

between the development of the proposed standards and the publication of this proposed rule, the potential need to upgrade the data content of the specifications or the use of Release 2 of the Clinical Document Architecture (CDA), numerous members of the industry and professional associations have requested more time to analyze the potential impact and consequences of the proposed rule. Thus, we have decided to extend the comment period for an additional 60 days. This document announces the extension of the public comment period to January 23, 2006.

**Authority:** Secs. 1173 and 1175 of the Social Security Act (42 U.S.C. 1302d-2 and 1320d-4).

Dated: November 9, 2005.

**Mark B. McClellan,**

*Administrator, Centers for Medicare & Medicaid Services.*

Dated: November 17, 2005.

**Michael O. Leavitt,**

*Secretary.*

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 622

[Docket No. 051114298-5298-01; I.D. 110105C]

RIN 0648-AT12

#### Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Gulf of Mexico Commercial Grouper Fishery; Trip Limit

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

**ACTION:** Proposed rule; request for comments.

**SUMMARY:** NMFS issues this proposed rule to implement a regulatory amendment to the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico (FMP) prepared by the Gulf of Mexico Fishery Management Council (Council). This proposed rule would establish a 6,000-lb (2,722-kg) commercial trip limit for shallow-water and deep-water grouper, combined, in the exclusive economic zone of the Gulf of Mexico. The intended effect of this proposed rule is to minimize the effects of derby fishing and prolong the fishing season.

**DATES:** Written comments on the proposed rule must be received no later than 5 p.m., eastern time, on December 7, 2005.

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

• E-mail: 0648-

AT12.Proposed@noaa.gov. Include in the subject line the following document identifier: 0648-AT12.

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

• Mail: Andy Strelcheck, Southeast Regional Office, NMFS, 263 13th Avenue South, St. Petersburg, FL 33701.

• Fax: 727-824-5308; Attention: Andy Strelcheck.

Copies of the regulatory amendment, which includes a Regulatory Impact Review (RIR), an Initial Regulatory Flexibility Analysis (IRFA), and an Environmental Assessment (EA), may be obtained from the Gulf of Mexico Fishery Management Council, 2203 N. Lois Avenue, Suite 1100, Tampa, FL 33607; telephone: 813-348-1630; fax: 813-348-1711; e-mail: [gulfcouncil@gulfcouncil.org](mailto:gulfcouncil@gulfcouncil.org). Copies of the regulatory amendment may also be downloaded from the Council's website at [www.gulfcouncil.org](http://www.gulfcouncil.org).

**FOR FURTHER INFORMATION CONTACT:**

Andy Strelcheck, telephone: 727-824-5374; fax: 727-824-5308; e-mail: [andy.stelcheck@noaa.gov](mailto:andy.stelcheck@noaa.gov).

**SUPPLEMENTARY INFORMATION:** The reef fish fishery of the Gulf of Mexico is managed under the FMP. The FMP was prepared by the Council and is implemented under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) by regulations at 50 CFR part 622.

On July 15, 2004 (69 FR 33315, June 15, 2004), NMFS implemented Secretarial Amendment 1 to the FMP to establish a red grouper rebuilding plan, including a 5.31 million-lb (2.42 million-kg), gutted weight, commercial quota and a 1.25 million-lb (0.57 million-kg), gutted weight, recreational target catch level for red grouper. Secretarial Amendment 1 also reduced the commercial quotas for deep-water grouper (i.e., speckled hind and yellowedge, misty, warsaw, and snowy grouper) and shallow-water grouper (i.e., all grouper other than deep-water grouper, goliath grouper, and Nassau grouper and including scamp before the quota for shallow-water grouper is reached). In 2004, the commercial deep-water grouper and shallow-water grouper quotas were reached prior to the end of the fishing year, and the fisheries

were closed on July 15, 2004 (69 FR 41433, July 9, 2004), and November 15, 2004 (69 FR 65092, November 10, 2004), respectively. In November 2004, the Council, at the request of representatives of the commercial grouper fishing industry, asked NMFS to develop an emergency or interim rule establishing trip limits for the commercial grouper fishery in 2005. Trip limits, which began at 10,000 lb (4,536 kg) and stepped down to 7,500 lb (3,402 kg) and then to 5,500 lb (2,495 kg) at defined trigger points, were implemented by NMFS through an emergency rule that was effective from March 3 through August 16, 2005 (70 FR 8037, February 17, 2005). NMFS extended the emergency rule and trip limits for an additional 180 days effective August 17, 2005, through February 12, 2006 (70 FR 48323, August 17, 2005). These trip limits were implemented to prolong the shallow-water grouper and deep-water grouper fishing seasons in 2005 and to reduce the adverse effects associated with derby fishing. However, the emergency trip limits were not restrictive enough to achieve the intended objectives. In fact, the deep-water and shallow-water grouper fisheries closed earlier in 2005 (June 23, 2005, and October 10, 2005, respectively) than they had in 2004.

The Council prepared a regulatory amendment to evaluate alternatives and establish more permanent trip limits for the commercial grouper fishery. After considering the effectiveness of existing trip limits, management alternatives, and public testimony, the Council adopted a 6,000-lb (2,722-kg) commercial trip limit for shallow-water grouper and deep-water grouper, combined. This proposed rule would implement the 6,000-lb (2,722-kg) trip limit. To maximize the effectiveness of this more restrictive trip limit, the Council and NMFS have agreed the existing trip limits implemented via emergency rule (70 FR 48323, August 17, 2005) would terminate upon implementation of the 6,000-lb (2,722-kg) trip limit proposed in this rule.

#### Classification

NMFS has determined that the proposed rule is consistent with the FMP and preliminarily determined that the rule is consistent with the Magnuson-Stevens Fishery Conservation and Management Act and other applicable laws.

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

NMFS prepared an IRFA as required by section 603 of the Regulatory Flexibility Act. The IRFA describes the

economic impact this proposed rule, if adopted, would have on small entities. A description of the action, why it is being considered, and the legal basis for this action are contained at the beginning of this section in the preamble and in the **SUMMARY** section of the preamble. A summary of the analysis follows.

This proposed rule would establish a 6,000-lb (2,722-kg) trip limit for the commercial grouper fishery in the Gulf of Mexico. The purpose for this regulatory amendment is to reduce the adverse socioeconomic effects of derby fishing in the commercial sector and prolong the fishing season. The Magnuson-Stevens Fishery Conservation and Management Act provides the statutory basis for the proposed rule.

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

An estimated 1,129 vessels were permitted to engage in commercial fishing for Gulf reef fish (which include grouper) in early 2004, down from 1,718 vessels in 1993. Although a permit moratorium has limited access in this fishery since 1992, transfer of permits is not restricted. Those seeking to enter the fishery can purchase a permit from those seeking to exit the fishery, provided they meet income and other requirements. However, total participation in terms of both the number of permits and the number of vessels landing Gulf reef fish has consistently declined since 1993.

An estimated 1,157 vessels had permits to fish commercially for Gulf reef fish from 2002–2004, and 1,021 vessels had historical, logbook-reported landings of Gulf reef fish. This total includes 928 vessels with landings of Gulf grouper, for which the median estimated gross revenue for all reported landings of fish was approximately \$20,000 per vessel per year, and for which the maximum revenue ranged from \$478,000–\$543,000. For the longline fleet (162 vessels per year, on average), the median annual gross revenue ranged from \$96,000–\$102,000 (84–90 percent from grouper). The handline fleet (765 vessels per year, on average) had median annual gross revenue of under \$17,000 (44–48 percent from grouper). Some vessels use both gears, so the numbers of vessels cannot be added across gear types.

For the 928 vessels with reported landings of Gulf grouper, historical fishery performance resulted in estimated annual average gross revenue of \$46 million for all logbook-reported fish in 2002–2004. This includes gross revenue of \$39 million for all fish on

trips with grouper landings (\$25 million from red grouper). The net revenue for these trips was approximately \$29 million (annual averages per vessel for 928 vessels are \$41,000 for gross revenue and \$31,000 for net revenue). Net revenue for the commercial fishing sector, computed as trip revenue minus trip costs, includes returns to all labor and capital.

Simulation of fishery performance under status quo conditions produced estimates that are slightly lower than historical fishery performance: gross revenue of approximately \$37 million for all fish on trips with grouper landings and \$27 million for net revenue (annual averages per vessel for 922 vessels are \$40,000 for gross revenue and \$29,000 for net revenue). Projected net revenue is approximately \$10.7 million for the longline fleet (average, \$66,000 per vessel per year for 161 vessels), and \$14.5 million for the vertical line fleet (average, \$19,000 per vessel per year for 748 vessels).

Between 1997–2000, there were on average 123 reef fish dealers actively buying and selling in the grouper market. Of these, 101 dealers (82 percent) sold more than \$30,000 per year worth of domestic grouper on a regular basis. These dealers may hold multiple types of permits. Because the extent of business operation for these dealers is unknown, it is not possible to determine what percentage of their business comes from grouper. Average employment information per reef fish dealer is not known, but total employment in 1997 for reef fish processors in the Southeast was estimated at approximately 700 individuals, both part and full time. It is assumed that all processors must be dealers, yet a dealer need not be a processor. Therefore, total dealer employment is expected to be slightly more than 700 individuals. Since none of the reef fish processors meet the SBA employment threshold, it is unlikely that any of the dealers will meet that threshold.

The proposed rule would not change current reporting, recordkeeping, and other compliance requirements under the FMP. These requirements include qualification criteria for the commercial permits, landing reports for vessels with commercial permits, and participation in additional data collection programs if selected by NMFS. All of the information elements required for these requirements are standard elements essential to the successful operation of a fishing business and should, therefore, already be collected and maintained as standard operating practice by the business. The requirements do not

require professional skills and, therefore, are deemed not to be onerous.

The Small Business Administration defines a small business in the commercial fishery sector as a firm that is independently owned and operated, is not dominant in its field of operation, and has annual receipts up to \$3.5 million per year. For support industries, the appropriate thresholds are a firm with fewer than 500 employees in the case of fish processors, or fewer than 100 employees in the case of fish dealers. Given the profiles presented above, it is determined that all commercial fishing entities and dealers that will be affected by the proposed action are small business entities. Because all said entities would be potentially affected, it is determined that the proposed action will affect a substantial number of small entities.

The outcome of “significant economic impact” can be ascertained by examining two issues: disproportionality and profitability. The disproportionality question is do the regulations place a substantial number of small entities at a significant competitive disadvantage to large entities? All the commercial fishing or dealer entities affected by the proposed rule are considered small entities, so the issue of disproportionality does not arise in the present case. The profitability question is do the regulations significantly reduce profit for a substantial number of small entities? The proposed rule is projected to reduce net revenues by \$760,000 to \$1.09 million for the bottom longline sector. Compared with projected annual net revenue of \$10.7 million for this sector under the status quo (\$66,000 per vessel per year for 161 vessels), the projected net revenue reduction equates to approximately \$4,700–\$6,700, or approximately 7–10 percent, per vessel per year, on average.

For the vertical line sector, the proposed rule is projected to increase net revenues by \$81,000–\$112,000 per year. Compared with projected annual net revenue of \$14.5 million for this sector under the status quo (\$19,000 per vessel per year for 748 vessels), the projected increase in net revenue equates to approximately \$100–\$150 per vessel, or less than a 1 percent increase.

The proposed commercial trip limits are expected to reduce the adverse but unquantifiable economic effects of derby fishing that are expected to develop under the status quo. Although the direct impacts of derby fishing cannot be quantified using current data and models, they are expected to be substantial, and reduction of those derby effects is expected to mitigate any

losses in net revenue to the fishery associated with the implementation of trip limits.

Five alternatives, including the status quo, were considered relative to the proposed commercial action. The status quo alternative would eliminate the short-term adverse impacts of the proposed action but would not address the potential development of a derby fishery and would not, therefore, achieve the Council's objectives.

A second alternative to the proposed action would establish a step-down trip limit consisting of trip limits of 10,000, 7,500, and 5,500 lb (4,536, 3,402, and 2,495 kg), gutted weight, based on target dates and accumulated landing totals. This alternative, while resulting in lower short-term reductions in net revenues relative to the proposed action, does not appear to sufficiently constrain commercial landings, as evidenced by 2005 fishery performance. Therefore, this alternative is not sufficient to lessen derby conditions and reduce the length of the quota closure.

The third alternative to the proposed action would start the commercial trip limit at 7,500 lb (3,402 kg) with step-down to 5,000 lb (2,268 kg). This alternative would potentially reduce the short-term reduction in net revenues relative to the proposed action. However, based on preliminary 2005 fishery performance, the starting limit appears insufficient to counter derby pressure.

The fourth alternative would also start with an initial trip limit of 7,500 lb (3,402 kg) with a step-down to 3,500 lb

(1,588 kg). The short-term adverse impacts of this alternative, however, exceed those of the proposed action.

The fifth alternative to the proposed commercial action would begin the fishery with a 4,000-lb (1,814-kg) trip limit and allow the trip limit to either be increased, decreased, or remain the same depending upon fishery performance. Although this scenario cannot be fully analyzed due to the absence of a clearly specified step up/down decision rule, the initial limit is so low that it is expected to generate excessive negative impacts, particularly on the bottom longline sector.

Copies of the IRFA are available from the Council (see **ADDRESSES**).

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

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

Dated: November 17, 2005.

#### John Oliver,

*Deputy Assistant Administrator for Operations, National Marine Fisheries Service.*

For the reasons set out in the preamble, 50 CFR part 622 is proposed to be amended as follows:

#### **PART 622—FISHERIES OF THE CARIBBEAN, GULF, AND SOUTH ATLANTIC**

1. The authority citation for part 622 continues to read as follows:

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

2. In § 622.44, introductory text and paragraph (g) are revised to read as follows:

#### **§ 622.44 Commercial trip limits.**

Commercial trip limits are limits on the amount of the applicable species that may be possessed on board or landed, purchased, or sold from a vessel per day. A person who fishes in the EEZ may not combine a trip limit specified in this section with any trip or possession limit applicable to state waters. A species subject to a trip limit specified in this section taken in the EEZ may not be transferred at sea, regardless of where such transfer takes place, and such species may not be transferred in the EEZ. For fisheries governed by this part, commercial trip limits apply as follows (all weights are round or eviscerated weights unless specified otherwise):

\* \* \* \* \*

(g) *Gulf deep-water and shallow-water grouper, combined.* For vessels operating under the quotas in § 622.42(a)(1)(ii) or (a)(1)(iii), the trip limit for Gulf deep-water and shallow-water grouper combined is 6,000 lb (2,722 kg), gutted weight. However, when the quotas in § 622.42(a)(1)(ii) or (a)(1)(iii) are reached and the respective fishery is closed, the commercial trip limit for the species subject to the closure is zero. (See § 622.42(a)(1)(ii) and (a)(1)(iii) for the species included in the deep-water and shallow-water grouper categories, respectively.)

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