

Secretary of Transportation or if they contain the following statement:

The General Counsel of the Department of Transportation has reviewed this document and approved it as consistent with the language and intent of 49 CFR part 23.

■ 5. Revise § 23.33 to read as follows:

**§ 23.33 What size standards do recipients use to determine the eligibility of ACDBEs?**

(a) As a recipient, you must, except as provided in paragraph (b) of this section, treat a firm as a small business eligible to be certified as an ACDBE if its gross receipts, averaged over the firm's previous three fiscal years, do not exceed \$47.78 million.

(b) The following types of businesses have size standards that differ from the standard set forth in paragraph (a) of this section:

(1) Banks and financial institutions: \$750 million in assets;

(2) Car rental companies: \$63.71 million average annual gross receipts over the firm's three previous fiscal years;

(3) Companies providing pay telephones: 1,500 employees;

(4) Automobile dealers: 200 employees.

(c) The Department adjusts the numbers in paragraphs (a) and (b)(2) of this section using the Department of Commerce price deflators for purchases by state and local governments as the basis for this adjustment. These adjustments are made every two years from May 2, 2007. The Department publishes a final rule informing the public of each adjustment.

**PART 26—PARTICIPATION BY DISADVANTAGED BUSINESS ENTERPRISES IN DEPARTMENT OF TRANSPORTATION FINANCIAL ASSISTANCE PROGRAMS**

■ 1. The authority citation for part 26 continues to read as follows:

**Authority:** 23 U.S.C. 324; 42 U.S.C. 2000d *et seq.*; 49 U.S.C 1615, 47107, 47113, 47123; Sec. 1101(b), Pub. L. 105-178, 112 Stat. 107, 113.

■ 2. Revise § 26.9 to read as follows:

**§ 26.9 How does the Department issue guidance and interpretations under this part?**

(a) Only guidance and interpretations (including interpretations set forth in certification appeal decisions) consistent with this part 26 and issued after March 4, 1999 express the official positions and views of the Department of Transportation or any of its operating administrations.

(b) The Secretary of Transportation, Office of the Secretary of

Transportation, FHWA, FTA, and FAA may issue written interpretations of or written guidance concerning this part. Written interpretations and guidance are valid, and express the official positions and views of the Department of Transportation or any of its operating administrations, only if they are issued over the signature of the Secretary of Transportation or if they contain the following statement:

The General Counsel of the Department of Transportation has reviewed this document and approved it as consistent with the language and intent of 49 CFR part 26.

■ 3. Revise § 26.65 to read as follows:

**§ 26.65 What rules govern business size determinations?**

(a) To be an eligible DBE, a firm (including its affiliates) must be an existing small business, as defined by Small Business Administration (SBA) standards. As a recipient, you must apply current SBA business size standard(s) found in 13 CFR part 121 appropriate to the type(s) of work the firm seeks to perform in DOT-assisted contracts.

(b) Even if it meets the requirements of paragraph (a) of this section, a firm is not an eligible DBE in any Federal fiscal year if the firm (including its affiliates) has had average annual gross receipts, as defined by SBA regulations (see 13 CFR 121.402), over the firm's previous three fiscal years, in excess of \$20.41 million.

(c) The Department adjusts the number in paragraph (b) of this section using the Department of Commerce price deflators for purchases by State and local governments as the basis for this adjustment. The Department issues a final rule by August 10 of each year making this adjustment.

Issued this 20 day of March 2007, at Washington DC.

**Mary E. Peters,**

*Secretary of Transportation.*

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**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 622**

[Docket No. 061121304-7053-02; I.D. 112006B]

RIN 0648-AT87

**Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Reef Fish Fishery of the Gulf of Mexico; Gulf Red Snapper Management Measures**

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

**ACTION:** Temporary rule; interim measures.

**SUMMARY:** This final rule implements interim measures to reduce overfishing of Gulf red snapper. This final rule reduces the commercial and recreational quotas for red snapper, reduces the commercial minimum size limit for red snapper, reduces the recreational bag limit for Gulf red snapper, prohibits the retention of red snapper under the bag limit for captain and crew of a vessel operating as a charter vessel or headboat, and establishes a target level of reduction of shrimp trawl bycatch mortality of red snapper. The intended effect is to reduce overfishing of red snapper in the Gulf of Mexico.

**DATES:** This final rule is effective May 2, 2007 through September 29, 2007, except for amendments to § 622.37, which are effective April 2, 2007 through September 29, 2007.

**ADDRESSES:** Copies of documents supporting this final rule, including a final environmental impact statement (FEIS), a Record of Decision (ROD), and a final regulatory flexibility analysis (FRFA), may be obtained from Peter Hood, Southeast Regional Office, NMFS, 263 13<sup>th</sup> Avenue South, St. Petersburg, FL 33701.

**FOR FURTHER INFORMATION CONTACT:** Peter Hood, telephone: 727-551-5784, fax: 727-824-5308, e-mail: [peter.hood@noaa.gov](mailto:peter.hood@noaa.gov).

**SUPPLEMENTARY INFORMATION:** The red snapper fishery of the Gulf of Mexico is managed under the Fishery Management Plan (FMP) for the Reef Fish Fishery of the Gulf of Mexico, and the shrimp fishery is managed under the FMP for the Shrimp Fishery of the Gulf of Mexico. The FMPs were prepared by the Gulf of Mexico Fishery Management Council (Council) and are implemented under the authority of the Magnuson-

Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) by regulations at 50 CFR part 622.

On October 13, 2006, NMFS published a notice of availability of the draft environmental impact statement (DEIS) for this action (71 FR 60509). The notice of availability of the final environmental impact statement (FEIS) was published on December 29, 2006 (71 FR 78427). On December 14, 2006, NMFS published the proposed rule and requested public comment. The rationale for these interim measures is provided in the FEIS and the preamble to the proposed rule and is not repeated here.

### Comments and Responses

The following is a summary of comments received on the proposed rule and NMFS' responses. A total of 6,403 comments were received from individuals and organizations. In addition to these comments, NMFS received two comment letters, with a total of 10,280 signatures, that opposed various provisions of the proposed rule. NMFS' response to comments on the proposed rule including the issues presented in the two comment letters is provided below.

*Comment 1:* Many respondents asked NMFS not to implement the interim rule, but allow the Council to develop an amendment with updated data taking into account the effect of recent hurricanes on fishing.

*Response:* The Magnuson-Stevens Act requires NMFS to develop a plan to end overfishing once such a determination has been made. The Council has developed, and the Secretary has approved, a red snapper rebuilding plan ending overfishing between 2009 and 2010. The red snapper harvest and bycatch reduction measures the Council is evaluating to achieve this goal cannot be implemented in time to address overfishing during 2007. If overfishing continues in 2007, then substantially more severe harvest reductions will be required between 2008 and 2010 to end overfishing on schedule. Consequently, NMFS has determined interim measures are needed to address overfishing of red snapper during the 2007–fishing year.

The interim measures implemented through this final rule are designed to minimize to the extent practicable the unavoidable adverse impacts of ending overfishing during a time when Gulf of Mexico fisheries are recovering from the adverse effects of two particularly severe hurricane seasons. Additionally, the analyses underlying these measures assume effort in the red snapper and shrimp fisheries will be slightly below average during 2007 as a result of the

hurricanes. NMFS has determined this rule is based on the best scientific information available. NMFS continues to actively monitor red snapper and shrimp effort data so this information can be taken into account in developing measures to achieve the additional, longer-term reductions in red snapper harvest and bycatch needed to end overfishing of red snapper.

*Comment 2:* Many respondents suggested the rule violated national standard 2 of the Magnuson-Stevens Act. One respondent also suggested the rule violated national standards 4, 7, and 8. These national standards require fishery conservation and management measures be based upon the best scientific information available (national standard 2); be fair and equitable, promote conservation, and allow no one to have excessive shares in a fishery (national standard 4); minimize costs and avoid unnecessary duplication, where practicable (national standard 7); and, in achieving the conservation requirements of the Magnuson-Stevens Act, sustain the participation of and minimize adverse economic impacts to fishing communities to the extent practicable (national standard 8).

*Response:* NMFS has determined these interim measures and associated analytical documents comply with all Magnuson-Stevens Act national standards, as well as with all other applicable laws and regulations. The scientific data and information underlying the need for action was independently peer reviewed through the Southeast Data and Assessment Review (SEDAR) process, and certified by NMFS Southeast Fisheries Science Center (SEFSC) and the Council's Scientific and Statistical Committee as the best scientific information available. The interim measures promote conservation by addressing overfishing for the 2007 fishing season, and are fair and equitable because they apply to fishery participants in all coastal states of the Gulf of Mexico. Differences in the measures applicable to the commercial and recreational sectors of the directed red snapper fishery, and the bases for the measures applicable to the shrimp fishery, are discussed in further detail below. (See, e.g., responses to Comments 14 and 17–19.) These interim measures also minimize costs to fisheries participants to the extent practicable while meeting national standard 1 requirements to reduce overfishing, and minimize to the extent practicable the unavoidable costs and adverse economic impacts associated with reducing red snapper mortality in the Gulf of Mexico. Addressing

overfishing in the 2007 season will help to avoid more severe harvest reductions to end overfishing between 2008 and 2010.

*Comment 3:* Many respondents disagreed with the conclusions of the red snapper stock assessment on which the interim measures are based, stating red snapper fishing is improving and the stock appears healthy, particularly in the northeastern Gulf. Specific criticisms of the assessment stated the assessment does not take into account the full contribution of artificial reefs to stock productivity; overestimates bycatch in the recreational fishery; and does not account for post-settlement, density-dependent mortality.

*Response:* The 2005 red snapper stock assessment was conducted and reviewed using the SEDAR process, which is a cooperative fishery management council process initiated in 2002 to improve the quality and reliability of fishery stock assessments in the Gulf of Mexico and other Southeast fishery management council regions. SEDAR emphasizes constituent and stakeholder participation in assessment development, transparency in the assessment process, and a rigorous and independent scientific review of completed stock assessments. Council, NMFS, and state agency representatives, as well as affected fishermen, academics, and environmental non-governmental organizations participated in the 2005 red snapper SEDAR process, and all decisions were reached by consensus. Each SEDAR involves a series of three workshops--data, assessment, and review. Each workshop is open to the public and noticed in advance through the **Federal Register**.

The reports produced during the SEDAR workshops document in detail key findings regarding data usage and assessment methodology and were formally peer reviewed during the SEDAR Review Workshop in April 2005. The SEDAR Review panel identified the results of the red snapper stock assessment as the best scientific information available. Additionally, the SEDAR Review panel provided a series of recommendations including additional data needs to improve future assessments. An additional endorsement of the stock assessment came from the Gulf Council's Joint Standing and Special Reef Fish/Mackerel/Spiny Lobster Scientific and Statistical Committee who recognized the assessment as the best available science during their July 5–6, 2005, meeting.

The 2005 red snapper SEDAR assessment supports the observation

made by fishermen that stock biomass is increasing in the eastern Gulf. However, stock biomass remains far below the minimum threshold (i.e., overfished) and fishing mortality continues to exceed the maximum sustainable level defined in the red snapper rebuilding plan (i.e., overfishing). The assessment examined differences in the eastern and western components of the fishery, which are divided by the Mississippi River delta, and found that, although the eastern portion of the stock is in slightly better condition than is the western portion, red snapper is still significantly overfished in both regions.

SEDAR participants discussed and addressed, to the extent possible, the potential impacts of artificial reefs on stock productivity and recruitment, as well as issues related to each of the other criticisms described above. The rationale for their decisions on each of these issues is provided in the SEDAR 07 working papers and reports, which can be accessed online at: [http://www.sefsc.noaa.gov/sedar/Sedar\\_Workshops.jsp?WorkshopNum=07](http://www.sefsc.noaa.gov/sedar/Sedar_Workshops.jsp?WorkshopNum=07).

*Comment 4:* Several respondents suggested either the "linked" or "delinked" bycatch reduction scenarios be used in determining the rebuilding strategy. Others indicated estimates of bycatch from the recreational fishery were overestimated by the stock assessment.

*Response:* Estimates of maximum sustainable yield (MSY) and stock size that allows harvest at MSY, are contingent on mortality (including bycatch mortality) from the directed red snapper and shrimp trawl fisheries. The "linked" scenario requires an equal reduction in fishing mortality across all sources of mortality (i.e., directed fishery, closed season bycatch, and shrimp trawl bycatch), while the "delinked" scenario does not require an equal reduction and allows fishery managers to establish individual mortality reduction goals for one or more sources of mortality. These decisions then define how much of a reduction of mortality is required in the remaining sectors, and enable fishery managers to hold each sector accountable for achieving its specific mortality reduction objective. NMFS is encouraging the Council to explore the pros and cons of "linking" and "delinking" the various sources of red snapper mortality. However, such a decision is beyond the scope of this temporary rule, the objective of which is to address overfishing on a temporary basis while the Council develops a strategy to end overfishing of the stock in compliance with the red snapper

rebuilding plan and the Magnuson-Stevens Act.

Estimates of red snapper recreational fishery discards were reviewed through the SEDAR process and have been determined to be the best available science (see response to Comment 3). During the SEDAR data workshop, discard estimates based on the Marine Recreational Fishery Statistics Survey (MRFSS) were reviewed and considered to underestimate total recreational discards. Additionally, there were concerns about estimating discards for headboats and from Texas waters using MRFSS discard estimates or other studies. Therefore, the red snapper stock assessment estimated recreational and commercial discards using predicted length composition of the catch, and discards were primarily attributed to the minimum size limit.

*Comment 5:* Many comments suggested the interim measures should reduce the total allowable catch (TAC) of red snapper to 6 million lb (2.72 million kg) or less to end overfishing as soon as possible.

*Response:* The 6.5-million lb (2.95-million kg) TAC implemented through this final rule is intended to reduce overfishing of the red snapper stock on a temporary basis, specifically for the 2007 fishing season, while the Council develops a strategy to end overfishing of the stock in compliance with the red snapper rebuilding plan and the Magnuson-Stevens Act. The chosen TAC is designed to minimize to the extent practicable the unavoidable adverse impacts of reducing red snapper mortality during a time when Gulf fisheries are recovering from the adverse effects of two particularly severe hurricane seasons. While a lower TAC and more restrictive management measures will be required in the future to end overfishing on schedule, NMFS believes that a 6.0 million-lb (2.7 million-kg) TAC is not necessary for purposes of this final rule and that longer-term management measures should, as appropriate, be developed through the Council process, which provides additional mechanisms for consulting with affected user groups.

*Comment 6:* One comment suggested red snapper TAC reductions should be phased in to the level needed to end overfishing.

*Response:* The red snapper TAC implemented through this final rule will reduce, rather than end, overfishing. The TAC will need to be reduced below 6.5 million lb (2.95 million kg) in the coming years to end overfishing on schedule.

*Comment 7:* Some respondents suggested closing the directed red

snapper (commercial and recreational) and shrimp fisheries to allow the red snapper stock to recover.

*Response:* Closing the red snapper and shrimp fisheries would be inconsistent with the national standard 1 mandate to achieve the optimum yield from each U.S. fishery and the national standard 8 mandate to minimize to the extent practicable adverse economic impacts on fishing communities because such action would exceed that required to meet the red snapper conservation objective.

*Comment 8:* Some respondents questioned why TAC was being reduced in the final rule rather than creating seasonal or area closures to protect spawning aggregations. They indicated fishing for red snapper should be closed in areas and at those times when red snapper are known to spawn.

*Response:* Area closures were considered but rejected by the Council as a management tool for Amendment 14/27 (a joint amendment to the Shrimp and Reef Fish FMPs). Using this management technique in this final rule would be limited to the 2007 fishing season and would therefore result in marginal gains for the stock should the Council not adopt these measures in future actions. The Council is considering reductions in length of the recreational fishing season in Amendment 14/27. The final rule does not reduce the length of the fishing season because other management measures accomplish the necessary reductions in harvest. However, the Council may choose to reconsider seasonal and area closures if public comment or other information suggests these are the preferred management strategies.

*Comment 9:* Several respondents suggested fishing seasons should be modified to one of the following: 1) a short time period for commercial and recreational fishermen that avoids the red snapper breeding season, 2) alternating months or opening portions of months for the recreational fishery, 3) a shorter commercial season concurrent with the recreational season, or 4) different seasons between the eastern and western Gulf.

*Response:* NMFS evaluated numerous alternatives, including various seasonal closures, to constrain the recreational red snapper fishery to the 2007 allocation implemented through this final rule. The range of alternative seasons considered was intended to preserve, if possible, a core season of May 15 to August 15. Many comments received on this rule during public testimony suggested that recreational fishermen would prefer methods other

than changing the current fishing season to reduce fishing effort.

The Council will examine recreational fishing regulations in Amendment 14/27. Consequently, if the core season can no longer be preserved, or if public comments request the Council to preserve different core seasons in the eastern and western Gulf, then the Council could re-examine these and other seasonal closure alternatives in developing a plan to end overfishing of red snapper in compliance with the red snapper rebuilding plan and the Magnuson-Stevens Act.

NMFS did not evaluate seasonal closure alternatives for the commercial red snapper fishery because the mortality rate of that fishery is managed in season through an individual fishing quota (IFQ) program. This program was implemented in part to eliminate the derby fishery conditions that had developed in response to short fishing seasons. IFQ programs intend to control total annual harvest by enabling fishery managers to track and limit the landings of each individual program participant.

*Comment 10:* Two respondents suggested that because red snapper have been successfully raised in captivity, aquaculture should be used to augment red snapper stocks, instead of implementing further harvest restrictions.

*Response:* Because stock enhancement through aquaculture is a longer-term alternative to address overfishing, it is beyond the scope of this rule to reduce overfishing of the red snapper stock on a temporary basis, for the 2007 fishing season. However, NOAA supports creation of environmentally sound and economically sustainable aquaculture opportunities. The Generic Amendment for Offshore Aquaculture, currently under development by the Council, in collaboration with NMFS, would provide a similar framework for regulating offshore aquaculture of federally managed species, including red snapper, in Federal waters of the Gulf of Mexico. Additionally, a multi-year grant awarded to the Gulf of Mexico Marine Stock Enhancement Program by NMFS in 2003 is funding research for red snapper stock enhancement possibilities.

*Comment 11:* Some respondents suggested the economic and social value of both the recreational and commercial sectors should be considered in setting TAC. Some comments indicated current allocation of TAC should be changed so the recreational fishery receives a higher percentage. Several respondents were concerned TAC reductions will have an adverse economic effect on charter

fishermen and businesses dependent on offshore fishing.

*Response:* Changes to the current methodology for allocating red snapper TAC between the commercial and recreational sectors are outside the scope of this rule, which is intended only to reduce overfishing of the red snapper stock on a temporary basis, for the 2007 fishing season. However, the Council is developing an amendment to address the allocation of different reef fish species and may include red snapper. The Council has established a working group with the SEFSC to examine harvest allocation between fishing sectors.

Best available survey and modeling results indicate relatively few trip cancellations are expected to occur as a result of this action. Most survey respondents indicated when faced with a reduced red snapper bag limit, they would either continue fishing for red snapper or fish for another species. This change in fishing behavior may generate distributional effects (i.e., the substituted trip may occur from a different port, different mode, or in a different season, resulting in one port/season losing while another gains). These distributional effects, however, cannot be predicted with current data.

*Comment 12:* Many respondents suggested the current four-fish bag limit should not be reduced because high fuel prices have reduced recreational fishing effort, and, therefore, no further actions need to be taken to constrain red snapper harvest. Other respondents suggested other alternatives to the two-fish bag limit should be considered to reduce bycatch and minimize adverse economic harm to the recreational fishery. Suggested measures included a bag limit of the first four or five red snapper of any size caught per day, a recreational IFQ program, eliminating fishing tournaments other than catch and release, developing a size-based daily points system, setting a red snapper slot limit, restricting the number of trips an angler may take, and establishing more artificial reefs.

*Response:* In managing the recreational fishery so harvest is constrained to the recreational quota, NMFS has employed bag limits, size limits, and seasonal closures. Assuming some reduction in recreational effort due to hurricanes and increased fuel prices, the combined effect of reducing the recreational bag limit from four to two fish and prohibiting a captain and crew bag limit for for-hire vessels should control effort sufficiently to ensure the recreational fishery remains within the 2007 quota of 3.185 million lb (1.445 million kg). When combining

these two measures, the recreational fishery would be allowed to maintain its current 194-day recreational fishing season (April 21 - October 31). To maintain a four-fish bag limit, the fishing season would need to be reduced. Testimony from many fishermen suggested they would prefer a reduction to the bag limit than a reduction in season length.

Alternative management strategies suggested above other than bag limits could create confusion for anglers should the Council adopt different measures in Amendment 14/27, which considers red snapper management beyond 2007. Other measures suggested above, such as retaining the first four or five fish caught, were considered but rejected because preliminary analyses indicated these regulations would increase total recreational fishing mortality Gulf-wide and across all modes, thus slowing recovery. Measures that slow recovery also have negative long-term economic consequences. However, the Council may choose to consider these alternatives in Amendment 14/27 to assist in ending overfishing and continue the recovery of the red snapper stock.

*Comment 13:* Many respondents suggested that prohibiting the captain and crew of for-hire vessels from retaining the recreational bag limit contributes little to reductions in recreational fishing mortality, and the captain and crew should be able to keep a bag limit. One respondent suggested captain and crew bag limit reductions were already factored into the current fishing regulations when the season was reduced by six days to account for the cancellation of a zero-bag limit for captain and crew in 2000.

*Response:* Analyses indicated that prohibiting captain and crew of for-hire vessels from retaining the recreational bag limit would reduce red snapper landings by approximately 2 percent. This action, coupled with the reduction in the recreational bag limit to two fish allows the fishing season to remain at its current length of 194 days (from April 21–October 31). Many for-hire fishermen indicated they would be willing to give up their bag limit if the current season was maintained. Additionally, this measure would also increase consistency among regulations and make them more equitable. Within the reef fish fishery, captain and crew of for-hire vessels are not allowed to keep bag limits of grouper and captain and crew of commercial vessels are not allowed to keep reef fish bag limits if commercial quantities of reef fish are onboard.

While NMFS did reduce the recreational fishing season by six days in 2000 to allow the captain and crew of for-hire vessels to maintain their bag limits, these measures were put in place based on a 1999 stock assessment. The measures considered in this final rule are based on the 2005 stock assessment using new and updated data. Thus the condition of the stock has been reevaluated, and the measures in this final rule are based on this updated assessment.

*Comment 14:* Many respondents indicated reducing the minimum size limit should also be applied to the recreational fishery. They suggested not doing so will adversely affect stock recovery, enhance user conflict, and would not be fair and equitable. Some suggested commercial fishermen should be restricted to fishing in deeper water to reduce conflict between fisheries. One respondent suggested data used to assess the potential commercial discard reductions was based on only one study having a limited sample size and geographic location, while others indicated more research on reduced minimum size limits is needed for the commercial and recreational fisheries to determine if in fact this type of measure decreases bycatch. Further, one respondent suggested reductions in bycatch resulting from lowering of the commercial minimum size to 13 inches (33 cm) will not work because commercial fishermen will not change their current fishing practices.

*Response:* This final rule is implemented under the provision of section 305(c) of the Magnuson-Stevens Act that provides for interim measures needed to reduce overfishing. Reducing the commercial minimum size limit from 15 to 13 inches (38 to 33 cm) reduces overfishing because 71–82 percent of the fish discarded by commercial fishermen do not survive. However, while reducing the recreational minimum size limit would reduce bycatch, it would not reduce overfishing, because the discard mortality rate in the recreational fishery is relatively low (15–40 percent); therefore, a greater proportion of the fish discarded by recreational fishermen survive. Thus, reductions in the recreational minimum size limit were not adopted in this rule. The Council is currently considering a reduction in the recreational size limit and other strategies to reduce bycatch in the recreational red snapper fishery while developing long-term measures to end overfishing of red snapper in compliance with the red snapper rebuilding plan and Magnuson-Stevens Act.

Differences in minimum size limits may potentially result in user conflicts. Recreational fishermen have expressed concern commercial fishermen could reduce the number of fish available to anglers at known fishing areas. However, the interim measures in this rule are designed to reduce overfishing for the 2007 season. If the Council determines the difference in the commercial and recreational minimum size limit results in a conflict between the sectors, then the Council could explore alternatives, such as restrictions on depth fished, to minimize or eliminate that conflict. With respect to measures in this final rule not being fair and equitable between the recreational and commercial sectors, percent reductions in quota are equivalent. However, because the fisheries are prosecuted differently, alternative measures are needed to constrain harvest to each fishery's respective quota.

For the commercial fishery, data used to assess the potential discard reductions was based on two studies. One was empirical sampling of 16 commercial vessels off Louisiana. The other used data from the 2005 stock assessment, which was Gulf-wide. The trends from both studies were similar, with the results from the empirical study showing a slightly higher discard rate than the Gulf-wide study. However, in describing discard rates of undersized fish, results from both studies provided a potential range in discard reductions relative to different minimum size limits.

More research is needed to evaluate discard mortality in both the commercial and recreational fisheries. Discussion in the SEDAR data workshop recognized the limitation of information on the fate of discarded red snapper. Rather than using direct estimates from the fishery, the SEDAR assessment panel chose to estimate recreational discards internally by the assessment model. Further, discard mortality research was identified in the SEDAR process as an important component for the next assessment.

With regards to reducing discard mortality in the commercial fishery by changing fishing practices, reductions in minimum size do not affect discard mortality rates once fish have been released. However, reducing the commercial minimum size limit does reduce the overall number of discards by the fishery because a greater number of fish, which would have been discarded under the current 15-inch (38-cm) size limit, will be retained under the 13-inch (33-cm) size limit and counted against the commercial

quota. If the Council determines further reductions in discard mortality may be achieved through changing fishing practices, the Council may evaluate alternatives in future actions.

*Comment 15:* Several comments indicated NMFS should include in the temporary rule requirements for gear that would decrease reef fish fishery bycatch and mortality such as circle hooks, larger hooks, less hooks, venting tools, and de-hookers. Two respondents suggested mandatory classes should be taught to charter vessel captains and crew on how to properly de-hook, vent, and release fish to reduce bycatch mortality.

*Response:* The rule addresses bycatch of red snapper to the extent practicable given the temporary duration of this final rule. NMFS evaluated alternative gear restrictions that could achieve additional bycatch reduction in the directed red snapper fisheries, but determined it is not practicable to implement, on an interim basis, measures that would require fishermen to invest in new gear or equipment, such as circle hooks and de-hooking devices. If such measures are adopted as part of the Council's longer-term strategy for ending overfishing, then NMFS will consider alternative strategies for educating fishermen about how to comply with these requirements, including public workshops.

*Comment 16:* Two comments questioned economic analyses of the charter fishery in the EIS for the temporary rule. Specifically, these responders asked why there exists a wide variance of economic conditions between west Florida and other Gulf states (in particular Alabama), and why the analyses examine excess capacity when in all likelihood the fishery will never reach overcapacity.

*Response:* There are several market characteristics that separate the charter fisheries in these two states. On average, Florida vessels are smaller, have smaller horsepower, have lower maximum passenger capacity, and take fewer passengers per trip than Alabama vessels. Additionally, increased competition created by the larger number of vessels in Florida may reduce profits. Because of the size and location of Alabama, in the event of closure of Federal waters off Alabama, anglers can easily relocate their fishing to another location (e.g., Florida or Mississippi). Relocation from Florida, however, would be much more costly for the average angler, other than those fishing from the Florida Panhandle near Alabama, because of the extensive coastline and distance required to fish an alternative site. Additionally, the

wider variety of species available to a Florida angler would be expected to make fishing in Florida more attractive than fishing in Alabama.

The fact that bag limit reductions and seasonal restrictions are necessary to constrain the recreational sector to allowable harvest levels demonstrates that the recreational sector has the capacity to harvest more than the target threshold for this fishery.

*Comment 17:* Many comments specified shrimp trawl bycatch must be minimized by 50 to 80 percent to allow red snapper stocks to recover.

*Response:* This final rule will establish a target reduction goal for shrimp trawl bycatch mortality on red snapper that is 50 percent less than the benchmark years of 2001–2003. This target reflects the level of effort documented in 2005 in areas where red snapper are abundant in the western Gulf, compared to the level of effort during the benchmark years. It does not meet the 74–percent target mortality reduction level necessary to rebuild the red snapper stock to a spawning potential ratio of 26 percent. However, preliminary information for 2006 suggests shrimp trawl effort has continued to decline in offshore waters of the western Gulf. Therefore, similar to the directed red snapper fishery, shrimp trawl effort for 2006 and 2007 is likely to be less than the level of effort documented during 2005 in areas where red snapper are commonly taken. Additional bycatch mortality reduction is expected from the introduction of new bycatch reduction devices (BRDs) under a pending revision to the certification criterion for BRDs. In combination, NMFS estimates red snapper bycatch mortality attributable to the shrimp fishery over the next few years may closely approximate the needed percent reductions in shrimp bycatch mortality from the benchmark years of 2001–2003.

*Comment 18:* Several comments indicated that seasonal and area closures should be established for shrimp trawls to reduce juvenile red snapper bycatch in the shrimp fishery, particularly in the 10–30 fathom depth range. Several commenters desired the establishment of a red snapper conservation zone consisting of waters at 10–30 fathoms west of Cape San Blas, Florida, in which effort in the shrimp fishery would be capped at an appropriate level to reduce red snapper bycatch.

*Response:* In addressing long-term management strategies to control shrimp trawl bycatch mortality of red snapper, the Council may choose seasonal or area closures in Amendment 14/27.

However, the reduction target in the temporary rule discussed above will provide NMFS with interim means to immediately address shrimp trawl bycatch in 2007. NMFS intends to provide the Council with 2006 shrimp trawl effort information in 2007. If shrimp effort for 2006 is above the target, the Council could take further action in 2007, if necessary, to maintain the proposed reductions in shrimp effort in areas of the western Gulf where red snapper are most abundant.

The EIS for this temporary rule evaluated a number of seasonal closure alternatives designed to reduce red snapper bycatch in the shrimp trawl fishery, but shrimp effort levels are such that they are unlikely to exceed the target reduction goal for 2007 set in this temporary rule. Therefore, they were not considered practicable for the temporary rule. The Council is currently evaluating the potential benefits of additional alternatives in Shrimp Amendment 15 that would establish seasonal or fixed closures in areas identified through a review of recent literature and ongoing research programs. Three of these areas are located off the coast of Texas, one is located south of Mobile, and one is located west of the Mississippi Delta.

*Comment 19:* One comment suggested long-term measures to restrict shrimp bycatch should not be considered in the temporary rule, and long-term measures incorporating recommendations of the Council's Ad Hoc Shrimp Effort Advisory Panel should be followed and implemented through Joint Amendments 14/27 and 15/31.

*Response:* Long-term measures to manage shrimp fishing effort in relation to the target red snapper bycatch mortality reduction goal are needed. For 2007, anticipated declines in effort from external factors are expected to meet or exceed the 50–percent reduction target level. However, should effort increase and exceed the 50–percent threshold, NMFS can implement, through future action, time or area closures or both. In developing Amendment 14/27, the Council will evaluate long-term measures to restrict shrimp bycatch. The Council will take into consideration recommendations of the Council's Ad Hoc Shrimp Effort Advisory Panel.

*Comment 20:* Several comments were received that were beyond the scope of the temporary rule, and, therefore, NMFS did not provide responses. However, NMFS will consider these comments, as appropriate, in evaluating the need for future rulemaking. The purpose of this temporary rule is to reduce overfishing of the red snapper stock on a temporary basis, for the 2007 fishing season, while the Council

develops a strategy to end overfishing of the stock in compliance with the red snapper rebuilding plan and the Magnuson-Stevens Act. Comments outside the scope of the rule included the following suggestions for longer-term fisheries management: (1) create a voluntary buyout program to reduce overcapitalization in the commercial red snapper fishery; (2) increase enforcement in the commercial and recreational red snapper fisheries; (3) redistribute IFQ shares among commercial and recreational red snapper fishermen; (4) change fishing practices in the IFQ program; (5) create a buyout program for the shrimp fleet; (6) implement a moratorium on shrimp permits; and (7) close large areas of the Gulf to shrimp fishing.

### Recent Court Ruling

On March 12, 2007, the United States District Court for the Southern District of Texas, Houston Division, issued a ruling on legal challenges to the current red snapper rebuilding plan contained in Amendment 22 to the FMP for the Reef Fish Resources of the Gulf of Mexico (*Coastal Conservation Association v. Gutierrez et al.*, Case No. H–05–1214, consolidated with *Gulf Restoration Network et al., v. Gutierrez et al.*, Case No. H–05–2998). The Court required a new rebuilding plan within the next 9 months. However, the Court also ordered that status quo, i.e., implementation of Amendment 22, be maintained during the pendency of the remand. Amendment 22 explicitly stated that additional measures would likely be necessary to end overfishing of red snapper consistent with the then upcoming stock assessment. This rule implementing interim measures necessary to reduce overfishing as provided under section 305(c) of the Magnuson-Stevens Act would reduce overfishing for 2007 and increase the likelihood of achieving Amendment 22's target for ending overfishing.

### Future Action

NMFS finds that this temporary rule is necessary to reduce overfishing of red snapper in the Gulf of Mexico. NMFS issues this temporary rule, effective for not more than 180 days, as authorized by section 305(c) of the Magnuson-Stevens Act. This temporary rule may be extended for an additional 186 days, as authorized by section 305(c) of the Magnuson-Stevens Reauthorization Act, provided the public has had an opportunity to comment on the rule and provided that the Council is actively preparing proposed regulations to address overfishing of Gulf red snapper on a permanent basis. Public comments

requested on the proposed temporary rule (71 FR 75220) will be considered in determining whether to maintain or extend this rule to address overfishing of red snapper. The Council is preparing an amendment to address, on a permanent basis, red snapper overfishing issues that are the subject of this rule.

#### Classification

The Administrator, Southeast Region, NMFS, (RA) has determined that the interim measures this final rule will implement are necessary for the conservation and management of the Gulf red snapper fishery. The RA has also determined that this rule is consistent with the national standards of the Magnuson-Stevens Act and other applicable laws.

This final rule has been determined to be significant for purposes of Executive Order 12866.

NMFS prepared an FEIS for this action. The FEIS was filed with the Environmental Protection Agency on December 22, 2006. A notice of availability was published on December 29, 2006 (71 FR 78427). NMFS issued a ROD on March 5, 2007. A copy of the ROD is available from NMFS (see **ADDRESSES**).

NMFS prepared a FRFA, as required by section 604 of the Regulatory Flexibility Act, for this final rule. The FRFA describes the economic impact this final rule is expected to have on small entities and incorporates the IRFA, comments received on the IRFA and the economic impact of the rule, and NMFS' responses to those comments. A succinct statement of the need for and objectives of the action are contained in the SUMMARY section of the preamble. A copy of the full analysis is available from NMFS (see **ADDRESSES**). A summary of the FRFA follows.

This final rule will reduce total allowable catch (TAC) and the resultant commercial and recreational quotas in the red snapper fishery, lower the recreational red snapper bag limit to 2 fish, lower the red snapper bag limit for captain and crew of a vessel operating as a charter vessel or headboat to 0 fish, reduce the red snapper minimum size limit in the commercial fishery to 13 inches (33 cm), and establish a reduction goal for red snapper bycatch mortality in the commercial shrimp fishery. The purpose of this action is to reduce overfishing of the red snapper stock on a temporary basis, for the 2007 fishing season, while the Council develops a comprehensive plan to reduce directed and incidental red snapper fishing mortality rates in the

red snapper and shrimp fisheries. The Magnuson-Stevens Act provides the statutory basis for the final temporary rule.

Several comments on the economic impact of the rule were received from the public in response to the proposed rule. For the reasons described in the responses to these comments above, no changes were made in the final rule as a result of these comments. These comments raised issues regarding the economic impacts of the proposed TAC reduction on the charter fishermen and businesses dependent on offshore fishing. Best available survey and modeling results indicate that relatively few trip cancellations are expected to occur as a result of this action. Most survey respondents indicated that when faced with a reduced red snapper bag limit, they would either continue fishing for red snapper or fish for another species. Fishing for other species may generate distributional effects (i.e., the trips may occur from different ports, modes, or seasons, resulting in one port/entity/season losing business while another gains). These distributional effects, however, cannot be predicted with current data.

This final rule is expected to impact red snapper commercial fishers and for-hire operators, and reef fish dealers and processors participating in the red snapper trade. This final rule also contains actions that apply to the commercial shrimp fishery. However, the shrimp fishery actions either maintain the status quo or otherwise accommodate current fishery conditions, such that no direct impacts are expected to accrue at this time. Nevertheless, a description of the entities in the shrimp fishery is included in the following discussion.

The Small Business Administration (SBA) has established size criteria for all major industry sectors in the U.S. including fish harvesters, for-hire operations, fish processors, and fish dealers. A business involved in fish harvesting is classified as a small business if it is independently owned and operated, is not dominant in its field of operation (including its affiliates), and has combined average annual receipts not in excess of \$4.0 million (NAICS code 114111, finfish fishing) for all affiliated operations worldwide. For for-hire operations, the other qualifiers apply and the annual receipts threshold is \$6.5 million (NAICS code 713990, recreational industries). For seafood processor and dealers, rather than a receipts threshold, the SBA uses an employee threshold of 500 or fewer persons on a full-time, part-time, temporary, or other basis, at

all affiliated operations for a seafood processor and 100 or fewer persons for a seafood dealer.

Just prior to the implementation of the red snapper individual fishing quota (IFQ) program on January 1, 2007, 136 entities held Class 1 licenses that allowed a commercial vessel trip limit of up to 2,000 lb (907 kg) of red snapper and 628 entities held Class 2 licenses that allowed a trip limit of up to 200 lb (91 kg) of red snapper. Between 2002 and 2004, the top 50 red snapper vessels harvested a total of 2.77 million lb (1.26 million kg) of red snapper, on average, or 64 percent of the industry total. Vessels ranked 51 to 131 harvested 1.29 million lb (0.58 million kg), on average, or 30 percent of the industry total for the same period. In total, the top 131 vessels accounted for approximately 94 percent of the total red snapper commercial landings. Red snapper are mainly harvested by vertical line fishermen, who accounted for approximately 90 percent of commercial red snapper Gulf harvests, on average, between 2002 and 2004.

Reported average annual gross receipts (2004 dollars) of commercial reef fish vessels in the Gulf range from \$24,095 for low-volume vertical line vessels to \$116,989 for high-volume longline vessels. Annual net incomes range from \$4,479 for low-volume vertical line vessels to \$28,466 for high-volume vertical line vessels. Some fleet activity is known to exist in the commercial red snapper fishery, but the extent of such activity is unknown. The maximum number of reef fish permits reported owned by the same person/entity is six permits. Additional permits (and the revenues associated with those permits) may be linked to an entity through affiliation rules, but such affiliation links cannot be made using existing data. A definitive determination of whether any commercial entities would be considered large entities cannot be made using average income information. However, based on the size and value of the commercial red snapper fishery (an average of 4.336 million lb (1.967 million kg) and \$11.652 million ex-vessel revenue per year, 2002–2004), the number of participants in the fishery, the summary statistics provided above, and the maximum number of permits owned by a single entity, NMFS determined, for the purpose of this assessment, that all commercial reef fish harvest entities that would be affected by this final rule are small entities.

Currently, 1,625 vessels are estimated to possess the required Federal permit to operate in the Gulf reef fish for-hire fishery. Fleet behavior also exists in this



sector, with at least one entity reported to hold 12 permits. The bulk of the fishery, however, consists of single-permit operations.

The for-hire fleet is comprised of charterboats, which charge a fee on a vessel basis, and headboats, which charge a fee on an individual angler (head) basis. The average charterboat is estimated to generate \$76,960 in annual revenues and \$36,758 in annual profits, whereas the appropriate values for the average headboat are \$404,172 and \$338,209, respectively. The calculation of profits does not include fixed and other non-operating expenses, which tend to be higher for headboats.

Based on the average revenue figures, it is determined, for the purpose of this assessment, that all for-hire operations that will be affected by this final rule are small entities.

The measures in this final rule are also expected to affect fish dealers that handle red snapper. Two hundred and twenty-seven dealers currently have the required Federal permit to buy and sell commercial reef fish species. All processors would be included in this total since all processors must be dealers. From 1997–2002, an average of 154 dealers purchased red snapper from commercial vessels. Average employment information per reef fish dealer is unknown. Although dealers and processors are not synonymous entities, reported total employment for reef fish processors in the Southeast is estimated to be approximately 700 individuals, both part and full time. While all processors must be dealers, a dealer need not be a processor. Further, processing is a much more labor-intensive exercise than dealing. Therefore, given the total employment estimate for the processing sector (700 persons), the total number of dealers recently operating in the red snapper fishery (154), and the total number of permitted reef fish dealers, NMFS concludes that the average number of employees per dealer and the average number of employees per processor would be unlikely to surpass the SBA employment benchmark and, for the purpose of this analysis, NMFS determined that all red snapper dealers and processors that will be affected by this final rule are small entities.

Beginning on March 26, 2007, a moratorium permit will be required to shrimp in Federal waters of the Gulf. Although it is unknown how many eligible applicants will apply for a moratorium permit, 2,666 vessels could qualify for the shrimp permit and are assumed to constitute the potential affected universe of shrimp vessels. The average annual gross revenue (from all

fishing activity) per qualifying vessel in 2005 was approximately \$116,000, while the comparable figure for active qualifying vessels (vessels with recorded shrimp harvests) is approximately \$152,000. In the same year, the maximum annual gross revenue from shrimp by a vessel was approximately \$757,000 for both all qualifying and active qualifying vessels, whereas the maximum annual gross revenue from all harvest activities was approximately \$1.89 million by an inactive qualifier and \$757,000 for an active qualifier. This indicates that the inactive qualifier found activity in other fisheries more lucrative than participation in the shrimp fishery, whereas the most active qualifier operated exclusively in the shrimp fishery. Fleet activity is also known to exist in the commercial shrimp fishery, but the magnitude of such activity cannot be determined with available data. Given these findings, for the purpose of this analysis, NMFS determined that all Gulf shrimp vessels are small entities.

In 2005, 609 dealers were identified operating in the commercial shrimp fishery. Employment information for this sector is not available. In 2004, 61 shrimp processors were identified, employing approximately 3,700 persons, or an average of 61 employees per entity. Similar to the finfish sector, shrimp processing is more labor intensive than dealing, so average employment in the shrimp dealer sector is assumed to be less than that in the processing sector. Since the average employment per entity does not exceed the SBA threshold, NMFS determined, for this analysis, that all Gulf shrimp dealers and processors are small entities.

This final rule does not change current reporting, recordkeeping, or other compliance requirements under either the Reef Fish or Shrimp FMPs. Preexisting requirements include qualification criteria for vessel permits and participation in data collection programs if selected by NMFS. 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 that fishery participants do not already possess.

This final rule is expected to affect all vessels that operate in the commercial Gulf red snapper fishery, all vessels that have a Federal reef fish for-hire permit, and all reef fish dealers and processors. All such entities have been determined,

for the purpose of this analysis, to be small entities. Therefore, NMFS determined that the final rule will affect a substantial number of small entities.

Commercial red snapper fishing vessels, for-hire operations, and red snapper dealers are expected to bear the primary burden of the actions in the final rule that pertain to red snapper, though spill-over impacts would be expected in associated industries, such as marinas and fishery suppliers. The net result of the combined TAC reduction and commercial minimum size limit decrease for the commercial red snapper fishery is expected to be an approximate 28-percent decline in net revenues, or approximately \$7.0 million. Although over 750 entities were recently permitted to operate in the commercial red snapper fishery, 131 vessels accounted for approximately 94 percent of the red snapper harvests from 2002–2005, which had an average ex-vessel value of approximately \$11.18 million out of total average annual ex-vessel revenues for all fishing activity by these entities of approximately \$17.34 million. Since most commercial red snapper fishing entities operate in multiple fisheries, the projected \$7.0 million reduction in net revenues captures lost revenue for all species.

During 2002–2005, the top 50 harvesters in the commercial red snapper fishery averaged approximately \$144,000 in ex-vessel revenue per year out of total finfish revenues of approximately \$211,000, indicating approximately 68 percent of the total revenues came from red snapper. The second tier vessels averaged approximately \$40,000 in red snapper revenues and approximately \$84,000 total revenues, or 48 percent of total revenues coming from red snapper. Combined, the top 131 vessels averaged approximately \$80,000 per year from red snapper, \$132,000 total revenues, and 60 percent of total revenues coming from red snapper. The remaining vessels that landed red snapper accounted for only approximately \$700 per vessel per year from red snapper, out of total average revenues of \$14,000, or approximately 5 percent from red snapper. Red snapper is most likely not the primary species this third-tier group is targeting for harvest.

The TAC reduction is expected to primarily impact operations that target red snapper rather than those that incidentally harvest red snapper. If the entire quota reduction is assumed borne by the top 50 and 131 vessels, respectively, the reduction in net revenues would equate to approximately \$140,000 and \$53,000 per vessel for the two groups,



respectively. Relating these figures to the averages provided in the previous paragraph is difficult because the annual averages represent gross ex-vessel values, whereas the losses represent net values, and the expected losses incorporate an expected increase of approximately \$1.14 in the price per pound of red snapper expected to develop as a result of the IFQ program. This price increase equates to a 47.5-percent increase in the average price per pound over 2002–2005 (\$11.18 million per year/4.66 million lb (2.11 million kg) = \$2.40 per pound; \$1.14/\$2.40 = 47.5 percent). If the annual average red snapper revenues presented above are inflated by this 47.5-percent factor, the resultant values per vessel are \$212,400 in red snapper revenues and \$279,400 total revenues for the top 50 vessels, and \$118,000 and \$170,000 in red snapper and total revenues, respectively, for the top 131 vessels. Because the projected losses include all species harvested, the projected losses (\$140,000 and \$53,000) equate to approximately 50 percent of total revenues (\$140,000/\$279,400) for the top 50 vessels and approximately 31 percent of total revenues (\$53,000/\$170,000) for the top 131 vessels.

An alternative perspective is to consider the number of vessels projected to operate under the IFQ program. Under the IFQ program, the commercial red snapper fleet is expected to consolidate to 39–95 vessels, the range determined by whether the fleet gravitates to exclusively larger vessels (39 65-ft (19.8-m) vessels) or small vessels (95 35-ft (10.7-m) vessels). The period of time required to achieve this consolidation is not known, but TAC reduction may accelerate the consolidation. It is noted that any IFQ-related consolidation is voluntary, vessels are compensated for their exit (through sale of their quota shares), and exiting vessels may continue to operate in other fisheries. Under this final rule (i.e., during the 2007 season), the commercial red snapper fleet is projected to consolidate to 28–68 vessels, or 11–27 fewer vessels than the status quo (IFQ final rule), with the range again determined by whether the resultant fleet is primarily large vessels (28 vessels), or small vessels (68 vessels). Average performance of the fleet under the status quo (IFQ final rule) (39–95 vessels) is estimated at approximately \$274,000 (\$26.0 million over 95 vessels, revenues from all fishing activity) to \$667,000 (\$26.0 million over 39 vessels) in net revenues. The projected loss of \$7.0 million in net revenues under the TAC reduction is

expected to reduce these values to approximately \$200,000 and \$487,000, respectively, or reductions of 27 percent.

The for-hire sector is expected to lose approximately 2,000 trips in the charter vessel sector, 643 angler days in the headboat sector, and \$43,000 overall for the entire for-hire sector in producer surplus as a result of the final temporary rule. These reductions are not expected to occur uniformly across all operations because some vessels are more active in the red snapper fishery than others. The extent of individual vessel activity, however, cannot be determined with available data. If averaged over the 1,625 vessels active in the for-hire fleet, these reductions amount to fewer than 2 trips and less than \$30 per permitted vessel.

Related businesses are also expected to lose income from the expenditures associated with the trip losses in the for-hire and private angler sectors as a result of this final rule. These trips, however, represent less than 1 percent of the total effort directed at the species encompassed in the assessment (red snapper as the focus species, and grouper, dolphin, and king mackerel as potential substitute target species).

The target bycatch reduction goal for the commercial shrimp fishery is administrative in nature and is not expected to have a direct economic impact on any entities in the shrimp fishery or associated sectors.

Five alternatives, including the preferred alternative and the status quo, were considered for the action to set TAC in the red snapper fishery. Three of the alternatives contained multiple options and sub-options to manage the recreational fishery under the respective TAC. The first alternative, the status quo, would not have achieved progress towards eliminating overfishing, and would increase the necessary reduction in subsequent years to allow the resource to continue on the designated recovery path, thereby increasing the subsequent year short-term adverse economic impacts relative to the final temporary rule, and would not meet NMFS objectives.

The second alternative would have reduced the red snapper TAC to 7.0 million lb (3.2 million kg). Although this alternative has the potential of generating, depending upon the sub-option selected, lower first-year adverse economic impacts than the 6.5 million lb (3.0 million kg) TAC, this TAC would require greater TAC reduction in subsequent years, with greater adverse economic impacts in subsequent years than the final temporary rule.

The third alternative would have reduced the red snapper TAC to 6.0

million lb (2.7 million kg). This alternative would be expected to result in greater short-term adverse economic impacts, ranging from losses in economic value (consumer and producer surplus) in the overall recreational sector of approximately \$16.0 million to \$27.0 million and a loss of approximately \$8.5 million in net revenues in the commercial sector, than the final temporary rule, which is expected to result in a reduction of consumer and producer surplus of approximately \$15.0 million in the recreational sector and a reduction in net revenues of \$7.0 million in the commercial sector.

The fourth alternative would have reduced the red snapper TAC to 5.0 million lb (2.3 million kg). This alternative would be expected to result in greater short-term adverse economic impacts, ranging from losses in economic value in the recreational sector of approximately \$23.0 million to \$25.0 million and a loss of approximately \$11.5 million in net revenues in the commercial sector, than the final temporary rule.

Two alternatives, the preferred alternative and the status quo, were considered for the action to set the captain and crew red snapper bag limit. The status quo would be expected to decrease the ability of meeting harvest reduction targets and would have required more restrictive measures on recreational anglers, resulting in increased adverse economic impacts relative to the final rule.

Three alternatives, including the preferred alternative and the status quo, were considered for the commercial red snapper minimum size limit. The first alternative, the status quo alternative, would be expected to result in continued unnecessary bycatch mortality and would not, therefore, meet NMFS objectives.

The second alternative would eliminate the commercial minimum size limit entirely. Because no commercial market is known to exist for red snapper smaller than 12 inches (30 cm), the expected economic impacts of this alternative and the final rule are very similar. However, maintaining a minimum size limit in the commercial sector, as will be accomplished by the final rule, is expected to generate unquantifiable economic benefits accruing to a perception of greater sector equity and avoidance of user conflict because the final temporary rule will decrease the incentive, relative to no minimum size limit, for commercial operations to move their fishing location to areas where smaller fish congregate.

Four alternatives were considered for gear requirements in the red snapper fishery. The final rule (status quo) will not impose any new gear requirements on fishermen and will not result in any direct adverse economic impacts on these entities. Each of the three alternatives to the final temporary rule would be expected to result in greater adverse economic impacts than the final temporary rule as a result of either increased gear costs or reduced operating efficiency. Given the short-term nature of the final temporary rule, these adverse impacts would not be expected to be balanced by the economic benefits of reduced bycatch mortality and improved stock conditions. Thus, each alternative would be expected to increase costs in the fishery without demonstrable benefits and, thus, would not meet NMFS objectives.

Three alternatives, including the preferred alternative and the status quo, were considered for the red snapper bycatch mortality reduction target in the commercial shrimp fishery. The status quo would not have established a bycatch reduction target, would not ensure consistent reductions in bycatch fishing mortality of juvenile red snapper in the shrimp fishery, and would not meet NMFS objectives. The second alternative would establish a higher reduction target than the final rule. Although the establishment of a bycatch reduction target is an administrative action with no expected direct adverse economic effects, the higher target exceeds the level of bycatch reduction the fishery has demonstrated to date and would, therefore, be expected to require effort reductions in the commercial shrimp fishery, resulting in greater adverse economic impacts than the final rule.

Four alternatives were considered for effort reduction in the commercial shrimp fishery. The final rule (status quo) will not impose any effort controls on the fishery and will not result in any adverse economic impacts on the shrimp fishery or associated businesses. Each of the other alternatives would have imposed effort limitations in the shrimp fishery and would, therefore, be expected to result in greater adverse economic impacts than the final rule, ranging from \$7.8 million to \$14.8 million reductions in ex-vessel revenues, fishery-wide, and adversely impact 394–863 vessels. Although some behavioral changes would be expected by these vessels to mitigate these losses, the nature of these changes and their net impact cannot be determined.

Copies of the FRFA are available from NMFS (see ADDRESSES).

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 an 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 and permitted dealers in the Gulf red snapper and shrimp fisheries.

Pursuant to 5 U.S.C. 553(d), there is good cause to waive the 30-day delay in effective date for reducing the commercial minimum size limit from 15 inches (38 cm) to 13 inches (33 cm). Reducing the minimum size limit for commercial Gulf red snapper will result in additional legal-sized fish being available to fishers and will help minimize bycatch and bycatch mortality as required by national standard nine of the Magnuson-Stevens Act. The current 15-inch (38 cm) minimum size limit results in unnecessarily high levels of red snapper bycatch mortality because most undersized fish are discarded dead. To end overfishing as soon as possible, bycatch and bycatch mortality of undersized red snapper must be curtailed. Prolonging overfishing of the red snapper resource would lead to more severe harvest reductions and associated short-term adverse socioeconomic impacts in the future. For all of these reasons, the 30-day delay of effective date for this measure is waived.

List of Subjects in 50 CFR Part 622

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

Dated: March 28, 2007.

Samuel D. Rauch III

Deputy Assistant Administrator for Regulatory Programs, 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 § 622.37, paragraph (d)(1)(iv) is suspended and paragraph (d)(1)(vi) is added to read as follows:

§ 622.37 Size limits.

\* \* \* \* \*

(d) \* \* \*

(1) \* \* \*

(vi) Red snapper—16 inches (40.6 cm), TL, for a fish taken by a person subject to the bag limit specified in § 622.39(b)(1)(iii) and 13 inches (38.1 cm), TL, for a fish taken by a person not subject to the bag limit.

\* \* \* \* \*

3. In § 622.39, paragraphs (b)(1)(iii) and (b)(1)(v) are suspended and paragraphs (b)(1)(viii) and (b)(1)(ix) are added to read as follows:

§ 622.39 Bag and possession limits.

\* \* \* \* \*

(b) \* \* \*

(1) \* \* \*

(viii) Red snapper—2. However, no red snapper may be retained by the captain or crew of a vessel operating as a charter vessel or headboat. The bag limit for such captain and crew is zero.

(ix) Gulf reef fish, combined, excluding those specified in paragraphs (b)(1)(i), (ii), (iv), (vi), (vii), and (viii) of this section and excluding dwarf sand perch and sand perch—20, but not to exceed 10 vermilion snapper.

\* \* \* \* \*

4. In § 622.42, paragraphs (a)(1)(i) and (a)(2) are suspended and paragraphs (a)(1)(v) and (a)(3) are added to read as follows:

§ 622.42 Quotas.

\* \* \* \* \*

(a) \* \* \*

(1) \* \* \*

(v) Red snapper—3.315 million lb (1.504 million kg), round weight.

\* \* \* \* \*

(3) Recreational quota for red snapper. The following quota applies to persons who harvest red snapper other than under commercial vessel permits for Gulf reef fish and the commercial quota specified in paragraph (a)(1)(v) of this section—3.185 million lb (1.445 million kg), round weight.

\* \* \* \* \*

[FR Doc. 07–1605 Filed 3–28–07; 1:43 pm]

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