

*E. General*

1. Are there aspects of the current rule that do not increase safety risks or adversely impact driver health and that should be preserved?

Issued on: January 13, 2010.

**Larry W. Minor,**

*Associate Administrator for Policy and Program Development.*

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**DEPARTMENT OF COMMERCE****National Oceanic and Atmospheric Administration****50 CFR Part 622**

[Docket No. 090225243-91127-01]

RIN 0648-AX67

**Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Reef Fish Fishery of the Gulf of Mexico; Amendment 31**

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

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

**SUMMARY:** NMFS issues this proposed rule to implement Amendment 31 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 implement restrictions applicable to the bottom longline component of the reef fish fishery in the exclusive economic zone (EEZ) of the eastern Gulf of Mexico (Gulf). The proposed restrictions would include a bottom longline endorsement requirement, a seasonal closed area, and a limitation on the number of hooks that could be possessed and fished. The intent of the proposed rule is to balance the continued operation of the bottom longline component of the reef fish fishery in the eastern Gulf while maintaining adequate protective measures for sea turtles.

**DATES:** Written comments must be received on or before March 1, 2010.

**ADDRESSES:** You may submit comments on the proposed rule, identified by "0648-AX67" by any of the following methods:

- Electronic Submissions: Submit all electronic public comments via the Federal e-Rulemaking Portal: <http://www.regulations.gov>.

- Fax: 727-824-5308; Attention: Cynthia Meyer.

- Mail: Cynthia Meyer, Southeast Regional Office, NMFS, 263 13th Avenue South, St. Petersburg, FL 33701-5505.

Instructions: No comments will be posted for public viewing until after the comment period has closed. All comments received are a part of the public record and will generally be posted to <http://www.regulations.gov> without change. All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

To submit comments through the Federal e-Rulemaking Portal: <http://www.regulations.gov>, enter "NOAA-NMFS-2008-0310" in the keyword search, then select "Send a Comment or Submission." NMFS will accept anonymous comments (enter N/A in the required fields, if you wish to remain anonymous). You may submit attachments to electronic comments in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

Copies of Amendment 31, which include a draft environmental impact statement (DEIS), an initial regulatory flexibility analysis (IRFA), and a regulatory impact review may be obtained from the Gulf of Mexico Fishery Management Council, 2203 North Lois Avenue, Suite 1100, Tampa, FL 33607; telephone 813-348-1630; fax 813-348-1711; e-mail [gulfcouncil@gulfcouncil.org](mailto:gulfcouncil@gulfcouncil.org); or may be downloaded from the Council's website at <http://www.gulfcouncil.org/>.

Written comments regarding the burden-hour estimate or other aspects of the collection-of-information requirement contained in this proposed rule may be submitted to Richard Malinowski, Southeast Regional Office, NMFS, and by e-mail to [David\\_Rostker@omb.eop.gov](mailto:David_Rostker@omb.eop.gov), or by fax to 202-395-7285.

**FOR FURTHER INFORMATION CONTACT:** Cynthia Meyer, telephone: 727-824-5305.

**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 through regulations at 50 CFR part 622 under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

**Background**

Sea turtles are incidentally taken, and some are killed, as a result of numerous activities, including fishery-related activities in the Gulf and along the Atlantic seaboard. Under the Endangered Species Act (ESA) and its implementing regulations, the taking of sea turtles is prohibited, with exceptions identified in 50 CFR 223.206(d), or according to the terms and conditions of a biological opinion issued under section 7 of the ESA, or according to an incidental take permit issued under section 10 of the ESA. All sea turtles that occur in U.S. waters are listed as either endangered or threatened under the ESA of 1973. The Kemp's ridley (*Lepidochelys kempii*), leatherback (*Dermochelys coriacea*), and hawksbill (*Eretmochelys imbricata*) turtles are listed as endangered. The loggerhead (*Caretta caretta*) and green (*Chelonia mydas*) turtles are listed as threatened, except for breeding populations of green turtles in Florida and on the Pacific coast of Mexico, which are listed as endangered.

In September 2008, NMFS released a report analyzing sea turtle takes in the reef fish fishery as documented through an observer program. Subsequently updated in April 2009, the report indicated that the number of hardshell sea turtle takes by the bottom longline component of the Gulf reef fish fishery had exceeded the incidental take estimates specified in a 2005 Biological Opinion. Therefore, action was needed to provide protection for threatened loggerhead sea turtles in compliance with ESA.

To address this issue in the short-term while the Council developed a long-term management strategy, NMFS published an emergency rule effective May 18, 2009. The emergency rule prohibited longline fishing for reef fish in the eastern Gulf shoreward of a line approximating the 50-fathom depth contour, and prohibited all longline fishing in the eastern Gulf after the deep-water grouper and tilefish commercial quotas were filled.

On October 16, 2009, NMFS published a rule, under the authority of the ESA, to replace the emergency rule. The rule prohibits bottom longline fishing in the eastern Gulf shoreward of a line approximating the 35-fathom (64-m) contour with a restriction of 1,000 hooks per vessel with no more than 750 hooks rigged for fishing or fished at any given time. The intended effect of the rulemaking is to maintain protective measures for loggerhead sea turtles as well as to maintain a viable bottom longline fleet pending the

implementation of Amendment 31 or alternative long-term mitigation measures.

At the August 2009 meeting, the Council approved long-term measures in Amendment 31, and submitted the amendment for review by the Secretary of Commerce following final editing, along with the accompanying regulations deemed necessary and appropriate to implement Amendment 31. Dated October 13, 2009, the updated Biological Opinion determined that the fishing activities conducted under Amendment 31 and its implementing regulations are not likely to jeopardize the continued existence of sea turtles or smalltooth sawfish.

### Management Measures

The proposed rule would modify regulations for the bottom longline component of the reef fish fishery by including a seasonal area closure, qualifying endorsement, and gear restrictions. Collectively, the actions contained in the proposed rule are anticipated to achieve a 48-percent to 67-percent reduction in effective bottom longline fishing effort and, therefore, hardshell sea turtle takes in the bottom longline component of the reef fish fishery.

The June through August seasonal area closure would prohibit the use of bottom longline gear to fish for reef fish shoreward of a line approximating the 35-fathom (64-m) boundary in the eastern Gulf. In the case of the 35-fathom (64-m) boundary intersecting a marine reserve, fishermen would also be required to adhere to the regulations for the reserve. During vessel transit through closed zones, no reef fish could be possessed unless bottom longline gear is appropriately stowed, meaning that a longline may be left on the drum if all gangions and hooks are disconnected and stowed below deck; hooks are not baited, and all buoys are disconnected from the gear, but may remain on deck.

The gear restriction would apply to longline vessels with Gulf reef fish permits with longline endorsements. The restriction would limit the number of hooks allowed per vessel. Each vessel would be allowed to possess 1,000 hooks total. However, only 750 hooks may be fished or rigged for fishing at any given time.

The qualifying endorsement to fish in the eastern Gulf would reduce the number of vessels operating in the bottom longline component of the reef fish fishery. The longline endorsement would be provided only to vessel permits with demonstrated average annual landings of 40,000 lb (18,144 kg)

of reef fish harvested with fish traps or longline gear during 1999–2007. The transfer of the endorsement would be unrestricted between commercial Gulf reef fish permit holders.

To be eligible to receive a longline endorsement to fish in the eastern Gulf, a person would need to possess an active or renewable (within the one year grace period immediately following expiration) Gulf reef fish commercial vessel permit. The calculation of landings would be based on the average annual reef fish landings using fish traps or longline gear associated with each permit during the applicable landings period, 1999–2007. All landings associated with an active or renewable Gulf reef fish commercial vessel permit for the applicable landings period that were reported to NMFS by December 31, 2008, would be attributed to the current owner, as of the date of publication of the final rule. The associated landings also include landings reported by a person who held the permit prior to the current owner. Only legal landings reported in compliance with applicable state and Federal regulations would be used to identify initial endorsement holders. The NMFS would automatically mail initial endorsements to all eligible permit holders.

The appeals process included in this rule would provide a formalized process for resolving disputes regarding eligibility for a longline endorsement to fish in the eastern Gulf. Items subject to appeal would include the accuracy of the amount of reef fish landings using longline gear or fish traps, the correct assignment of landings to the permit owner, and the initial eligibility for an eastern Gulf reef fish bottom longline endorsement based on ownership of a qualifying reef fish permit.

Appeals would need to contain documentation supporting the basis for the appeal and must be submitted to the Regional Administrator (RA) postmarked no later than 90 days after the effective date of the final rule that would implement Amendment 31. Landings data for appeals would be based on NMFS' logbooks submitted to and received by the Southeast Fisheries Science Center (SEFSC) by December 31, 2008, for the years 1999 through 2007. Appeals based on hardship factors would not be considered. The RA would review, evaluate, and render final decision on appeals based on NMFS' logbooks. Appellants would need to submit NMFS' logbooks to support their appeal. If NMFS' logbooks are not available, the RA could use state landings records. In addition, NMFS' records of Gulf commercial reef fish

permits would constitute the sole basis for determining ownership of such permits. A person who believes he/she meets the permit eligibility criteria based on ownership of a vessel under a different name, as may have occurred when ownership has changed from individual to corporate or vice versa, would need to document his/her continuity of ownership.

Positive impacts to the biological environment include reductions in bycatch of both hardshell sea turtles and non-targeted or undersized reef fish. During the months of June through August, the NMFS observer program data indicate a concentration of sea turtles in water depths of 20–35 fathoms (37–64 m). Shifting the fishing effort to deeper waters for this time period may reduce the sea turtle takes in the bottom longline component of the fishery. The bottom longline endorsement requirement would reduce the number of permitted vessels operating in the fishery from approximately 120 to 61, resulting in a bottom longline trip reduction of approximately 54-percent. Limiting the number of hooks would likely change the fishing behavior for a number of vessels as they would reduce the length of their mainline and possibly increase the number of sets to accommodate the reduction in hooks. The range in reduction is based on various analyses of effort shifting scenarios in the bottom longline component of the reef fish fishery.

### Availability of Amendment 31

Additional background and rationale for the measures discussed above are contained in Amendment 31. The availability of Amendment 31 was announced in the **Federal Register** on December 31, 2009 (74 FR 69322). Written comments on Amendment 31 must be received by March 1, 2010. All comments received on Amendment 31 or on this proposed rule during their respective comment periods will be addressed in the preamble of the final rule.

### Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the AA has determined that this proposed rule is consistent with Amendment 31, other provisions of the Magnuson-Stevens Act, and other applicable law, subject to further consideration after public comment.

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

NMFS prepared a DEIS for this amendment. A notice of availability for

the DEIS was published on November 13, 2009 (74 FR 58625).

An IRFA was prepared, 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 copy of this analysis is available from the Council (see **ADDRESSES**). A summary of the analysis follows.

The purpose of this proposed rule is to reduce interactions between sea turtles and bottom longline gear in the reef fish fishery in the eastern Gulf. The Magnuson-Stevens Act provides the statutory basis for this proposed rule.

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

This proposed rule would prohibit the use of bottom longline gear to fish for reef fish in the eastern Gulf (east of 85° 30' W. longitude) shoreward of a line approximating the 35-fathom (64-m) depth contour from June through August, require a permit endorsement to fish for reef fish using bottom longline gear in the eastern Gulf, and limit the number of hooks per vessel using bottom longline gear to fish for reef fish in the eastern Gulf to 1,000 hooks, of which no more than 750 hooks could be rigged for fishing or fished at any given time.

This proposed rule would be expected to directly affect commercial fishing vessels that use bottom longline gear to fish for reef fish in the eastern Gulf. Based on logbook records, for the period 2003–2007, an average of 149 vessels per year recorded reef fish landings using bottom longline gear. These vessels are estimated to average \$108,635 per year in gross revenues and \$72,649 per year in net operating revenues (NOR; revenues net of non-labor trip costs).

Some fleet activity is known to occur in the commercial sector of the Gulf reef fish fishery. Based on permit data, the maximum number of permits reported to be owned by the same entity is six, though additional permits may be linked through other affiliations which cannot be identified with current data. It is unknown whether all of these linked permits are for vessels that use longline gear, which generate higher average annual revenues than vessels that use other gears to harvest reef fish. Nevertheless, assuming each of these six vessels use bottom longline gear, using the average revenue per vessel provided above the average annual combined

revenues for this entity would be approximately \$652,000.

The Small Business Administration has established size criteria for all major industry sectors in the U.S. including fish harvesters. A business involved in fish harvesting is classified as a small business if it is independently owned and operated, is not dominant in its field of operation (including its affiliates), and has combined annual receipts not in excess of \$4.0 million (NAICS code 114111, finfish fishing) for all its affiliated operations worldwide. Based on the gross revenue estimates provided above, all commercial reef fish vessels expected to be directly affected by this proposed rule are determined for the purpose of this analysis to be small business entities.

As previously stated, this proposed rule would require a permit endorsement to fish for reef fish using bottom longline gear in the eastern Gulf. This permit endorsement would be a new compliance requirement. Acquisition of the endorsement would not require an application or additional fees. Instead, eligibility for the endorsement would be determined by NMFS, based on an evaluation of the landings history associated with each commercial reef fish permit, and the permit endorsement provided to qualified vessels. As a result, no additional costs or administrative burdens would be imposed on qualifying entities. Permit holders that do not qualify for the endorsement would be prohibited from using bottom longline gear to harvest reef fish in the prescribed area. The expected economic effects of the endorsement requirement on entities that historically have harvested reef fish with bottom longline gear but that would not qualify for the endorsement are discussed below. This proposed rule would not establish any new reporting or record-keeping requirements.

The expected effects of the proposed seasonal bottom longline gear prohibition and endorsement requirement were evaluated in tandem. Vessels affected by the proposed endorsement and gear restrictions would be expected to either shift fishing effort to areas that remain open and continue to fish with bottom longline gear, or convert to vertical line gear. However, because of the absence of adequate data, effort shift was not modeled in the analysis of the expected economic effects of this proposed rule. Instead, only gear conversion was modeled, with gear conversion rates varied from 0 percent to 100 percent of affected vessels and trips. Under this modeling approach, any affected effort

that did not convert to vertical line gear was assumed to not occur, resulting in the loss of all normal harvests and revenues for that vessel and trip. As such, this is an extreme assumption. In reality, rather than trip cancellation, effort shift is likely to occur, resulting in some amount of continued historic harvest. The absence of effort shift in the analysis results in over-estimation of the expected economic effects of this proposed rule and, as a result, the following results should be viewed as upper bounds.

This proposed rule would be expected to reduce the net operating revenues (NOR; revenues minus non-labor variable operating costs) of commercial vessels that have historically harvested reef fish using bottom longline gear in the eastern Gulf by \$1.28 million per year (100-percent conversion to vertical line gear) to \$3.44 million (0-percent conversion to vertical line gear). Averaged across the average number of vessels per year with recorded landings of reef fish using bottom longline gear from 2003–2007 (149 vessels), the estimated reduction in NOR per vessel ranges from approximately \$8,600 to \$23,100, or approximately 12 percent to 32 percent of the average annual NOR per vessel. It is noted that individual vessels may experience higher or lower losses than these averages. Gear conversion is estimated to cost approximately \$13,750 per vessel, though partial financial assistance is available for up to 50 vessels from an environmental advocacy group. Additional economic losses may accrue due to the proposed hook restriction. Although these losses cannot be quantified with available data, the proposed hook restriction may result in reduced harvest efficiency of some vessels. This would be expected to result in either reduced harvests or increased costs to maintain normal harvests if fishermen have to fish longer or make more sets. The proposed hook restrictions could also increase the possibility that a trip may have to be terminated early if a line is lost and insufficient replacement hooks are available to allow continued fishing.

Four alternatives, including the no action alternative (status quo), with multiple sub-alternatives, were considered for the action to establish seasonal and area gear restrictions. One alternative and set of sub-options focused on the geographic scope of the proposed gear restriction, one alternative and set of sub-options focused on the depth specification of the proposed gear restriction, and one alternative and set of sub-options focused on the temporal application of

the proposed gear restriction. The no-action alternative would not establish any new gear restrictions, would not be expected to reduce interactions between sea turtles and bottom longline gear in the reef fish fishery, and would not be expected to achieve the Council's objectives.

The alternative specifications of the geographic scope of the proposed gear restrictions would have imposed the restrictions on smaller areas than the proposed rule and, as a result, would be expected to result in lower adverse economic effects than this proposed rule. However, the reduced geographic scope of these alternative specifications would be expected to result in insufficient reduction in interactions between sea turtles and bottom longline gear, and would not be expected to achieve the Council's objectives.

One alternative to the depth specification of this proposed rule would have prohibited the use of bottom longline gear to harvest reef fish in waters less than 30 fathoms (55 m), which would be less restrictive than the proposed restriction, while two alternatives would have been more restrictive, prohibiting the use of the gear in waters less than 40 fathoms (73 m) and 50 fathoms (91 m), respectively. The less restrictive alternative would be expected to reduce the loss of NOR to commercial vessels relative to the proposed rule. However, the reduced scope of the restriction would be expected to result in insufficient reduction in interactions between sea turtles and bottom longline gear, and would not be expected to achieve the Council's objectives. While the two more restrictive alternatives may be expected to result in greater protection of sea turtles, both would be expected to result in greater adverse economic effects than the depth specification of this proposed rule. As a result, these alternative depth specifications would not be expected to achieve the Council's objectives of sufficiently reducing interactions between sea turtles and bottom longline gear while minimizing the adverse effects on the reef fish fishery.

Both alternatives to the seasonal specification of this proposed rule would have increased the duration of the gear prohibition and would be expected to result in greater adverse economic effects than the seasonal restriction of this proposed rule. Similar to the more restrictive depth alternatives, while increased seasonal application of the proposed gear prohibition would be expected to result in greater sea turtle protection, these alternatives would not be expected to

achieve the Council's objectives of sufficiently reducing interactions between sea turtles and bottom longline gear while minimizing the adverse effects on the reef fish fishery.

Seven alternatives, including the no action alternative (status quo), were considered for the action to reduce the number of vessels allowed to use bottom longline gear to harvest reef fish in the eastern Gulf. Except for the no action alternative, the alternatives varied by the minimum average annual reef fish harvest threshold that would be required to qualify for a permit endorsement that allowed the use of bottom longline gear to harvest reef fish in the eastern Gulf, and each alternative included two sub-options for the qualifying time period from which average annual harvests would be evaluated (1999–2004 or 1999–2007) and three sub-options that addressed the transferability of the endorsement. The no action alternative would not establish a longline endorsement to the reef fish permit, would not be expected to reduce the number of vessels (permits) allowed to use bottom longline gear to harvest reef fish in the eastern Gulf, and would not be expected to achieve the Council's objectives.

Two alternatives would have established lower average annual harvest thresholds (20,000 lb (9,072 kg) and 30,000 lb (13,608 kg), gutted weight) for endorsement qualification than this proposed rule (40,000 lb (18,144 kg), gutted weight), while two alternatives would establish higher thresholds (50,000 lb (22,680 kg) and 60,000 lb (27,216 kg), gutted weight). Because lower thresholds would allow more vessels to continue to participate in the reef fish fishery using bottom longline gear, these alternatives would be expected to result in lower adverse economic effects than the proposed qualification threshold. However, these two alternatives would not be expected to result in sufficient reductions in the number of vessels allowed to use bottom longline gear to harvest reef fish in the eastern Gulf or, in turn, sufficient reductions in bottom longline effort necessary to achieve target reductions in interactions between sea turtles and bottom longline gear. As a result, these alternatives would not be expected to achieve the Council's objectives. The two alternatives that would have established higher qualification thresholds would be expected to result in fewer qualifying vessels, greater economic losses, and greater reduction in interactions between sea turtles and bottom longline gear than is necessary to achieve the Council's objectives.

Under the seventh alternative for the action to reduce the number of vessels allowed to use bottom longline gear to harvest reef fish in the eastern Gulf, endorsement qualification would have been based on landings histories in communities where the ex-vessel value of red grouper landings accounted for at least 15 percent of the total ex-vessel value of all species landed in the community. Qualifying permits would be required to have reported landings in these communities for at least 5 years during the period of 1999–2007, with minimum average annual reef fish harvests of 30,000 lb (13,608 kg) per permit. The net economic effects of this alternative are unknown. However, while over 80 vessels would be expected to qualify for an endorsement under a 30,000-lb (13,608-kg) threshold without a community-linkage requirement, fewer than 50 vessels would qualify with the imposition of the community requirement. The intent of this alternative was to reduce bottom longline effort to a level that would adequately reduce sea turtle interactions while protecting communities dependent on this component of the commercial sector of the Gulf reef fish fishery. However, the alternative was determined to be incapable of achieving the Council's objectives because qualifying vessels could not be required to continue landing their harvests in the target communities. Additionally, the exclusion of vessels that met the landings threshold but lacked the required history with a specific dependent community was determined to be inequitable.

This proposed rule would establish endorsement qualification based on harvest history from 1999–2007. The alternative period of evaluation, 1999–2004, would, for all landings thresholds, have resulted in fewer qualifying permits and greater adverse economic effects than the proposed action.

This proposed rule would also allow unrestricted transfer of endorsements between commercial reef fish permit holders. The alternative sub-options would either not have allowed endorsement transfer or only allowed transfer to reef fish permit holders with a vessel of equal or lesser length. Each of these sub-options would have been more restrictive than the transfer allowance of this proposed rule and, as a result, would be expected to result in greater adverse economic effects than this proposed rule.

Four alternatives, including the no action alternative (status quo), were considered for the action to modify fishing gear or practices. The no action alternative would not establish further

restrictions on fishing gear or practices and, as a result, would not be expected to achieve the Council's objectives.

One alternative, with multiple sub-options, to the proposed fishing gear restriction would limit mainline length for bottom longlines, while another would limit gangion length. The economic effects of these alternatives cannot be quantitatively evaluated with available data. In general, these actions would be expected to adversely affect the catch rates, operating efficiency, and NOR of affected vessels. Whether these alternatives would result in lower adverse economic effects than the proposed hook restriction is unknown. However, available data do not indicate that these measures would be more effective in reducing interactions between sea turtles and bottom longline gear than the proposed hook restriction.

Two alternative hook limits, 500 hooks and 1,500 hooks, were considered relative to the proposed hook restriction. The lower hook limit would be expected to result in greater adverse economic effects than the proposed limit and is more restrictive than believed necessary to achieve the target reduction in interactions between sea turtles and bottom longline gear. Conversely, while the higher hook limit would be expected to result in lower adverse economic effects than the proposed limit, it is not believed to be sufficiently restrictive to achieve the target reduction in sea turtle interactions.

The amendment on which this proposed rule is based also considered an action to establish restrictions on the bait used in the bottom longline reef fish fishery. Two alternatives, including the no action alternative (status quo), were considered. However, the no action alternative was selected by the Council as the preferred alternative. As a result, no regulatory action is required, no direct adverse economic effects would be expected to accrue to entities involved in the bottom longline component of the reef fish fishery in the eastern Gulf, and the issue of significant alternatives is not relevant.

This proposed rule contains a collection-of-information requirement subject to the Paperwork Reduction Act (PRA). This requirement has been submitted to the Office of Management and Budget (OMB) for approval. Public reporting burden for marking a checkbox for a Gulf reef fish bottom longline endorsement on the Federal Permit Application Form is estimated to average less than 1 minute per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the

data needed, and completing and reviewing the collection of information.

Public comment is sought regarding: whether this proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; the accuracy of the burden estimate; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information, including through the use of automated collection techniques or other forms of information technology. Send comments regarding the burden estimate or any other aspect of the collection-of-information requirement, including suggestions for reducing the burden, to NMFS and to the OMB (see **ADDRESSES**).

Notwithstanding any other provision of law, no person is required to respond to, nor shall a person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA unless that collection of information displays a currently valid OMB control number.

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

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

Dated: January 11, 2010.

#### Samuel D. Rauch III,

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

For the reasons set out in the preamble, 50 CFR part 622 is 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 § 622.2, the definition of "Annual catch target" and "Bottom longline" are added in alphabetical order to read as follows:

#### § 622.2 Definitions and acronyms.

\* \* \* \* \*

*Annual catch target (ACT)* means an amount of annual catch of a stock or stock complex that is the management target of the fishery, and accounts for management uncertainty in controlling the actual catch at or below the ACL.

\* \* \* \* \*

*Bottom longline* means a longline that is deployed, or in combination with gear aboard the vessel, e.g., weights or

anchors, is capable of being deployed to maintain contact with the ocean bottom.

\* \* \* \* \*

3. In § 622.4, the third sentence of paragraph (a)(2)(v) and the first sentence of paragraph (g)(1) are revised, and paragraph (a)(2)(xiv) is added to read as follows:

#### § 622.4 Permits and fees.

\* \* \* \* \*

(a) \* \* \*

(2) \* \* \*

(v) \* \* \* See paragraph (a)(2)(ix) of this section regarding an IFQ vessel account required to fish for, possess, or land Gulf red snapper or Gulf groupers and tilefishes and paragraph (a)(2)(xiv) of this section regarding an additional bottom longline endorsement required to fish for Gulf reef fish with bottom longline gear in a portion of the eastern Gulf. \* \* \*

\* \* \* \* \*

(xiv) *Eastern Gulf reef fish bottom longline endorsement.* For a person aboard a vessel, for which a valid commercial vessel permit for Gulf reef fish has been issued, to use a bottom longline for Gulf reef fish in the Gulf EEZ east of 85°30' W. long., a valid eastern Gulf reef fish bottom longline endorsement must have been issued to the vessel and must be on board. A permit or endorsement that has expired is not valid. This endorsement must be renewed annually and may only be renewed if the associated vessel has a valid commercial vessel permit for Gulf reef fish or if the endorsement and associated permit are being concurrently renewed. The RA will not reissue this endorsement if the endorsement is revoked or if the RA does not receive a complete application for renewal of the endorsement within 1 year after the endorsement's expiration date.

(A) *Initial eligibility.* To be eligible for an initial eastern Gulf reef fish bottom longline endorsement a person must have been issued and must possess a valid or renewable commercial vessel permit for Gulf reef fish that has bottom longline landings of Gulf reef fish averaging at least 40,000 lb (18,144 kg), gutted weight, annually during the period 1999 through 2007. In addition, for a commercial reef fish permit with reef fish longline landings after February 7, 2007, and with reef fish trap or longline landings during 1999 through February 7, 2007, such reef fish trap landings may be applied toward satisfaction of the eligibility requirement for an initial eastern Gulf reef fish bottom longline endorsement. All applicable reef fish landings associated with a current reef fish

permit for the applicable landings history, including those reported by a person(s) who held the license prior to the current license owner, will be attributed to the current license owner. However, landings accumulated via permit stacking are not creditable for the purpose of determining eligibility for an initial eastern Gulf reef fish bottom longline endorsement. Only legal landings reported in compliance with applicable state and Federal regulations will be accepted.

(B) *Initial issuance.* On or about [date 30 days after date of publication of the final rule in the FEDERAL REGISTER] the RA will mail each eligible permittee an eastern Gulf reef fish bottom longline endorsement via certified mail, return receipt requested, to the permittee's address of record as listed in NMFS' permit files. An eligible permittee who does not receive an endorsement from the RA, must contact the RA no later than [date 60 days after date of publication of the final rule in the FEDERAL REGISTER] to clarify his/her endorsement status. A permittee who is denied an endorsement based on the RA's initial determination of eligibility and who disagrees with that determination may appeal to the RA.

(C) *Procedure for appealing longline endorsement eligibility and/or landings information.* The only items subject to appeal are initial eligibility for an eastern Gulf reef fish bottom longline endorsement based on ownership of a qualifying reef fish permit, the accuracy of the amount of landings, and correct assignment of landings to the permittee. Appeals based on hardship factors will not be considered. Appeals must be submitted to the RA postmarked no later than 120 days after [date of publication of the final rule in the FEDERAL REGISTER], and must contain documentation supporting the basis for the appeal. The RA will review all appeals, render final decisions on the appeals, and advise the appellant of the final decision.

(1) *Eligibility appeals.* NMFS' records of reef fish permits are the sole basis for determining ownership of such permits. A person who believes he/she meets the permit eligibility criteria based on ownership of a vessel under a different name, as may have occurred when ownership has changed from individual to corporate or vice versa, must document his/her continuity of ownership.

(2) *Landings appeals.* Appeals regarding landings data for 1999

through 2007 will be based on NMFS' logbook records. If NMFS' logbooks are not available, the RA may use state landings records or data for the period 1999 through 2007 that were submitted in compliance with applicable Federal and state regulations on or before December 31, 2008.

(D) *Transferability.* An owner of a vessel with a valid eastern Gulf reef fish bottom longline endorsement may transfer that endorsement to an owner of a vessel that has a valid commercial vessel permit for Gulf reef fish.

(E) *Fees.* There is no fee for initial issuance of an eastern Gulf reef fish bottom longline endorsement. A fee is charged for each renewal, transfer, or replacement of such endorsement. The amount of each fee is calculated in accordance with the procedures of the NOAA Finance Handbook, available from the RA, for determining the administrative costs of each special product or service. The fee may not exceed such costs and is specified with each application form. The appropriate fee must accompany each application for renewal, transfer, or replacement.

\* \* \* \* \*

(g) \* \* \*

(1) A vessel permit, license, or endorsement issued under this section is not transferable or assignable, except as provided in paragraph (m) of this section for a commercial vessel permit for Gulf reef fish, in paragraph (o) of this section for a king mackerel gillnet permit, in paragraph (q) of this section for a commercial vessel permit for king mackerel, in paragraph (r) of this section for a charter vessel/headboat permit for Gulf coastal migratory pelagic fish or Gulf reef fish, in paragraph (s) of this section for a commercial vessel moratorium permit for Gulf shrimp, in § 622.17(c) for a commercial vessel permit for golden crab, in § 622.18(b) for a commercial vessel permit for South Atlantic snapper-grouper, in § 622.19(b) for a commercial vessel permit for South Atlantic rock shrimp, or in § 622.4(a)(2)(xiv)(D) for an eastern Gulf reef fish bottom longline endorsement. \*

\* \* \* \* \*

\* \* \* \* \*

4. In § 622.34, paragraph (q) is added to read as follows:

**§ 622.34 Gulf EEZ seasonal and/or area closures.**

\* \* \* \* \*

(q) *Prohibitions applicable to bottom longline fishing for Gulf reef fish.* (1)

From June through August each year, bottom longlining for Gulf reef fish is prohibited in the portion of the Gulf EEZ east of 85°30' W. long. that is shoreward of rhumb lines connecting, in order, the following points:

Point	North lat.	West long.
A	28°58.70'	85°30.00'
B	28°59.25'	85°26.70'
C	28°57.00'	85°13.80'
D	28°47.40'	85°3.90'
E	28°19.50'	84°43.00'
F	28°0.80'	84°20.00'
G	26°48.80'	83°40.00'
H	25°17.00'	83°19.00'
I	24°54.00'	83°21.00'
J	24°29.50'	83°12.30'
K	24°26.50'	83°00.00'

(2) Within the prohibited area and time period specified in paragraph (q)(1) of this section, a vessel with bottom longline gear on board may not possess Gulf reef fish unless the bottom longline gear is appropriately stowed, and a vessel that is using bottom longline gear to fish for species other than Gulf reef fish may not possess Gulf reef fish. For the purposes of paragraph (q) of this section, appropriately stowed means that a longline may be left on the drum if all gangions and hooks are disconnected and stowed below deck; hooks cannot be baited; and all buoys must be disconnected from the gear but may remain on deck.

(3) Within the Gulf EEZ east of 85°30' W. long., a vessel for which a valid eastern Gulf reef fish bottom longline endorsement has been issued that is fishing bottom longline gear or has bottom longline gear on board cannot possess more than a total of 1000 hooks including hooks on board the vessel and hooks being fished and cannot possess more than 750 hooks rigged for fishing at any given time. For the purpose of this paragraph, "hooks rigged for fishing" means hooks attached to a line or other device capable of attaching to the mainline of the longline.

\* \* \* \* \*