50 CFR part 641

[Docket No. 90926-9226]

RIN 0648-AC16

Reef Fish Fishery of the Gulf of Mexico

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Proposed rule.

SUMMARY: NOAA issues this proposed rule to implement Amendment 1 to the Fishery Management Plant for the Reef Fish Resources of the Gulf of Mexico (FMP). This proposed rule would: (1) Require a permit for vessels harvesting reef fish for sale; (2) establish a 50 percent earned income criterion to qualify for a permit; (3) provide for the charging of fees to cover the administrative costs of issuing permits and trap tags; (4) require reporting by operators of charter vessels; (5) require permitted vessels to display identification numbers; (6) eliminate exemptions to the size limit for red snapper; (7) establish size limits for other major species; (8) prohibit sale of fish smaller than the size limits; (9) extend present boundary of the stressed area where certain gear is prohibited to include all waters off Texas out to the 30 fathom isobath and all waters off Louisiana out to the 10 fathom isobath; (10) prohibit use of longline and buoy gear for taking reef fish inside of 50 fathoms to the west and inside of 20 fathoms to the east of Cape San Blas, Florida; (11) establish bag limits for certain snappers, groupers, and amberjack; (12) provide for the possession of two days' bag limits for charter vessels and headboats on trips in excess of 24 hours; (13) restrict vessels with trawl or entangling net gear aboard to the bag limits; (14) establish annual commercial quotas for red snapper and deep- and shallow-water groupers; (15) prohibit fishing for and sale of reef fish when an annual quota for that species is reached; (16) reduce the number of traps that may be fished by a vessel; (17) make other technical changes to facilitate compliance; (18) establish a procedure for setting total allowable catch (TAC) and adjusting management measures annually; and (19) establish as long-term optimum yield (OY) the restoration of stocks to a 20 percent spawning stock biomass per recruit ratio (SSBR) level by the year 2000.

DATE: Written comments must be received on or before November 26, 1989.

ADDRESSES: Requests for copies of Amendment 1, which includes the draft regulatory impact review/regulatory flexibility analysis/environmental assessment (RIR/RFA/EA) should be sent to the Gulf of Mexico Fishery Management Council, 5401 West Kennedy Boulevard, Suite 881, Tampa, FL 33609.

Comments on the proposed rule should be sent to William R. Turner, Southeast Region, National Marine Fisheries Service, 9450 Koger Boulevard, St. Petersburg, FL 33702.

Comments on the information collection requirements that would be imposed by this rule should be sent to the Office of Information and Regulatory Affairs of the Office of Management and Budget, Washington, DC 20503, attention: Paperwork Reduction Act Project 0648-XXXX.

FOR FURTHER INFORMATION CONTACT: William R. Turner, 813-893-3722.

SUPPLEMENTARY INFORMATION: The reef fish fishery of the Gulf of Mexico is managed under the FMP prepared by the Gulf of Mexico Fishery Management Council (Council), and its implementing regulations at 50 CFR part 641, under the authority of the Magnuson Fishery Conservation and Management Act (Magnuson Act).

Amendment 1 is a major revision of the FMP which, to the extent allowed by available data, addresses snappers, groupers, and other reef fish on a species basis. This change from the FMP's approach of addressing snappers and groupers as a single mixed species complex was made possible by an expanded reef fish data collection effort by NMFS and the states in recent years. Stock assessment analyses based on these data indicate red snapper are severely overfished and other species require reductions in fishing mortality to assure that the spawning stock biomass is maintained at a level adequate to prevent reductions in recruitment to those species or stocks. As a consequence of these analyses, Amendment 1 and these proposed implementing regulations would reduce fishing mortality largely by imposing measures such as bag limits, quotas, size limits, and gear restrictions. They also provide a procedure for setting TAC annually based on stock assessments and for adjusting the measures imposed to achieve TAC.

Three minority reports object to (1) the prohibition of the retention and sale of undersized fish in certain instances; (2) the bag limits being applied to shrimp vessels; (3) the geographical extension of stressed areas; (4) the maximum number of persons aboard charter and headboats to fish commercially; (5) the commercial quota on groupers; (6) the prohibition of entangling nets; or (7) the 20-inch minimum size limit for red grouper. A notice of availability summarizing Amendment 1 and the minority reports was published in the **Federal Register** on August 29, 1989 (54 FR 35707).

Background

In 1984, NMFS implemented, cooperatively with the States, a Trip Interview Program (TIP) which collected length-frequency and other biological and statistical information on landings of reef fish by species. Collection of landings data for groupers by species instead of by family was also initiated. These data sets along with similar information collected under the Marine Recreational Fishery Statistics Survey (MRFSS), initiated in 1979 and available by 1984, surveys of Gulf charter and headboat fisheries, and fishery independent information from the Southeast Area Monitoring and Assessment Program provided a data base that allowed stock assessments to be undertaken for major reef fish species.

The stock assessments for red snapper and other species were initiated by the Southeast Fisheries Center (SEFC) of NMFS in 1986 and were completed by SEFC and the Council in 1988. The stock assessments for red snapper concluded that the fishery was being subjected to recruitment overfishing and that the SSBR was likely no greater than 4.8 percent of the unfished level. This analysis and those for the dominant groupers indicated that to restore the spawning stocks to a 20 percent SSBR level, reductions in fishing mortality on the order of 60 to 70 percent would be necessary over the long-term (i.e., until the year 2000) for red snapper and on the order of 20 percent over the short-term for the groupers. Size limits, bag limits, and other reductions in harvest levels necessary to restore each species or species group to the 20 percent SSBR (i.e., the Council's goal for long-term OY from the fishery) and the supporting analyses are set forth in Amendment 1.

Problems in the Fishery

Problems affecting the fishery that resulted in the development of Amendment 1 by the Council are as follows:

1. The adult population of red snapper has declined since 1979, and this decline may be greater in the western Gulf. The current snapper fishery is supported primarily by younger fish, ages one to three;

2. Habitat loss is negatively affecting reef fish stocks in the Gulf of Mexico;

3. Longline gear has been introduced in the fishery since the FMP was written; this gear needs to be recognized as a segment of the fishery. If longlines are used in areas where other gear have been used traditionally, an increase in the level of mortality and conflicts among user groups may result;

4. The geographic extent of and limitation on fishing effort within the stressed area require modification to address fishing mortality and user conflicts under current and potential use patterns;

5. Some reef fish species are growth and recruitment overfished;

6. Management measures specified in the FMP to establish a data base for management have not been implemented successfully. Statistical data for many species have been aggregated into genus or family groups which has made it impossible to assess the condition of specific stocks adequately. Biological profile data are needed throughout the Gulf of Mexico on a continuing basis; the present system of opportunistic dockside sampling of the commercial catch is not providing a representative characterization;

7. A significant portion of the catch in the reef fish fishery consists of species not included in the fishery management unit;

8. Present definition of OY for the reef fish fishery is an overestimate and does not provide adequate protection for the resource due to different vulnerabilities among reef fish species to overfishing;

9. Mortality of juvenile red snapper due to trawl bycatch reduces potential yield;

10. Fishing pressure has increased dramatically in the past decade due to increased number of vessels, greater use of sophisticated electronic equipment, and increased use of more efficient gear by all sectors of the fishery;

11. Definitive research is needed to determine whether artificial reefs contribute more to overfishing or to the rebuilding of the reef fish resource in the various Gulf of Mexico habitats;

12. The user groups utilizing and depending on the reef fish resources need to be identified and their socioeconomic and sociocultural characteristics delineated to enable analysis of their respective impacts on the resource and the differential impacts that alternative management measures may exert on the various user groups;

13. The stock boundaries of reef fish are unknown; and

14. Overfishing of the reef fish stocks is the result of directed and nondirected recreational and commercial fishing mortality.

Management Objectives

The management objectives of Amendment 1 are:

1. To stabilize long-term population levels of all reef fish species by establishing a certain survival rate of biomass into the stock at spawning age to achieve at least 20 percent SSBR (the primary objective);

2. To reduce user conflicts and nearshore fishing mortality;

3. To respecify the reporting requirements necessary to establish a data base for monitoring the reef fish fishery and evaluating management actions;

4. To revise the definitions of the fishery management unit and fishery to reflect the current species composition of the reef fish fishery;

5. To revise the definition of OY to allow specification at the species level;

6. To encourage research on the effects of artificial reefs; and

7. To maximize net economic benefits from the reef fish fishery.

Management Unit

Presently, snappers, groupers, and seabasses are managed under the FMP. Amendment 1 and the proposed implementing regulation would add the tilefishes, amberjacks, white grunt, red porgy, and gray triggerfish to the management unit. These species previously taken as incidental catch and frequently discarded are now being targeted in the fishery.

Optimum Yield

Amendment 1 and the proposed implementing regulations state OY as two components. The first is OY as a long-term goal, and the second is an annual specification of TAC for each species (stock) or species group (stock complex) that is designed to achieve the OY over time. The components are designed to bring the FMP into compliance with the provisions of 50 CFR part 602 in order to prevent overfishing or rebuild an overfished stock.

The statement of OY as a long-term goal contained in Amendment 1 is: "Optimum Yield is any harvest level for each species which maintains, or is expected to maintain, over time[,] a survival rate of biomass into the stock of spawning age to achieve at least a 20 percent Spawning Stock Biomass Per Recruit (SSBR) population level, relative to the SSBR that would occur with no fishing". The target date for achieving OY, as specified in the TAC procedure, is on or before January 1, 2000. The target date was selected in part to moderate the short-term impacts of the harvest restrictions required to achieve OY on users of the reef fish resources, particularly for red snapper. The procedure for specifying an annual TAC contains provisions that are designed to assure the goal will be met, provides safeguards to prevent irreversible overfishing, and will allow the rules to be modified annually based on the most recent information and analyses.

Definition of Overfishing

Overfishing is defined as:

1. A reef fish stock or stock complex is *overfished* when it is below the level of 20 percent of the [SSBR] that would occur in the absence of fishing.

2. When a reef fish stock or stock complex is overfished, *overfishing* is defined as harvesting at a rate that is not consistent with a program that has been established to rebuild the stock or stock complex to the 20 percent [SSBR] level.

e. When a reef fish stock or stock complex is not overfished, *overfishing* is defined as a harvesting rate that [,] if continued [,] would lead to a state of the stock or stock complex that would not at least allow a harvest of OY on a continuing basis.

The SSBR (reproductive potential) is determined by integrating or summing the multiple, for each age, or relative number of fish alive times the estimated fraction mature times the estimated weight of fish. The two models used to determine SSBR, both variants of yield per recruit models, are the Boverton-Holt continuous model and the Ricker discrete model. The total contribution of a cohort to the spawning stock biomass over its lifetime is found by summing the cohort's contribution at each age, which is then scaled to a per recruit basis to derive the theorethical SSBR measure. The SSBR measure can be used to evaluate alternative fishing mortality scenarios without knowing actual levels of recruitment or spawning stock. Maximum SSBR is obtained by setting fishing mortality to zero.

In the Council's opinion, these definitions satisfy the 50 CFR part 602 Guidelines in that they have sufficient scientific merit; are likely to result in effective Council action to prevent the stock from closely approaching or reaching an overfished status; provide a basis for objective measurement of the status of the stock against the definition; and are operationally feasible.

Procedure for Establishing an Annual TAC and Adjusting Management Measures (Procedure)

The Procedure provides for the Science and Research Director of SEC to prepare or update the stock assessment for each species (stock) or stock complex annually (i.e., prepare a Stock

Assessment and Fishery Evaluation (SAFE) Report) as provided for in 50 CFR part 602. The Council would be required to appoint a scientific stock assessment panel (Panel) to review the SAFE Report and other relevant information and prepare a report (Report) specifying a range of acceptance biological catch (ABC) for each stock or stock complex. The ABCs would be calculated so as to achieve reef fish population levels at or above the 20 percent SSBR goal by January 1, 2000. The Panel would be required to include in the Report to the Council a risk analysis of probabilities of each level of an ABC attaining OY, economic and social impacts of the levels, and recommendations for management measures to attain the ABC. The Council, after holding a public hearing(s) and reviewing comments of the Scientific and Statistical Committee (SSC) and of the Reef Fish Advisory Panel (AP) of the Report, would be required to specify a TAC from within or below the range of ABC or a series of TACs (some of which may be higher than the ABC) to attain the selected level of ABC in not less than three years. It was judged that such gradual approach to reduction of fishing mortality may be less disruptive to the fishery and have less adverse impact on users. The Procedure provides the safeguards to assure that irreversible overfishing does not occur, and that further adjustments to management measures will restore depleted stocks within a specified time frame and be based on progressively mroe precise and accurate information.

The Council would be required to subdivide the TACs into commercial and recreational allocations which maximize the net benefits of the fishing to the nation and are based on percentages harvested by each sector during the period of 1979–87. If the harvest in any year exceeds the TAC because either the recreational or commercial user group exceeds its allocation, subsequent allocations to the exceeding group will be adjusted to assure meeting the January 1, 2000, spawning stock biomass goal.

The Council would be required to provide to the NMFS Regional Director (RD) its recommendations for TACs for each species or species group, proposed regulations revising quotas and management measures necessary to attain each TAC, the Council's rationale, and analyses of impacts (EA and RIR) of the proposed regulations. A proposed rule containing the recommended TACs, quotas, and harvest restrictions will be published in the **Federal Register** for public comment. If the RD concludes after review of public comment that the proposed regulations are consistent with the FMP objectives and other applicable law, he will promulgate the regulations by final rule published in the **Federal Register** (see proposed § 641.27 for additional detail).

Permits and Reporting Requirements

Amendment 1 and the proposed implementing regulations require a permit in order to fish for reef fish in the exclusive economic zone (EEZ) under a commercial quota or to sell reef fish taken from the EEZ. To quality for permit, a person must derive more than 50 percent of his or her earned income from commercial or charter (for hire) fishing. Permits would have to be renewed annually and compliance with reporting requirements would be a condition for issuance, reissuance, or continuing validity of a permit.

The requirement that 50 percent of earned income be from commercial or charter fishing to qualify for a permit was proposed, in part, because of the severe restrictions on commercial harvest necessary to restore the principal species in the fishery. By including this requirement, recreational fishermen who previously sold their excess catch of reef fish would no longer be able to do so and would be excluded from participating under the commercial quotas for species for which quotas apply. Since there are likely several thousand of such persons, this reduces the impact of the harvest restrictions on full-time and many part-time commercial fishermen. Most retirement income is not considered earned income under this permit requirement.

The purpose of the permit requirements is to ensure allocations are distributed as set forth by the Council and to improve enforcement of the recreational and commercial catch limits. Without such delineation of these two major user groups, the catch limits proposed for the recreational sector will be unenforceable and recreational catch that is sold would be counted against the commercial quota.

In additional, the Council intends to develop in the future a limited access system for the commercial fishery that may reduce participation levels even further. The Council will submit for publication in the **Federal Register** a notice of a control date for entry into the fishery as the first step in developing such a system by subsequent amendment.

Compliance with the reporting requirements was made a condition of the issuance, reissuance, and continued validity of the permit because only about 15 percent of present permit holders (trap fishermen) have complied with the current reporting requirements. Sanctions for non-compliance are governed under 15 CFR part 904.

Amendment 1 and the proposed implementing regulations include reporting requirements for charter vessel operators. These requirements are generally identical to those currently applying to operators of headboats and are combined with those for the coastal migratory pelagics fishery under 50 CFR part 642. Amendment 1 and the proposed implementing regulations also require persons holding permits to file a report during months when no fishing occurs and also make other minor technical changes to reporting requirements to facilitate enforcement. The monthly report of no fishing is needed to ascertain periods when fishermen with permits are inactive and to facilitate compliance during active periods of fishing.

Vessel and Gear Identification

The proposed implementing regulation would require a vessel for which a permit has been approved to display its official number in a manner visible to both air and surface enforcement craft. Such an identification requirement currently applies to vessels with fish trap permits and would be extended to apply to other permitted commercial vessels. This identification requirement is necessary to allow aerial enforcement of closed areas (e.g., areas where longlining is prohibited) and closed seasons (i.e., periods when all commercial fishing is prohibited after quotas are reached).

Size Limits

Amendment 1 and the proposed implementing regulations retain 13 inches total length (TL) as the minimum size for possession of red snapper, but eliminate allowances for possession of undersized fish by fishermen (five per person) and for trawl vessels (unlimited) and prohibit sale of undersized red snapper. The allowances for possession and sale of undersized fish largely made the size limit ineffective (i.e., 39 percent of fish landed were undersized). This was especially true for recreational fishermen since typically 50 percent or more of their trips yielded five or less fish, all of which could legally be undersized. An effective size limit for red snapper would moderately increase yield per recruit (YPR) in terms of poundage available from the resource by about 5 percent, but initially (during first year) could reduce recreational landings by about 29 percent.

Amendment 1 and the proposed implementing regulations also impose minimum size and possession limits for black sea bass, lane and vermilion snapper (8 inches TL); for gray, mutton, and yellow-tail snapper (12 inches TL); for red, Nassau, gag, yellowfin and black groupers (20 inches TL); for greater amberjack (28 nches fork length (FL) for recreational catch and 36 inches FL for commercial catch) and for jewfish (50 inches TL). All of these species are predominantly (up to 99 percent) harvested off Florida. Florida currently has size limits for most of these species that are identical, or slightly smaller, and is expected to adopt the same limits.

Since size limits increase YPR, models were prepared that allowed computation of percent reduction in fishing mortality necessary to reach a 20 percent SSBR level at each minimum size. These models and information on size at maturity were used in selecting the proposed size limits. For most of these species, including red snapper, bag limits and quotas are also imposed to attain the desired reduction in fishing mortality as a function of the minimum size selected. For some species (black sea bass, lane and vermilion snappers, and jewfish) the YPR from the size limit alone will be adequate to attain or maintain the 20 percent SSBR level. The larger size limit for commercially harvested amberjack eliminates the necessity to set a commercial quota on that species. In order to facilitate enforcement and make the size limits effective, fish would be required to be landed with heads and fins intact and sale of fish smaller than the minimum size would be prohibited.

Gear Restrictions

Amendment 1 and the proposed implementing regulations would reduce the number of fish traps that can be fished by each permitted vessel from 200 to 100. Trap fishermen fishing the Gulf of Mexico (Gulf) in 1986 used 30 traps per vessel whereas those fishing the Florida Straits generally utilize about 200 according to testimony presented to the Council. Since the reef fish resources of the Gulf are being overfished, the Council proposed reducing the allowable level of traps before trap levels reach those employed in the adjacent Florida Straits. The proposed rule also would limit degradable door hinges and fasteners to jute string or magnesium fasteners since, according to fishermen, other materials deteriorate too slowly.

Area Limitations

Amendment 1 and the proposed implementing regulations modify the boundary of the stressed area by including waters of the EEZ shoreward of the 10-fathom contour off Louisiana and shoreward of the 30-fathom contour off Texas. The FMP prohibits the use of fish traps, roller trawls, and powerheads for taking reef fish within the stressed area. The stressed area delineates the nearshore areas subject to the most intensive fishing pressure (primarily by recreational fishermen who generally lack the capability to travel further offshore), and use of more efficient and competing gear is, therefore, prohibited. The inclusion of these additional areas will reduce harvest on the overfished red snapper stock because red snapper is the predominant reef fish species off Louisiana and Texas. Access to the coast of Louisiana is much more restricted than to the coast of Texas, and consequently the nearshore waters are subject to less intensive fishing pressure; therefore, the proposed boundary is closer to shore (10 fathoms versus 30 fathoms) for Louisiana than for Texas.

Amendment 1 and the proposed implementing regulations would prohibit the use of longline and buoy gear for the directed harvest of reef fish in the EEZ inshore of the 50-fathom contour west of Cape San Blas, Florida (85°30′ W. longitude) and inshore of the 20-fathom contour east of Cape San Blas. The western restricted area generally covers the range of red snapper as very few occur east of Cape San Blas or outside 50 fathoms. The prohibition will reduce the impact of those gears which typically have harvested large red snapper from the spawning stock and from areas (non-reef areas) where the catch per unit effort (CPUE) by other gear is too low to fish economically for the large spawners. Since fecundity for red snapper increases exponentially with increasing size, it is important to reduce catch of the larger fish in the depressed spawning stock. Since mortality of fish released at the water surface increases with water depth from which they are caught, implementation of a maximum size limit to preserve the larger spawners likely would be an ineffective alternative to the prohibition of buoy and longline gear from that area.

The eastern restricted area is generally located within the range of red grouper, the dominant species of shallow-water grouper. By expanding the restricted area, longline gear (the principal gear in the group fishery) and buoy gear could only be used outside of 20 fathoms. This will prevent harvest and subsequent release mortality of groupers smaller than the 20-inch minimum size which are common inside of 20 fathoms. Since all groupers reverse sex as they grow and the larger fish are all males, there is less concern over the efficiency of longline and buoy gear to harvest the larger fish.

Bag and Possession Limits, Allocations, and Closures

Bag limits are imposed to reduce fishing mortality by recreational fishermen and quotas are imposed to reduce fishing mortality by commercial fishermen. Sale of certain reef fish would be prohibited for the remainder of the fishing year when the quota for those species or species groups is reached. Exception would be made for fish held in cold storage by a dealer or processor. Sale of reef fish taken in the EEZ under a bag limit would be prohibited. Persons fishing under a commercial quota would have to possess vessel permits. Persons on charter vessels and headboats (when under charter) and on commercial vessels temporarily excluded from fishing under a vessel permit (i.e., vessels with trawl or net gear aboard and longline vessels fishing in the restricted area for species other than reef fish) would be limited to the bag limits, except that persons on charter vessels and headboats would be allowed to possess up to two daily bag limits for trips of more than 24 hours duration.

For red snapper, Amendment 1 and the proposed implementing regulations would impose a daily bag limit of seven fish for recreational fishermen and a quota of 3.1 million pounds for commercial fishermen. This is equivalent to a 20 percent reduction from the 1985–1987 level of fishing mortality (harvest) for the initial fishing year. This percentage reduction will not restore the spawning stock to 20 percent SSBR by the year 200 (i.e., long-term OY goal). However, the Procedure for establishing an annual TAC and adjusting management measures allows an annual reassessment of progress made in achieving OY and adjustments to the bag limit and quota to reach that goal. The Council judged that a more gradual approach to reduction of fishing mortality would be less disruptive to the fishery and have less adverse impact on users. The Procedure provides the safeguards to assure that irreversible overfishing does not occur and that further adjustments to measures will be based on progressively more precise and accurate information.

For groupers, Amendment 1 and the proposed implementing regulations would impose a daily bag limit of five fish of all species in aggregate (except jewfish) and separate commercial quotas of 9.2 million pounds for shallow-water groupers and 1.8 million pounds for deep-water groupers (defined by species). This is equivalent to a 14 percent reduction from the 1985–1987 level of fishing mortality (harvest) for the initial fishing year. Since initial estimates of the percent reduction in fishing mortality necessary to attain 20 percent SSBR for groupers was approximately 20 percent, this level of reduction (14 percent) may or may not attain the OY goal by the year 2000. However, the Procedure will allow assessing this annually and adjusting the rules to attain that goal.

Amendment 1 and the proposed implementing regulations would impose an aggregate daily bag limit of 10 fish for all other snapper species, except for vermilion and lane snappers. This bag limit was proposed because restrictions placed on other reef fish species will result in transfer of effort toward harvest of these species, which are predominantly harvested by recreational fishermen. The measures that would be imposed under this proposed rule will be assessed annually under the Procedure. Vermilion and lane snapper were excluded from bag limits and allocations because they become sexually mature at a size smaller than the minimum size limit (e.g., vermilion mature at 6 inches TL) and are therefore protected from recruitment overfishing.

Amendment 1 and the proposed implementating regulations would impose a daily bag limit of three fish with a 28-inch FL minimum size and a larger commercial size limit (36-inch FL) for greater amberjack to reduce harvest equitably. The harvest of greater amberjack has been largely by recreational fishermen with the harvest level escalating in recent years as they become a targeted substitute for less abundant reef fish. Commercial harvest, while much less, has also increased. The recreational bag and the size limits will result in about a 60 percent reduction from the 1985–1987 harvest level in the initial years until the fish reach a larger size.

The bag limits are intended to reduce recreational harvest while spreading the reduced individual catch over the fishing year, whereas the quotas are intended to allow commercial harvest to be taken as efficiently as possible and to prohibit harvest for sale when the quota is taken during each fishing year. The possession of two days bag limits (of legal size fish) is proposed for charter vessels and headboats since many of these vessels traditionally have made multi-day trips to more distant reef complexes. In all other cases, the possession limits would be the bag limits.

The prohibition on sale of reef fish taken under a bag limit will prevent recreational harvest and bycatch from being counted in the commercial quotas and thereby intensify the impact of the reduced allocation level on that user group. Once a quota for a species or species group is reached, directed fishing and sale of that species or group would be prohibited for the remainder of the fishing year. This is necessary to assure that the allocation not be exceeded. After such a closure, all persons in the reef fish fishery would be subject to the possession limit or daily bag limit, which cannot be sold.

Additional Changes

In addition to the changes to the existing regulations necessary to implement Amendment 1, NOAA proposes other changes to facilitate enforcement and to make corrections and clarifications.

Revisions to the purpose and scope section (§ 641.1) are proposed to indicate the full geographical scope of the regulations by specifying those sections that apply in state waters adjoining the EEZ. NOAA believes the public is better served by a general expression of scope in this section with the specific scope of each general provision or management measure stated in that provision or measure. This approach avoids the possibility of misleading fishermen, dealers, and processors as to the scope of the regulations in this part. The definition and use of the term Management area would be removed. The term Exclusive economic zone (EEZ), defined at 50 CFR 620.2 and applicable to part 641, in the context of the geographical scope specified in § 641.1, adequately specifies the extent of each management measure.

The proposed regulations would prohibit the possession of dynamite or a similar explosive substance on board vessels in the reef fish fishery. The use of explosives, excluding those in powerheads, is currently prohibited. Nevertheless, there are persistent reports and indications of the illegal use of dynamite. Indications include underwater explosions not assocaited with sesmic testing or oil rig removal, the landing of reef fish by vessels without operable fishing gear aboard, and the presence ashore of reef fish without the typical markings associated with fish caught by hook, net, or fish traps. Enforcement of the prohibition on use of explosives in the reef fish fishery has been thwarted by the large area that constitutes the fishing grounds, the small number of available enforcement vessels, and the resultant difficulty of catching a person in the act of using explosives. NOAA is not aware of any legitimate use of dynamite or a similar explosive substance aboard a fishing vessel in the reef fish fishery. Enforcement of the basic prohibition would be enchanced since it will not be necessary to observe the use of dynamite in the fishery.

The gear restrictions applicable to fish traps would be reorganized for clarity into a single subsection (§641.22(b)). Other minor reorganizations and corrections are proposed for clarity and to conform the regulations to current usage.

NOAA expects the initial permit fee and the fee for fish trap identification tags proposed under §641.4(c) to be approximately $23 and $1 per tag, respectively.

Classification

Section 304(a)(1)(D)(ii) of the Magnuson Act, as amended by Public Law 99–659, requires the Secretary of Commerce (Secretary) to publish regulations proposed by a Council within 15 days of receipt of an FMP amendment and regulations. At this time, the Secretary has not determined that Amendment 1, which this proposed rule would implement, is consistent with the National Standards, other provisions of the Magnuson Act, and other applicable law. The Secretary, in making that determination, will take into account the data, views, and comments received during the comment period.

The Under Secretary for Oceans and Atmosphere, NOAA, has initially determined that this proposed rule is not a "major rule" requiring the preparation of a regulatory impact analysis under E.O. 12291. This proposed rule, if adopted, is not likely to result in an annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or a significant adverse effect on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Council prepared a RIR which concludes that this rule will have the following economic effects: over the short-term, the economic output would

be reduced by $35.9 to $55 million, income by $12.4 to $18.7 million and jobs by 903 to 1,364. These effects would be $15.6 million in output, $5.7 million in income, and 412 jobs for the commercial sector and $20.3 to $39.4 in economic output, $6.7 to $13 million in income, and 491 to 952 jobs for the recreational sector. Annual cost to the federal government for enforcement and administration is estimated to be $160,000. The overall long-term net effect will be positive for both commercial and recreational sectors through restoring the stocks over a ten-year period. Copies of the RIR may be obtained from the address listed above.

This proposed rule is exempt from the procedures of E.O. 12291 under section 8(a)(2) of that order. It is being reported to the Director, Office of Management and Budget, with an explanation of why it is not possible to follow the procedures of that order.

The Council prepared a Regulatory Flexibility Analysis (RFA) as part of the RIR which describes the effects this rule, if adopted, would have on small business entities. Based on the RFA, the Assessment Administrator for Fisheries, NOAA, concludes that this rule, if adopted, would have significant effects on small entities, summarized as follows: The prohibition on sale or reef fish taken as incidental catch by trawl vessels (6,000) from the EEZ will result in an annual exvessel loss of $7 per fisherman or $17.50 per vessel. According to the most recent available data, there are 931 commercial vessels in the directed fishery for reef fish. Since reef fish taken by entangling net vessels are almost all taken from state waters, the prohibition on sale of reef fish taken by this gear from the EEZ will have a little impact on the 29 commercial vessels that use this gear. There will be a short-term reduction of gross exvessel revenue on the other 902 commercial vessels in the fishery, primarily the result of increased size limits. In the intermediate- and long-term, this reduction will largely be restored as the fish grow to a larger size. The amount of the short-term reduction will be equivalent to $8,824 per vessel. Part of this impact will actually accrue to recreational and part-time fishermen (several thousand) who will be unable to obtain a permit and, thus, will be prohibited from selling reef fish, rather than to the commercial vessels. If the bag and size limits deter fishermen from fishing on the 920 charter vessels and headboats, the short-term annual reduction in revenue per vessel could range between $243 and $6,902. It is anticipated the impact will be at the low end of the range. The effects related to the size limits would be recovered in the following and subsequent years. Initial permit and fish trap identification tag costs would be $23 and $1, respectively. Permit costs for commercial vessels would be $23 and fish trap identification tags would cost $1. Over the ten-year horizon for rebuilding the stocks, the short-term losses affecting small business entities should be regained and positive benefits should occur after several years. Copies of the RFA may be obtained from the address listed above.

The Council has determined that this rule will be implemented in a manner that is consistent to the maximum extent practicable with the approved coastal zone management programs of Alabama, Florida, Louisiana, and Mississippi. Texas does not have an approved coastal zone management program. These determinations have been submitted for review by the responsible state agencies under section 307 of the Coastal Zone Management Act.

The Council prepared an EA that discusses the impact on the environment as a result of this rule. Copies of the EA may be obtained at the address listed above and comments on it are requested.

This proposed rule contains two new collection-of-information requirements and revises three existing requirements subject to the Paperwork Reduction Act. A request to collect this information has been submitted to the Office of Management and Budget for approval. The new requirements are (1) a reporting system for charter vessels, and (2) an annual vessel permitting system. The public reporting burdens for these collections of information are estimated to average 3 and 15 minutes, respectively, per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collections of information. Revision to the existing requirements will require (1) vessels fishing traps and (2) other commercial vessels to file monthly reports whether or not they fished and (3) headboats to submit monthly rather than quarterly reports and include the operator's U.S. Coast Guard license number. The public reporting burdens for these revised collections of information are estimated to average 3, 3, and 5 minutes respectively, per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collections of information. Send comments on these reporting burden estimates or any other aspect of the collection of information, included suggestions for reducing the burdens, to NMFS and OMB (see **ADDRESSES**).

This proposed rule does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under E.O. 12612.

List of Subjects in 50 CFR Part 641

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: October 3, 1989.

James E. Douglas, Jr.,

Deputy Assistant Administrator For Fisheries, National Marine Fisheries Service.

For reasons set forth in the preamble, 50 CFR part 641 is proposed to be amended as follows:

PART 641—REEF FISH FISHERY OF THE GULF OF MEXICO

1. The authority citation for part 641 continues to read as follows:

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

2. In § 641.1, paragraph (b) is revised to read as follows:

§ 641.1 Purpose and scope.

* * * * *

(b) This part governs conservation and management of reef fish in the EEZ of the Gulf of Mexico, except that §§ 641.5 and 641.25 also apply to fish from adjoining State waters.

3. In § 641.2, the definition for *Management area* is removed; Figures 1 and 2 are redesignated as appendix A, Figures 1 and 2; in the definition for *Fork length*, the parenthetical phrase "(See appendix A, Figure 1.)" is added after the period; in the definition for *Powerhead*, the word "which" is revised to read "that"; in the definition for *Statistical area*, the word, letter, and punctuation "appendix A," are added before the word "Figure"; in the definition for *Total length*, the word "when" is added before the word "depressed" and the parenthetical phrase at the end of the definition is revised to read "(See appendix A, Figure 1.)"; the defintions for *Charter vessel*, *Headboat*, *Reef fish*, and *Roller trawl* are revised; and new definitions for *Buoy gear* and *Trip* are added in alphabetical order to read as follows:

§ 641.2 Definitions.

* * * * *

Buoy gear means fishing gear consisting of a float and one or more weighted lines suspended therefrom, generally long enough to reach the bottom, on which there is a hook or

hooks (usually six to 10) at or near the end, which is allowed to draft freely with periodic retrieval to remove catch and rebait hooks.

Charter vessel means a vessel whose operator is licensed by the U.S. Coast Guard to carry six or fewer paying passengers and whose passenger fish for a fee. A charter vessel with a permit to fish on a commercial quota for reef fish is under charter when it carries a passenger who fishes for a fee, or when there are more than three persons aboard including operator and crew.

* * * * *

Headboat means a vessel whose operator is licensed by the U.S. Coast Guard to carry seven or more paying passengers and whose passengers fish for a fee. A headboat with a permit to fish on a commercial quota for reef fish is operating as a headboat when it carries a passenger who fishes for a fee, or when there are more than three persons aboard including operator and crew.

* * * * *

Reef fish refers to fish in the following two categories:

(a) *Management unit.* Species taken in the directed fishery include the following:

Snappers—Lutijanidae Family

Queen snapper, *Etelis oculatus*
Mutton snapper, *Lutjanus analis*
Schoolmaster, *Lutjanus apodus*
Blackfin snapper, *Lutjanus buccanella*
Red snapper, *Lutjanus campechanus*
Cubera snapper, *Lutjanus cyanopterus*
Gray (mangrove) snapper, *Lutjanus griseus*
Dog snapper, *Lutjanus mahogoni*
Lane snapper, *Lutjanus synagris*
Silk snapper, *Lutjanus vivanus*
Yellowtail snapper, *Ocyurus chrysurus*
Wenchman, *Pristipomoides aquilonaris*
Vermilion snapper, *Rhomboplites aurorubens*

Groupers—Serranidae Family

Rock hind, *Epinephelus adscensionis*
Speckled hind, *Epinephelus drummondhayi*
Yellowedge grouper, *Epinephelus flavolimatus*
Red hind, *Epinephelus guttatus*
Jewfish, *Epinephelus itajara*
Red grouper, *Epinephelus morio*
Misty grouper, *Epinephelus mystacinus*
Warsaw grouper, *Epinephelus nigritus*
Snowy Grouper, *Epinephelus niveatus*
Nassau grouper, *Epinephelus striatus*
Black grouper, *Mycteroperca bonaci*
Yellowmouth grouper, *Mycteroperca interstitialis*
Gag, *Mycteroperca microlepis*
Scamp, *Mycteroperca phenax*
Yellowfin grouper, *Mycteroperca venenosa*

Sea Basses—Serranidae Family

Bank sea bass, *Centropristis ocyurus*
Rock sea bass, *Centropristis philadelphica*
Black sea bass, *Centropristis striata*

Tilefishes—Malacanthidae Family

Goldface tilefish, *Caulolatilus chrysops*
Blackline tilefish, *Caulolatilus cyanops*
Anchor tilefish, *Caulolatilus intermedius*
Blueline tilefish, *Caulolatilus microps*
Tilefish, *Lophotatilus chamaeleonticeps*

Jacks—Carangidae Family

Greater amberjack, *Seriola dumerili*
Lesser amberjack, *Seriola fasciata*

Grunts—Haemulidae Family

White grunt, *Haemulon plumieri*

Porgies—Sparidae Family

Red porgy, *Pagrus pagrus*

Triggerfishes—Balistidae Family

Gray triggerfish, *Balistes capriscus*

(b) *Fishery.* Species taken incidental to the directed fishery include the following:

Wrasses—Labridae Family

Hogfish, *Lachnolaimus maximus*

Grunts—Haemulidae Family

Tomtate, *Haemulon aurolineatum*
Pigfish, *Orthopristis chrysoptera*

Porgies—Sparidae Family

Grass porgy, *Clamus arctifrons*
Jolthead porgy, *Calamus bajonado*
Knobbed porgy, *Calamus nodosus*
Littlehead porgy, *Calamus proridens*
Pinfish, *Lagodon rhomboides*

Sand Perches—Serranidae Family

Dwarf sand perch, *Diplectrum bivitatatum*
Sand perch, *Diplectrum formosum*

Triggerfishes—Balistidae Family

Queen triggerfish, *Balistes vetula*

* * * * *

Roller trawl means a trawl net equipped with a series of large solid rollers separated by several smaller spacer rollers on a separate cable or line (sweep) connected to the footrope, which makes it possible to fish the gear over rough bottom, i.e., in areas unsuitable for fishing conventional shrimp trawls. Rigid framed trawls adapted for shrimping over uneven bottom, in wide use along the west coast of Florida, and shrimp trawls with hollow plastic rollers for fishing on soft bottoms, are not considered roller trawls.

* * * * *

Trip means a fishing trip, regardless of number of days duration, that begins with departure from a dock, berth, beach, seawall, or ramp and that terminates with return to a dock, berth, beach, seawall, or ramp.

* * * * *

4. Section 641.4 is revised to read as follows:

§ 641.4 Permits.

(a) *Applicability.* (1) As a prerequisite to selling reef fish and to be eligible for exemption from the bag limits specified in § 641.24(b), an owner or operator of a vessel that fishes in the EEZ or a person who fishes in the EEZ from a structure must obtain an annual vessel permit.

(2) A qualifying owner or operator of a charter vessel or headboat may obtain a permit. However, a charter vessel or headboat must adhere to applicable bag limits when under charter or carrying a passenger who fishes for a fee.

(3) For a corporation to be eligible for a vessel permit, the statement required by paragraph (b)(2)(xi) of this section must be provided by a shareholder or officer of the corporation or the vessel operator.

(4) An owner or operator of a vessel using a fish trap in the EEZ or a person using a fish trap from a structure in the EEZ must obtain both a vessel permit and a color code from the Regional Director.

(5) A vessel permit issued upon the qualification of an operator is valid only when the person is the operator of the vessel.

(b) *Application for permit.* (1) An application for a vessel permit must be submitted and signed by the owner or operator of the vessel or by a person who fishes from a structure. The application must be submitted to the Regional Director at least 60 days prior to the date on which the applicant desires to have the permit made effective.

(2) Permit applicants must provide the following information (a person fishing from a structure may omit vessel information):

(i) Name, mailing address including zip code, and telephone number of the owner of the vessel;

(ii) Name, mailing address including zip code, and telephone number of the applicant, if other than the owner;

(iii) Social security number and date of birth of the applicant and the owner;

(iv) Name of the vessel;

(v) The vessel's official number;

(vi) Home port or principal port of landing, gross tonnage, radio call sign, and length of the vessel;

(vii) Engine horsepower and year the vessel was built;

(viii) Type of gear to be fished and other fisheries vessel is used for;

(ix) Passenger capacity and U.S. Coast Guard license number(s) of vessel operator(s) if the vessel also operates as a charter vessel or headboat during the year;

(x) Any other information concerning vessel and gear characteristics requested by the Regional Director;

(xi) A sworn statement by the applicant certifying that more than 50 percent of his or her earned income was derived from commercial, charter, or headboat fishing during the calendar year preceding the application;

(xii) Proof of certification, as required by paragraph (b)(3) of this section;

(xiii) If fish traps will be used to harvest reef fish,

(A) The number, dimensions, and estimated cubic volume of the fish traps that will be used;

(B) The applicant's desired color code for use in identifying his or her vessel and buoys; and

(C) A statement that the applicant will allow an authorized officer reasonable access to his or her property (vessel, dock, or structure) to examine fish traps for compliance with these regulations; and

(xiv) If fish traps will be used from a fixed structure,

(A) The name and number of the oil or gas structure or the most descriptive identification for other types of structures; and

(B) The location of the structure in latitude and longitude or distance and direction from a fixed point of land.

(3) The Regional Director may require the applicant to provide documentation supporting the sworn statement under paragraph (b)(2)(xii) of this section before a permit is issued or to substantiate why such a permit should not be denied, revoked, or otherwise sanctioned under paragraph (i) of this section.

(4) Any change in the information specified in paragraph (b) of this section must be submitted in writing to the Regional Director by the permit holder within 30 days of any such change. Failure to notify the Regional Director of any change in the required information will result in a presumption that the information is still accurate and current.

(c) *Fees.* A fee will be charged for each permit issued under paragraph (a) of this section and a fee will be charged for each fish trap identification tag required under § 641.6(d). The amount of each fee will be specified on or with the permit application form. The appropriate fee must accompany each permit application or request for fish trap identification tags.

(d) *Insuance.* (1) Except as provided in subpart D of 15 CFR part 904, the Regional Director will issue a permit at any time during the fishing year to the applicant. In addition, the Regional Director will issue a numbered tag for each fish trap that is used in the EEZ and will designate a color code to be used for the identification of each vessel and fish trap buoys when such vessel and buoys are used to fish with fish traps in the EEZ.

(2) Upon receipt of an incomplete application, the Regional Director will notify the applicant of the deficiency. If the applicant fails to correct the deficiency within 30 days, the application will be considered abandoned.

(e) *Permit condition.* Compliance with the reporting requirements of § 641.5 is a condition for the issuance, reissuance, or continuing validity of a permit issued under this section. Failure to comply with those requirements may result in the denial or sanction of a permit pursuant to subpart D of 15 CFR part 904.

(f) *Duration.* A permit remains valid for the remainder of the fishing year for which it is issued unless revoked, suspended, or modified pursuant to subpart D of 15 CFR part 904.

(g) *Transfer.* A permit issued under this section is not transferable or assignable. A person purchasing a vessel with a permit to fish for reef fish must apply for a permit in accordance with the provisions of paragraph (b) of this section. The application must be accompanied by a copy of an executed (signed) bill of sale.

(h) *Display.* A permit issued under this section must be carried on board the fishing vessel or fixed structure, and such vessel or structure must be identified as provided for in § 641.6. The operator of a fishing vessel or person fishing fish traps from a fixed structure must present the permit for inspection upon the request of an authorized officer.

(i) *Sanctions.* Procedures governing permit sanctions and denials are found at subpart D of 15 CFR part 904.

(j) *Alternation.* A permit that is altered, erased, or mutilated is invalid.

(k) *Replacement.* A replacement permit may be issued. An application for a replacement permit will not be considered a new application.

5. In § 641.5, in paragraph (b), the introductory text and paragraph (b)(2) are revised, in paragraphs (b)(1) and (b)(3) through (6), the semicolons are removed and periods are added in their place, and paragraphs (b)(7) and (8) are removed; in paragraph (c), the introductory text is revised, in paragraphs (c)(1) through (4), the semicolons are removed and periods are added in their place, and in paragraph (c)(5), the semicolon and the word "and" are removed and a period is added in their place; in paragraph (d), in the introductory text, the phrase "or parts thereof" is removed where it appears in two places and the commas preceding and following the second appearance are removed; in paragraph (g), the introductory text is revised, in paragraphs (g)(1) through (3), the semicolons are removed and periods are added in their place, in paragraph (g)(4), the semicolon and the word "and" are removed and a period is added in their place, and a new paragraph (g)(6) is added; in paragraph (h), in the introductory text, the words "or quarterly" are revised to read "or more frequent"; and paragraphs (f) and (i) are revised to read as follows:

§ 641.5 Recordkeeping and reporting

* * * * *

(b) *Vessels and persons fishing with fish traps.* The owner or operator of a vessel or a person on a structure permitted under § 641.4 to fish with a fish trap in the Gulf of Mexico EEZ or who fishes in adjoining State waters must maintain a fishing record on a form available from the Science and Research Director. These forms must be submitted to the Science and Research Director so as to be received not later than seven days after the end of each fishing trip or, in the case of a person fishing with fish traps from a structure, not later than seven days after the end of each month. If no fishing occurred during a month, a report so stating must be submitted on one of the forms to be received not later than seven days after the end of each month. If fishing occurred, the following information must be reported:

* * * * *

(2) Pounds of catch of reef fish by species for each type of gear used.

* * * * *

(c) *Vessels not fishing with fish traps.* The owner or operator of a vessel that is permitted under §641.4 to fish with gear other than fish traps in the Gulf of Mexico EEZ, or who fishes in adjoining State waters, and who is selected by the Science and Research Director, must maintain a fishing record for each fishing trip on a form available from the Science and Research Director. These forms must be submitted to the Science and Research Director on a monthly basis (or more frequently, if requested by the Science and Research Director) so as to be received not later than the 7th day of the end of the reporting period. If no fishing occurred during a month, a report so stating must be submitted on one of the forms. If fishing occurred, the following information must be reported for each trip:

* * * * *

(f) *Charter vessels.* The owner or operator of a charter vessel that fishes for or lands reef fish under the bag limits in the Gulf of Mexico EEZ or in adjoining State waters, and who is selected to report, must maintain a daily fishing record for each trip on forms provided by the Science and Research Director, and must submit the forms to the Science and Research Director

weekly within 7 days of the end of each week (Sunday). Information on the forms includes, but is not limited to the following:

(1) Name and official number of vessel.

(2) Operator's Coast Guard license number.

(3) Date and duration of fishing (hours) of each trip.

(4) Number of fishermen on trip.

(5) Fishing location, by statistical area.

(6) Fishing methods and type of gear.

(7) Species targeted.

(8) Number and estimated weight of fish caught by species.

(g) *Headboats.* The owner or operator of a headboat that fishes for or lands reef fish in the Gulf of Mexico EEZ or in adjoining State waters, and who is selected to report, must maintain a fishing record for each trip, or a portion of such trips as specified by the Science and Research Director, on forms provided by the Science and Research Director and must report the following information at least monthly within 7 days of the end of each month:

* * * * *

(6) Operator's U.S. Coast Guard license number.

* * * * *

(i) *Additional data and inspection.* Additional data will be collected by authorized statistical reporting agents, as designees of the Science and Research Director, and by authorized officers. An owner or operator of a fishing vessel, a person fishing traps from a structure, and a dealer or processor are required upon request to make reef fish or parts thereof available for inspection by the Science and Research Director or an authorized officer.

6. Section 641.6 is revised to read as follows:

§ 641.6 Vessel and gear identification.

(a) *Vessels.* (1) A vessel for which a permit has been issued under § 641.4 must display its official number—

(i) On the port and starboard sides of the deckhouse or hull and on an appropriate weather deck so as to be clearly visible from an enforcement vessel or aircraft;

(ii) In block arabic numerals in contrasting color to the background;

(iii) At least 18 inches in height for fishing vessels over 65 feet in length and at least 10 inches in height for all other vessels; and

(iv) Permanently affixed to or painted on the vessel.

(2) In addition, a vessel for which a permit has been issued under § 641.4 to fish with fish traps must display its color code—

(i) On the port and starboard sides of the deckhouse or hull and on an appropriate weather deck so as to be clearly visible from an enforcement vessel or aircraft;

(ii) In the form of a circle at least 20 inches in diameter; and

(iii) Permanently affixed to or painted on the vessel.

(b) *Structures.* A person fishing from a structure with a fish trap who has been issued a permit under § 641.4 must display his permit number and color code—

(1) So as to be clearly visible from an enforcement vessel or aircraft;

(2) With the permit number in block arabic numerals in contrasting color to the background;

(3) With the permit number at least 10 inches in height;

(4) With the color code in the form of a circle at least 20 inches in diameter; and

(5) Permanently affixed to or painted on the structure.

(c) *Duties of operator or person.* The operator of each fishing vessel specified in paragraph (a) or person specified in paragraph (b) of this section must—

(1) Keep the official number or permit number and color code clearly legible and in good repair, and

(2) Ensure that no part of the fishing vessel or structure, its ringing, fishing gear, or any other material aboard obstructs the view of the official number or permit number and color code from any enforcement vessel or aircraft.

(d) *Fish traps.* Each fish trap used or possessed in the EEZ must have affixed to it an indentification tag provided by the Regional Director that displays the assigned permit number, a number (normally 1–100) indicating the specific tag number for that trap, and the year for which the tag was issued. A tag for the current year must be affixed to a trap before its first use in a new year or, if in use on January 1, when it is first tended after January 1.

(e) *Buoys.* Each fish trap, or the ends of a string of fish traps, must be marked by a floating buoy or by a buoy designed to be submerged and automatically released. Each buoy used to mark fish traps must display the designated color code and permit number son as to be easily distinguished, located, and identified.

(f) *Preumption of ownership.* A fish trap in the EEZ will be presumed to be the property of the most recently documented owner. This presumption will not apply with respect to traps that are lost or sold if the owner reports the loss or sale within 15 days to the Regional Director.

(g) *Unmarked traps or buoys.* An unmarked fish trap or buoy deployed in the EEZ is illegal and may be disposed of in any appropriate manner by the Secretary (including an authorized officer). If an owner of an unmarked trap or buoy can be ascertained, such owner is subject to appropriate civil penalties.

7. Section 641.7 is revised to read as follows:

§ 641.7 Prohibitions.

In addition to the general prohibitions specified in § 620.7 of this chapter, it is unlawful for any person to do any of the following:

(a) Falsify information specified in § 641.4(b)(2) on an application for vessel permit.

(b) Fail to display a permit, as specified in § 641.4(h).

(c) Falsify or fail to provide information required to be submitted or reported, as required by § 641.5(b) through (h).

(d) Fail to make reef fish or parts thereof available for inspection, as required by § 641.5(i).

(e) Falsify or fail to display and maintain vessel and gear identification, as required by § 641.6.

(f) Possess or purchase barter, trade, or sell a reef fish smaller than the minimum size limits, as specified in § 641.21(a) and (d).

(g) Possess a reef fish without its head and fins intact, as specified in § 641.21(b).

(h) Fish with poisons or explosives or possess on board a fishing vessel any dynamite or similar explosive substance, as specified in § 641.22(a).

(i) Use or possess in the EEZ a fish trap that does not conform to the requirements for escape windows, degradable openings, and mesh sizes specified in § 641.22(b) (1), (2), and (3).

(j) Use in the EEZ shoreward of the 50-fathom isobath a fish trap that exceeds the maximum allowable size specified in § 641.22(b)(4).

(k) Fish or possess in the EEZ more than 100 fish traps per vessel or structure, as specified in § 641.22(b)(5).

(l) Pull or tend a fish trap, except during the hours specified in § 641.22(b)(6)(i); or tend, open, pull, or otherwise molest or have in possession another person's fish trap, except as specified in § 641.22(b)(6)(ii).

(m) Use a powerhead to take reef fish of the management unit in the stressed area, as specified in § 641.23(a)(1).

(n) Use of fish trap or a roller trawl in the stressed area, as specified in § 641.23(a)(2).

(o) Use a longline or buoy gear to fish for reef fish in the longline and buoy gear restricted area, as specified in § 641.23(b).

(p) Exceed the bag and possession limits, as specified in § 641.24(a) through (d).

(q) Operate a vessel with reef fish aboard that are smaller than the minimum size limits, do not have head and fins intact, or are in excess of the cumulative bag limit, as specified in §§ 641.21(c) and 641.24(e).

(r) Transfer reef fish at sea, as sspecified in § 641.24(f).

(s) Purchase, barter, trade, or sell a reef fish taken by a vessel that does not have a permit or by a person fishing from a structure who does not have a permit, as specified in § 641.4(a), or taken under the bag limits, as specified in § 641.24(g).

8. In § 641.22, Figure 3 and Table 1 are removed; in § 641.24, Figure 4 is redesignated as appendix A, Figure 3; § 641.26 is redesignated as § 641.28; §§ 641.21 through 641.25 are revised; and new §§ 641.26 and 641.27 are added to read as follows:

§ 641.21 Harvest limitations.

(a) *Minimum sizes.* The following minimum size limits apply for the possession of reef fish in or taken from the EEZ:

(1) Red snapper—13 inches total length.

(2) Gray, mutton, and yellowtail snappers—12 inches total length.

(3) Lane and vermilion snappers—8 inches total length.

(4) Jewfish—50 inches total length.

(5) Red, Nassau, yellowfin, and black groupers and gag—20 inches total length.

(6) Greater amberjack—28 inches fork length for a fish taken by a person subject to the bag limit specified in § 641.24(b)(4) and 36 inches fork length, for a fish taken by a person not subject to the bag limit.

(7) Black sea bass—8 inches total length.

(b) *Head and fins intact.* A reef fish subject to a minimum size limit specified in paragraph (a) of this section possessed in the EEZ must have its head and fins intact and such reef fish taken from the EEZ must have its head and fins intact through landing. Such reef fish may be eviscerated but must otherwise be maintained in a whole condition.

(c) *Operator responsibility.* The operator of a vessel that fishes in the EEZ is responsible for ensuring that reef fish possessed aboard that vessel comply with the minimum sizes specified in paragraph (a) of this section and are maintained with head and fins intact as specified in paragraph (b) of this section.

(d) A reef fish smaller than the minimum sizes specified in paragraphs (a)(1) through (5) of this section and for greater amberjack, smaller than 36 inches fork length, may not be purchased, bartered, traded, or sold.

§ 641.22 Gear restrictions.

(a) *Poisons and explosives.* Poisons and explosives may not be used to take reef fish in the EEZ; however, powerheads may be used outside the stressed area. A vessel in the reef fish fishery may not possess on board any dynamite or similar explosive substance.

(b) *Fish traps.* A fish trap used or possessed in the EEZ and a person using a fish trap in the EEZ are subject to the following requirements and limitations:

(1) *Escape windows.* Each trap must have at least two escape windows on each of two sides, excluding the bottom, (a total of four escape windows) that are 2 × 2 inches or larger.

(2) *Openings and degradable fasteners.* (i) A degradable panel or access door must be located opposite each side of the trap that has a funnel.

(ii) The opening covered by each degradable panel or access door must be 144 square inches or larger, with one dimension of the area equal to or larger than the largest interior axis of the trap's throat (funnel) with no other dimension less than 6 inches.

(iii) The hinges and fasteners of each degradable panel or access door must be constructed of one of the following panel or access door must be constructed of one of the following materials:

(A) Untreated jute string of 3/16-inch diameter or smaller; or

(B) Magnesium alloy, time float releases (pop-up devices) or similar magnesium alloy fasteners.

(3) *Mesh sizes.* A fish trap must meet all of the following mesh size requirements (based on centerline measurements between opposite wires or netting strands) (see appendix A, Figure 3):

(i) A minimum of 2 square inches of opening for each mesh;

(ii) One-inch minimum length for the shortest side;

(iii) Minimum distance of 1 inch between parallel sides of rectangular openings, and 1.5 inches between parallel sides of square openings and of mesh openings with more than four sides; and

(iv) One and nine-tenths (1.9) inches minimum distance for diagonal measures of mesh.

(4) *Maximum allowable size.* The maximum allowable size for a fish trap fished in the EEZ shoreward of the 50-fathom isobath (300-foot contour) is 33 cubic feet in volume. Fish trap volume is determined by measuring the external dimensions of the trap, and includes both the enclosed holding capacity of the trap and the volume of the funnel(s) within those dimensions. There is no size limitation for fish traps fished seaward of the 50-fathom isobath.

(5) *Effort limitation.* The maximum number of traps that may be assigned to, possessed, or fished in the EEZ by a vessel or from a structure is 100.

(6) *Tending traps.* (i) A reef fish trap may be pulled or tended only during the period from official (civil) sunrise to official (civil) sunset.

(ii) A reef fish trap may be tended only by a person (other than an authorized officer) aboard the structure or vessel permitted to fish such trap, or aboard another vessel if such vessel has on board written consent of the vessel permit holder.

§ 641.23 Area limitations.

(a) *Stressed area.* (1) A powerhead may not be used in the stressed area to take reef fish of the management unit. Possession of a powerhead and a multilated reef fish of the management unit is the stressed area or after having fished in the stressed area constitutes *prima facie* evidence that such reef fish was taken with a powerhead in the stressed area.

(2) A fish trap or a roller trawl may not be used in the stressed area. A fish trap used in the stressed area will be considered unclaimed or abandoned property and may be disposed of in any appropriate manner by the Secretary (including and authorized officer). If an owner of such fish trap can be ascertained, such owner is subject to appropriate civil penalties.

(3) The stressed area is that portion of the EEZ in the Gulf of Mexico shoreward of a line connecting the points listed in appendix A, Table 1. (See also appendix A, Figure 4.)

(b) *Longline and buoy gear restricted area.* (1) Longline and buoy gear may not be used to fish for reef fish in the longline and buoy gear restricted area. For the purposes of this paragraph (b), fishing for reef fish means possessing or landing reef fish—

(i) for which a bag limit is specified in § 641.24(b), in excess of that bag limit; or

(ii) For which no bag limit is specified, in excess of 5 percent by weight of all fish aboard or landed.

(2) A person aboard a vessel that uses on any trip longline or buoy gear in the

longline and buoy gear restricted area to fish for species other than reef fish is limited on that trip to the bag limits specified in § 641.24(b) and, for other reef fish, to 5 percent by weight of all fish aboard the vessel or landed.

(3) The longline and buoy gear restricted area is that portion of the EEZ in the Gulf of Mexico shoreward of a line connecting the points listed in Appendix A, Table 2. (See also Appendix A, Figure 5).

§ 641.24 Bag and possession limits.

(a) *Applicability.* Bag limits apply to a person who fishes in the EEZ—

(1) From a fixed structure without a permit specified in § 641.4;

(2) From a vessel—

(i) That does not have on board a permit specified in § 641.4,

(ii) With trawl gear or entangling net gear on board,

(iii) With a longline or buoy gear on board when such vessel is fishing or has fished on its present trip in the longline and buoy gear restricted area specified in § 641.23(b), or

(iv) That is carrying a passenger who fishes for a fee; or

(3) For a species for which the quota specified in § 641.25 has been reached and closure has been effected.

(b) *Bag limits.* Daily bag limits are:

(1) Red snapper—7.

(2) Snappers, excluding red, lane, and vermilion snapper—10.

(3) Groupers—5.

(4) Greater amberjack—3.

(5) All others—unlimited.

(c) *Possession limits.* A person subject to a bag limit may not possess in or from the EEZ during a single day, regardless of the number of trips or the duration of a trip, any reef fish in excess of the bag limits specified in paragraph (b) of this section, except that a person who is on a trip that spans more than 24 hours may possess no more than two daily bag limits, provided such trip is aboard a charter vessel or headboat, and,

(1) The vessel has two licensed operators aboard as required by the U.S. Coast Guard for trips of over 12 hours, and

(2) Each passenger is issued and has in possession a receipt issued on behalf of the vessel that verifies the length of the trip.

(d) *Combination of bag limits.* A person who fishes in the EEZ may not combine a bag limit specified in paragraph (b) of this section with a bag or possession limit applicable to State waters.

(e) *Responsibility for bag and possession limits.* The operator of a vessel that fishes in the EEZ is responsible for the cumulative bag or possession limit applicable to that vessel, based on the number of persons aboard.

(f) *Transfer of reef fish.* A person for whom a bag or possession limit specified in paragraph (b) or (c) of this section applies may not transfer at sea a reef fish—

(1) Taken in the EEZ; or

(2) In the EEZ, regardless of where such reef fish was taken.

(g) *Sale.* A reef fish taken under the bag limits specified in paragraph (b) of this section may not be purchased, bartered, traded, or sold.

§ 641.25 Commercial quotas.

Persons who are fishing under a permit issued pursuant to § 641.4, provided they are not subject to the bag limits specified in § 641.24, are subject to the following quotas each fishing year:

(a) Red snapper—3.1 million pounds.

(b) Yellowedge, misty, warsaw, and snowy grouper (deeper-water groupers), combined—1.8 million pounds.

(c) All other groupers, excluding jewfish, combined—9.2 million pounds.

(d) All others—unlimited.

§ 641.26 Closures.

When a commercial quota specified in § 641.25 is reached, or is projected to be reached, the Secretary will publish a notice to that effect in the **Federal Register**, after the effective date of such notice, for the remainder of the fishing year, the bag limit will apply to all harvest in the EEZ of the indicated species, and the purchase, barter, trade, and sale of the indicated species taken from the EEZ is prohibited. This prohibition does not apply to trade in the indicated species that were harvested, landed, and bartered, traded, or sold prior to the effective date of the notice in the **Federal Register** and were held in cold storage by a dealer or processor.

§ 641.27 Procedure for specification of total allowable catch (TAC) and adjustment of management measures.

(a) Prior to April 1 each year, or such other time as agreed upon by the Gulf of Mexico Fishery Management Council (Council) and the Regional Director, the Science and Research Director will, as provided for in 50 CFR 602.12(e), update or complete a stock assessment and fishery evaluation (SAFE) report for red snapper and other reef fish stocks or stock complexes; assess the current spawning stock biomass per recruit ratio (SSBR) levels for each stock; estimate current fishing mortality (F) in relation to F(SSBR); estimate other population parameters; summarize statistics on the fishery; and analyze social and economic data.

(b) The Council will convene a scientific assessment panel (Panel) that will annually review the SAFE report and other relevant data, and will prepare a written report to the Council specifying a range of acceptable biological catch (ABC) for each stock or stock complex in the management unit identified by the Council, NMFS, or the Panel. The ABCs shall be calculated so as to achieve reef fish population levels at or above the 20 percent SSBR goal by January 1, 2000. Where data are inadequate to compute the SSBR model, the Panel will provide the best estimate of ABC that should result in at least 20 percent SSBR level. The ABC ranges will prevent an overfished stock from further decline. A risk analysis showing the probabilities of attaining the stock goal and the annual transitional yields will be calculated for each level of F within the ABC range. The Panel report will include recommendations on quotas, bag limits, size limits, specific gear limits, season closures, and other restrictions required to attain the management goal, along with the associated economic and social impacts.

(c) The Council will conduct a public hearing on the Panel report(s) at or prior to the time it is considered by the Council for subsequent action. Other public hearings may be held also. The Council will request review of the report(s) by its advisory panel and scientific and statistical committees and may convene these groups to provide advice before taking action.

(d) The Council in selecting a TAC level for each stock or stock complex for which an ABC range has been identified, in addition to taking into consideration the recommendations provided for in paragraphs (a), (b), and (c) of this section will:

(1) Set TAC within or below the ABC range or set a series of annual TACs that come within the ABC range within three years or less; and

(2) Subdivide the TACs into commercial and recreational allocations which maximize the net benefits of the fishery to the nation. The allocations will be based on historical percentages harvested by each user group during the base period of 1979–87. However, if the harvest in any year exceeds the allocation for either the recreational or commercial user group, subsequent allocations pertaining to the respective user group will be adjusted to assure meeting the January 1, 2000, spawning stock biomass per recruit goal.

(e) The Council will provide its recommendations to the Regional

Director for implementing or changing TACs for each stock or stock complex, the quotas, bag limits, trip limits, size limits, closed seasons, and gear restrictions necessary to attain the TAC, along with the reports, a regulatory impact review and environmental assessment of impacts, and the proposed regulations, before October 15 of each year, or such other time as agreed upon by the Council and the Regional Director.

(f) Prior to each fishing year, or such other time as agreed upon by the Regional Director and the Council, the Regional Director will review the Council's recommendations and supporting information and, if he concurs that the recommendations are consistent with the objectives of the FMP, the national standards, and other applicable law, he shall forward for publication notice of proposed TACs and associted management measures (harvest restrictions) by November 1, of each year or such other time as agreed upon by the Council and the Regional Director, providing up to 30 days for additional public comment. The Regional Director will take into consideration all information received and will forward for publication in the Federal Register the notice of final rule by December 1 of each year, or such other time as agreed upon by theCouncil and the Regional Director.

(g) Appropriate management measures that may be implemented or modified by proposed and final rules include:

(1) The TACs for each stock or stock complex that are designed to achieve a specific level of ABC within the first year or annual levels of TAC designed to achieve the ABC level within three years.

(2) Bag limits, size limits, vessel trip limits, closed seasons or areas, gear restrictions, and quotas designed to achieve the TAC level.

9. A new appendix A is added to part 641 consisting of new Tables 1 and 2, newly redesignated Figures 1, 2, and 3, and new Figures 4 and 5 to read as follows:

Appendix A to Part 641—Tables and Figures

TABLE 1.—SEAWARD COORDINATES OF THE STRESSED AREA

Point No.	Reference location [1]	N. lat.	W. long.
1	Seaward limit of Florida's waters northeast of Dry Tortugas	24°45.5'	82°41.5'
2	North of Marquesas Keys	24°48.0'	82°06.5'
3	Off Cape Sable	25°15.0'	82°02.0'
4	Off Sanibel Island—Inshore	26°26.0'	82°29.0'
5	Off Sanibel Island—Offshore	26°26.0'	82°59.0'
6	West of Egmont Key	27°30.0'	83°21.5'
7	Off Anclote Keys—Offshore	28°10.0'	83°45.0'
8	Off Anclote Keys—Inshore	28°10.0'	83°14.0'
9	Off Deadman Bay	29°38.0'	84°00.0'
10	Seaward limit of Florida's waters east of Cape St. George	29°35.5'	84°38.6'
	Thence westerly along the seaward limit of Florida's waters to		
11	Seaward limit of Florida's waters south of Cape San Blas	29°32.2'	85°27.1'
12	Southwest of Cape San Blas	29°30.5'	85°52.0'
13	Off St. Andrew Bay	29°53.0'	86°10.0'
14	De Soto Canyon	30°06.0'	86°55.0'
15	South of Florida/Alabama border	29°34.5'	87°38.0'
16	Off Mobile Bay	29°41.0'	88°00.0'
17	South of Alabama/Mississippi border	30°01.5'	88°23.7'
18	Horn/Chandeleur Islands	30°01.5'	88°40.5'
19	Chandeleur Islands	29°35.5'	88°37.0'
20	Seaward limit of Louisiana's waters off North Pass of the Mississippi River	29°16.3'	89°00.0'
	Thence southerly and westerly along the seaward limit of Louisiana's waters to		
21	Seaward limit of Louisiana's waters off Southwest Pass of the Mississippi River	28°57.3'	89°28.2'
22	Southeast of Grand Isle	29°09.0'	89°47.0'
23	Quick flashing horn buoy south of Isles Dernieres	28°32.5'	90°42.0'
24	Southeast of Calcasieu Pass	29°10.0'	92°37.0'
25	South of Sabine Pass—10 fathoms	29°09.0'	93°41.0'
26	South of Sabine Pass—30 fathoms	28°21.5'	93°28.0'
27	East of Arkansas Pass	27°49.0'	96°19.5'
28	East of Baffin Bay	27°12.0'	96°51.0'
29	Northeast of Port Mansfield	26°46.5'	96°52.0'
30	Northeast of Port Isabel	26°21.5'	96°35.0'
31	U.S./Mexico EEZ boundary	26°00.5'	96°36.0'
	Thence westerly along U.S./Mexico EEZ boundary to the seaward limit of Texas' waters.		

[1] Nearest identifiable landfall, boundary, navigational aid, or submarine area.

TABLE 2.—SEAWARD COORDINATES OF THE LONGLINE AND BUOY GEAR RESTRICTED AREA

Point No.	Reference location [1]	N. lat.	W. long.
1	Seaward limit of Florida's waters north of Dry Tortugas	24°48.0'	82°48.0'
2	North of Rebecca Shoal	25°07.5'	82°34.0'
3	Off Sanibel Island—Offshore	26°26.0'	82°59.0'
4	West of Egmont Key	27°30.0'	83°21.5'
5	Off Anclote Keys—Offshore	28°10.0	83°45.0'
6	Southeast corner of Florida Middle Ground	28°11.0'	84°00.0'

TABLE 2.—SEAWARD COORDINATES OF THE LONGLINE AND BUOY GEAR RESTRICTED AREA—Continued

Point No.	Reference location [1]	N. lat.	W. long.
7	Southwest corner of Florida Middle Ground	28°11.0'	84°07.0'
8	West corner of Florida Middle Ground	28°26.6'	84°24.8'
9	Northwest corner of Florida Middle Ground	28°42.5'	84°24.8'
10	South of Carrabelle	29°05.0'	84°47.0'
11	South of Cape St. George	29°02.5'	85°09.0'
12	South of Cape San Blas lighted bell buoy—20 fathoms	29°21.0'	85°30.0'
13	South of Cape San Blas lighted bell buoy—50 fathoms	28°58.7'	85°30.0'
14	De Soto Canyon	30°06.0'	86°55.0'
15	South of Pensacola	29°46.0'	87°19.0'
16	South of Perdido Bay	29°29.0'	87°27.5'
17	East of North Pass of the Mississippi River	29°14.5'	88°28.0'
18	South of Southwest Pass of the Mississippi River	28°46.5'	89°26.0'
19	Northwest tip of Mississippi Canyon	28°38.5'	90°08.5'
20	West side of Mississippi Canyon	28°34.5'	89°59.5'
21	South of Timbalier Bay	28°22.5'	90°02.5'
22	South of Terrebonne Bay	28°10.5'	90°31.5'
23	South of Freeport	27°58.0'	95°00.0'
24	Off Matagorda Island	27°43.0'	96°02.0'
25	Off Aransas Pass	27°30.0'	96°23.5'
26	Northeast of Port Mansfield	27°00.0'	96°39.5'
27	East of Port Mansfield	26°44.0'	96°37.5'
28	Northeast of Port Isabel	26°22.0'	96°21.0'
29	U.S./Mexico EEZ boundary	26°00.5'	96°24.5'
	Thence westerly along U.S./Mexico EEZ boundary to the seaward limit of Texas' waters.		

[1] Nearest identifiable landfall, boundary, navigational aid, or submarine area.

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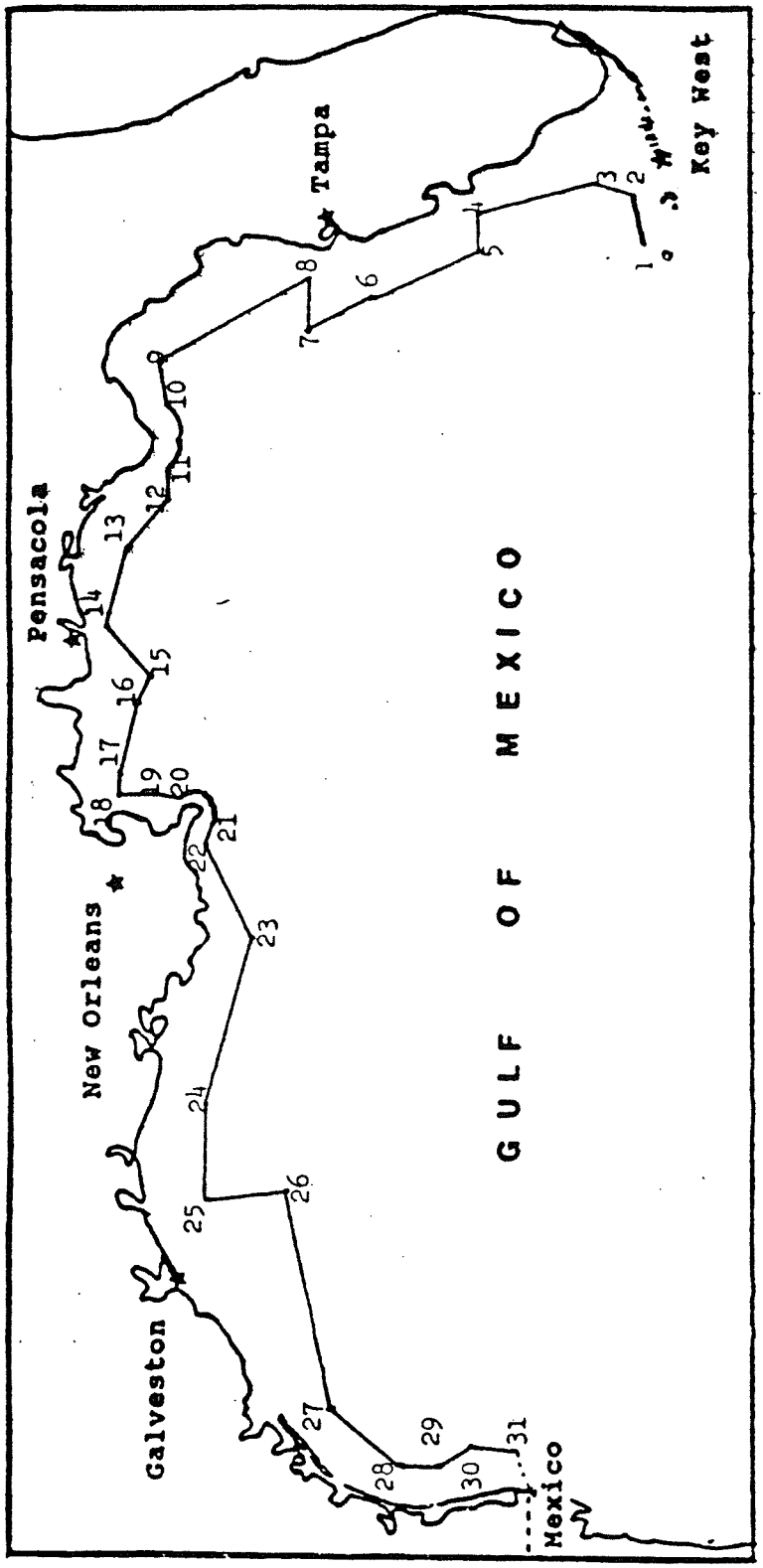

Figure 4. Seaward Limits of the Stressed Area.

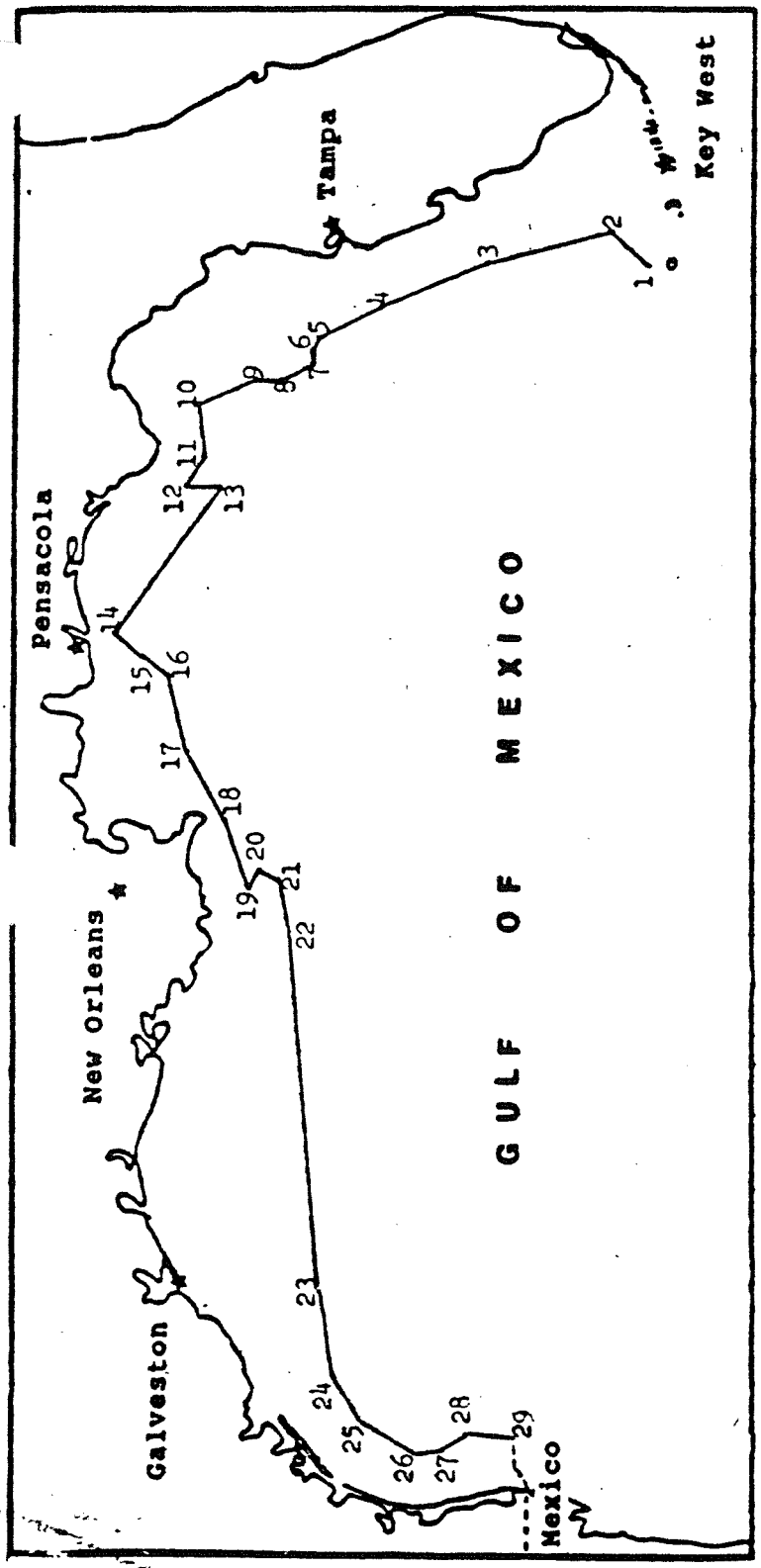

Figure 5. Seaward Limits of the Longline and Buoy Gear Restricted Area.

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