRFA. The FRFA incorporates the initial regulatory flexibility analysis (IRFA) and a summary of the analyses completed to support the action. No public comments were received on the IRFA or the economic impacts of the rule. Therefore, no changes were made in the final rule as a result of such comments. A summary of the FRFA follows.

This final rule will establish a limited access system for the commercial reef fish fishery in the Gulf of Mexico. The purpose of the 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 final 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 had logbook-reported landings from 1993 through 2003. The median annual gross revenue from all logbook-reported sales of finfish by these 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 access has been limited 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 do occur: 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, as evidenced by the transfer of 253 existing permits to vessels new to the fishery.

The final 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.

The final rule will not change current reporting, record-keeping, 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. Because these compliance requirements are unchanged under this rule, the requirements are not deemed to be onerous.

One general class of small business entities will 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.

The final 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 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 final rule will 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.

The final rule will 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 final rule. The 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 remaining two alternatives would continue the current moratorium on issuing new Gulf reef fish permits for 5 years and 10 years, respectively, compared to the final rule which would continue the moratorium indefinitely. Thus, the fishery would continue as a limited access fishery under each alternative. It is impossible 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.

Although the final 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. This cost includes all administrative costs associated with development, review, and implementation of this rule, including Council meetings, public hearings, travel, staff, and printing. Further, the final 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.

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.

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

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

Dated: July 13, 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, revise the last sentence of paragraph (a)(2)(v) and paragraph (m) introductory text 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.

\* \* \* \* \*

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

\* \* \* \* \*

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#### DEPARTMENT OF COMMERCE

#### National Oceanic and Atmospheric Administration

#### 50 CFR Part 660

[Docket No. 040628196-5130-02; I.D. 061704A]

RIN 0648-AQ92

#### Fisheries Off West Coast States and in the Western Pacific; Western Pacific Pelagic Fisheries; American Samoa Longline Limited Entry Program; Correction

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

ACTION: Final rule; correction.

SUMMARY: This document contains a correction to a final rule that was published on May 24, 2005.

DATES: Effective August 1, 2005.

FOR FURTHER INFORMATION CONTACT: Alvin Z. Katekaru, Pacific Islands Area Office, NMFS, 808-973-2937.

SUPPLEMENTARY INFORMATION: The final rule for Amendment 11 was published

in the Federal Register on May 24, 2005, (70 FR 29646). Instruction 9 was misnumbered as Instruction 10. This document corrects this oversight.

#### Correction

In the rule FR Doc. 05-10351, in the issue of Tuesday, May 24, 2005 (70 FR 29646), on page 29657, in the third column, correct Instruction 10 to read Instruction 9.

Dated: July 13, 2005.

#### Rebecca Lent,

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

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#### DEPARTMENT OF COMMERCE

#### National Oceanic and Atmospheric Administration

#### 50 CFR Part 679

[Docket No. 041126332-5039-02; I.D. 071205A]

#### Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Ocean Perch in the Central Aleutian District of the Bering Sea and Aleutian Islands Management Area

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS is prohibiting directed fishing for Pacific Ocean perch in the Central Aleutian District of the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the 2005 Pacific Ocean perch total allowable catch (TAC) in the Central Aleutian District of the BSAI.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), July 12, 2005, through 2400 hrs, A.l.t., December 31, 2005.

FOR FURTHER INFORMATION CONTACT: Josh Keaton, 907-586-7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the BSAI according to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP