

**AMENDMENT 11**  
**TO THE**  
**REEF FISH FISHERY MANAGEMENT PLAN**  
**FOR THE REEF FISH RESOURCES OF**  
**THE GULF OF MEXICO**  
**(Includes Regulatory Impact Review and Environmental Assessment)**



**June, 1995**

**Gulf of Mexico Fishery Management Council**  
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**Abbreviations Used in This Document**

ABC	Allowable Biological Catch
AP	Advisory Panel
Council	Gulf of Mexico Fishery Management Council
EEZ	Exclusive Economic Zone
E.O.	Executive Order
ETD	Economics and Trade Division of NMFS
F	Fishing Mortality Rate (measured as an instantaneous rate)
FMP	Fishery Management Plan
GMFMC	Gulf of Mexico Fishery Management Council
IRFA	Initial Regulatory Flexibility Analysis
ITQ	Individual Transferable Quota
LEAP	Law Enforcement Advisory Panel
Magnuson Act	Magnuson Fishery Conservation and Management Act
MEY	Maximum Economic Yield
MSY	Maximum Sustainable Yield
NMFS	National Marine Fisheries Service
OY	Optimum Yield
RD	Regional Director of NMFS (for the Southeast Region)
RFA	Regulatory Flexibility Act of 1980
RFSAP	Reef Fish Stock Assessment Panel
RIR	Regulatory Impact Review
SBA	Small Business Administration
Secretary	Secretary of the Department of Commerce
SEFSC	Southeast Fisheries Science Center of NMFS

SEP	Socioeconomic Panel
SERO	Southeast Regional Office of NMFS
SPR	Spawning Potential Ratio
SSBR	Spawning Stock Biomass Per Recruit
SSC	Scientific and Statistical Committee
TAC	Total Allowable Catch

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## 1.0 PUBLIC REVIEW

A total of ten public hearings were held to obtain public comments on this plan amendment with one additional hearing held during the Gulf Council meeting in the Holiday Inn Crown Plaza, 700 North Westshore Boulevard, Tampa, Florida during May 8-11, 1995. The public comment period for this amendment ended on May 3, 1995.

Public hearings were scheduled at the following dates and locations during 7:00 p.m. to 10:00 p.m.:

Monday, April 17, 1995

NMFS Panama City Laboratory  
Conference Room  
3500 Delwood Beach Road  
Panama City, Florida 32408

Monday, April 17, 1995

Holiday Inn Beachside  
3841 North Roosevelt Boulevard  
Key West, Florida 33040

Tuesday, April 18, 1995

Our Lady of the Sea  
Parish Hall  
705 Longoria  
Port Isabel, Texas 78578

Tuesday, April 18, 1995

Orange Beach Community Center  
27301 Canal Road  
Orange Beach, Alabama 36561

Tuesday, April 18, 1995

Ramada Airport Hotel  
5303 West Kennedy Boulevard  
Tampa, Florida 33609

Wednesday, April 19, 1995

University of Texas  
Visitor's Center Auditorium  
750 Channel View Drive  
Port Aransas, Texas 78373

Wednesday, April 19, 1995

J.L. Scott Marine Education Center  
and Auditorium  
115 East Beach Boulevard  
(U.S. Highway 90)  
Biloxi, Mississippi 39530

Thursday, April 20, 1995

Holiday Inn on the Beach  
5002 Seawall Boulevard  
Galveston, Texas 77551

Monday, April 24, 1995

Venice Fire House  
Highway 23  
Venice, Louisiana 70091

Tuesday, April 25, 1995

Larose Regional Park  
Versailles Room  
2001 East 5th Street  
Larose, Louisiana 70373

## **2.0 LIST OF AGENCIES AND PERSONS CONSULTED**

The following agencies have been consulted on the provisions of this amendment:

Gulf of Mexico Fishery Management Council:      Standing and Special Reef Fish Scientific and  
Statistical Committees  
Reef Fish (Red Snapper) Advisory Panel  
Reef Fish (Other Reef Fish) Advisory Panel

Coastal Zone Management Programs:      Louisiana  
Mississippi  
Alabama  
Florida

National Marine Fisheries Service:      Southeast Regional Office  
Southeast Fisheries Science Center

## **3.0 LIST OF PREPARERS**

Gulf of Mexico Fishery Management Council  
- Steven Atran, Statistician/Biologist  
- Antonio Lamberte, Economist  
- Wayne Swingle, Biologist

## **4.0 HISTORY OF MANAGEMENT**

The Reef Fish Fishery Management Plan was implemented in November 1984. The regulations, designed to rebuild declining reef fish stocks, included: (1) prohibitions on the use of fish traps, roller trawls, and powerhead-equipped spear guns within an inshore stressed area; (2) a minimum size limit of 13 inches total length for red snapper with the exceptions that for-hire boats were exempted until 1987 and each angler could keep 5 undersize fish; and, (3) data reporting requirements.

The National Marine Fisheries Service (NMFS) has collected commercial landings data since the early 1950's, recreational harvest data since 1979, and in 1984 initiated a dockside interview program to collect more detailed data on commercial harvest. The first red snapper assessment in 1988 indicated that red snapper was significantly overfished and that reductions in fishing mortality rates of as much as 60 to 70 percent were necessary to rebuild red snapper to a recommended 20 percent spawning stock potential ratio (SPR - See Section 5 below). The 1988 assessment also identified shrimp trawl bycatch as a significant source of mortality.

In November 1989, NMFS announced that anyone entering the commercial reef fish fishery in the Gulf of Mexico and South Atlantic after a control date of November 1, 1989 may not be assured of future access to the reef fish fishery if a management regime is developed and



implemented that limits the number of participants in the fishery. The purpose of this announcement was to establish a public awareness of potential eligibility criteria for future access to the reef fish resource, and does not prevent any other date for eligibility or other method for controlling fishing effort from being proposed and implemented.

Amendment 1 to the Reef Fish Fishery Management Plan, implemented in 1990, set as a primary objective of the FMP the stabilization of long term population levels of all reef fish species by establishing a survival rate of biomass into the stock of spawning age to achieve at least 20 percent spawning stock biomass per recruit (SSBR), relative to the SSBR that would occur with no fishing. It set a red snapper 7 fish recreational bag limit and 3.1 million pound commercial quota that together were to reduce fishing mortality by 20 percent and begin a rebuilding program for that stock. This amendment also established a 5 fish recreational bag limit and 11.0 million pound commercial quota<sup>1</sup> for groupers, with the commercial quota divided into a 9.2 million pound shallow-water quota and a 1.8 million pound deep-water quota. A framework procedure for specification of TAC was created to allow for annual management changes, and a target date for achieving the 20 percent SSBR goal was set at January 1, 2000. This amendment also established a longline and buoy gear boundary inshore of which the directed harvest of reef fish with longlines and buoy gear was prohibited and the retention of reef fish captured incidentally in other longline operations (e.g. shark) was limited to the recreational bag limit. Subsequent changes to the longline/buoy boundary could be made through the framework procedure for specification of TAC.

Amendment 2, implemented in 1990, prohibited the harvest of jewfish to provide complete protection for this species in federal waters in response to indications that the population abundance throughout its range was greatly depressed. This amendment was initially implemented by emergency rule.

At the direction of the Council, the Reef Fish Scientific Assessment Panel (RFSAP) met in March 1990 and reviewed the 1990 NMFS Red Snapper Stock Assessment. The recommendation of the panel at that time was to close the directed fishery because the Allowable Biological Catch (ABC) was being harvested as bycatch of the shrimp trawl fishery. No viable alternatives were identified that would achieve the 20 percent SPR goal by the year 2000 without closure of the directed fishery; because no means existed for reducing trawl bycatch. As a result, Amendment 3, implemented in July 1991, provided additional flexibility in the annual framework procedure for specifying TAC by allowing the target date for rebuilding an overfished stock to be changed depending on changes in scientific advice, except that the rebuilding period cannot exceed 1.5 times the generation time of the species under consideration. It revised the FMP's primary objective, definitions of optimum yield and overfishing and framework procedure for TAC by replacing the 20 percent SSBR target with 20 percent spawning potential ratio (SPR). The amendment also transferred speckled hind from the shallow-water grouper quota category to the

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<sup>1</sup> These values have been subsequently modified to correct for revisions adopted in the gutted to whole weight ratio. Historically, the conversion ratio used was 1.18, subsequently, the ratio has been corrected and 1.05 is used. This results in these values being 9.8, 8.2 and 1.6 million pounds respectively, for total, shallow-water and deep-water grouper quotas (e.g.,  $11.0 \div 1.18 \times 1.05 = 9.8$ ). There is no impact on the commercial fishery from the revision as fish have always been reported in gutted weight and that data is transformed to whole weight for NMFS records.

deep-water grouper quota category and established a new red snapper target year of 2007 for achieving the 20 percent SPR goal.

During 1991 several regulatory amendments were implemented to adjust the TACs and quotas for reef fish:

A July 1991 regulatory amendment provided a one-time increase in 1991 quota for shallow-water groupers from 9.2 million pounds to 9.9<sup>2</sup> million pounds. This action was taken to provide the commercial fishery an opportunity to harvest 0.7 million pounds that went unharvested in 1990 due to an early closure of the fishery in 1990. NMFS had projected the 9.2 million pound quota to be reached on November 7, 1990, but subsequent data showed that the actual harvest was 8.5 million pounds.

A March 1991 regulatory amendment reduced the red snapper TAC from 5.0 million pounds to 4.0 million pounds to be allocated with a commercial quota of 2.04 million pounds and a 7 fish recreational daily bag limit (1.96 million pound allocation) beginning in 1991. This amendment also contained a proposal by the Council to effect a 50 percent reduction of red snapper bycatch in 1994 by the offshore EEZ shrimp trawler fleet, to occur through the mandatory use of finfish excluder devices on shrimp trawls, reductions in fishing effort, area or season closures of the shrimp fishery, or a combination of these actions. This combination of measures was projected to achieve a 20 percent SPR by the year 2007. The 2.04 million pound quota was reached on August 24, 1991, and the red snapper fishery was closed to further commercial harvest in the EEZ for the remainder of the year. In 1992, the commercial red snapper quota remained at 2.04 million pounds. However, extremely heavy harvest rates resulted in the quota being filled in just 53 days, and the commercial red snapper fishery was closed on February 22, 1992.

A November 1991 regulatory amendment raised the 1992 commercial quota for shallow-water groupers from 8.2 million pounds to 9.8 million pounds, after a red grouper stock assessment indicated that the red grouper SPR was substantially above the Council's minimum target of 20 percent, and the Council concluded that the increased quota would not materially impinge on the long-term viability of at least the red grouper stock.

The 1992 commercial red snapper fishery opened on January 1 and closed after just 53 days when a derby fishery developed and the quota was quickly filled. An emergency rule, implemented in 1992 by NMFS at the request of the Council, reopened the red snapper fishery from April 3, 1992 through May 14, 1992 with a 1,000 pound trip limit. This rule was implemented to alleviate economic and social upheavals that occurred as a result of the 1992 red snapper commercial quota being rapidly filled. Although this emergency rule resulted in a quota overrun of approximately 600,000 pounds, analysis by NMFS biologists determined that this one time overrun would not prevent the red snapper stock from attaining its target SPR.

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<sup>2</sup> The corrected 1991 quota, using the revised conversion factor, was 8.8 million pounds. The corrected 1990 actual harvest was 7.6 million pounds.

Amendment 4, implemented in May 1992, established a moratorium on the issuance of new reef fish permits for a maximum period of three years. The moratorium was created to moderate short term future increases in fishing effort and to attempt to stabilize fishing mortality while the Council considers a more comprehensive effort limitation program. It allows the transfer of permits between vessels owned by the permittee or between individuals when the permitted vessel is transferred. Amendment 4 also changed the time of the year that TAC is specified from April to August and included additional species in the reef fish management unit.

Amendment 5, implemented in February 1994, established restrictions on the use of fish traps in the Gulf of Mexico EEZ, implemented a three year moratorium on the use of fish traps by creating a fish trap endorsement and issuing the endorsement only to fishermen who had submitted logbook records of reef fish landings from fish traps between January 1, 1991 and November 19, 1992, created a special management zone (SMZ) with gear restrictions off the Alabama coast, created a framework procedure for establishing future SMZ's, required that all finfish except for oceanic migratory species be landed with head and fins attached, established a schedule to gradually raise the minimum size limit for red snapper to 16 inches over a period of five years, and closed the region of Riley's Hump (near Dry Tortugas, Florida) to all fishing during May and June to protect mutton snapper spawning aggregations.

An October 1992 Regulatory Amendment raised the 1993 red snapper TAC from 4.0 million pounds to 6.0 million pounds to be allocated with a commercial quota of 3.06 million pounds and a recreational allocation of 2.94 million pounds (to be implemented by a 7 fish recreational daily bag limit). The amendment also changed the target year to achieve a 20 percent red snapper SPR from 2007 to 2009, based on the Plan provision that the rebuilding period may be for a time span not exceeding 1.5 times the potential generation time of the stock and an estimated red snapper generation time of 13 years (Goodyear 1992).

An Emergency Rule effective December 30, 1992 created a red snapper endorsement to the reef fish permit for the start of the 1993 season. The endorsement was issued to owners or operators of federally permitted reef fish vessels who had annual landings of at least 5,000 pounds of red snapper in two of the three years from 1990 through 1992. For the duration of the emergency rule, while the commercial red snapper fishery is open permitted vessels with red snapper endorsements are allowed a 2,000 pound possession limit of red snapper, and permitted vessels without the endorsement are allowed 200 pounds. This emergency action was initially effective for 90 days, and was extended for an additional 90 days with the concurrence of NMFS and the Council. A related emergency rule delayed the opening of the 1993 commercial red snapper season until February 16 to allow time for NMFS to process and issue the endorsements.

Amendment 6, implemented in June, 1993, extended the provisions of the emergency rule for red snapper endorsements for the remainder of 1993 and 1994, unless replaced sooner by a comprehensive effort limitation program. In addition, it allowed the trip limits for qualifying and non-qualifying permitted vessels to be changed under the framework procedure for specification of TAC.

[A withdrawn 1993 Regulatory Amendment would have moved the longline and buoy gear

restricted area boundary off central and south-central Florida inshore from the 20 fathom isobath to the 15 fathom isobath for a one-year period beginning January 1, 1994. It was withdrawn at industry's request by the Council in January 1994 amid concerns that it would lead to a quota closure and a concern by the NMFS Southeast Fisheries Science Center that there were inadequate experimental controls to properly evaluate the impact of the action.]

An October 1993 Regulatory Amendment set the opening date of the 1994 commercial red snapper fishery as February 10, 1994, and restricted commercial vessels to landing no more than one trip limit per day. The purpose of this amendment was to facilitate enforcement of the trip limits, minimize fishing during hazardous winter weather, and ensure that the commercial red snapper fishery is open during Lent, when there is increased demand for seafood. The Total Allowable Catch (TAC) was retained at the 1993 level of 6 million pounds, with a 3.06 million pound commercial quota and 2.94 million pound recreational allocation. The shallow-water grouper regulations were also evaluated but no change was made. The shallow-water grouper TAC, which previously had only been specified as a commercial quota, was specified as a total harvest of 15.1 million pounds (with 9.8 million pounds allocated to the commercial quota) and 20 inch total length size limit for gag, red, Nassau, yellowfin and black grouper.

Amendment 7, implemented in February 1994, established reef fish dealer permitting and record keeping requirements, allowed transfer of fish trap permits and endorsements between immediate family members during the fish trap permit moratorium, and allowed transfer of other reef fish permits or endorsements in the event of the death or disability of the person who was the qualifier for the permit or endorsement. A proposed provision of this amendment that would have required permitted vessels to sell harvested reef fish only to permitted dealers was disapproved by the Secretary of Commerce and was not implemented.

Proposed Amendment 8 was recently approved by the Council and was submitted to NMFS in June 1995. It will establish an individual transferable quota system (ITQ) to manage effort in the commercial red snapper fishery beginning in 1996. Under the ITQ system, each participant in the commercial red snapper fishery will have a harvest privilege for a percentage of the red snapper quota based on either an initial allocation or subsequent sale and purchase of quota shares among fishermen. Fishermen can harvest their share of the quota at any time during the year. The red snapper ITQ system is being implemented to restore stability to a fishery that has experienced economic and social disruption under the short derby fisheries that have developed under an open access quota system.

Amendment 9, implemented in July 1994, provided for collection of red snapper landings and eligibility data from commercial fishermen for the years 1990 through 1992. The purpose of this data collection was to evaluate the initial impacts of the limited access measures being considered under Amendment 8 and to identify fishermen who may qualify for initial participation under a limited access system. Development of Amendment 8 was temporarily suspended while the provisions of Amendment 9 were implemented. This amendment also extended the reef fish permit moratorium and red snapper endorsement system through December 31, 1995, in order to continue the existing interim management regime until longer term measures can be implemented. The Council received the results of the data collection in November 1994, at which time consideration of Amendment 8 resumed.

[Withdrawn Amendment 10 would have extended the validity of additional fish trap endorsements for the duration of the fish trap moratorium that was implemented under Amendment 5. These additional endorsements were to have been issued under an emergency rule, requested in March 1994, to alleviate economic hardships after the Council heard from fishermen who entered the fish trap fishery after the November 19, 1992 cutoff date and stated that they were unaware of the impending moratorium. The Council rejected the proposed amendment in May 1994 after NMFS stated that it had notified fishermen of the pending moratorium and fish trap endorsement criteria during the time between Council final action and NMFS implementation if they asked about fish trap rules or if they requested application materials and NMFS was aware that it was for purposes of entering the fish trap fishery. The Council also considered arguments that the change in qualifying criteria circumvented the intent of the fish trap moratorium to halt expansion of the fish trap fishery at the November 19, 1992 level. After the Council rejected Amendment 10, NMFS subsequently rejected the emergency request.]

An October 1994 proposed regulatory amendment retained the 6 million pound red snapper TAC and commercial trip limits and set the opening date of the 1995 commercial red snapper fishery as February 24, 1995. However, because the recreational sector exceeded its 2.94 million pound red snapper allocation each year since 1992, this regulatory amendment reduced the daily bag limit from 7 fish to 5 fish, and increased the minimum size limit for recreational fishing from 14 inches to 15 inches.

## **5.0 PURPOSE AND NEED FOR ACTION**

The framework procedure for specification of TAC was adopted in 1990, with the implementation of Amendment 1, and has had only minor revisions since that time<sup>3</sup>. In the intervening period, the practices used in the TAC process have deviated slightly, for example, the use of separate stock assessment and socioeconomic assessment panels rather than a single scientific assessment panel. Editorial changes are needed to make the framework procedure consistent with current practices. This is also a good opportunity to review the procedure and make changes to allow it to be more flexible to current management needs, and to review the Optimum Yield definition.

Permits and the conditions and requirements associated with permits are used to collect data, monitor the fishery, ensure compliance and control access. In order to allow for adequate data monitoring and compliance with commercial harvest regulations, permit conditions that allow harvested reef fish to be tracked through to and including the dealer are needed. Over time, a variety of permits and endorsements have been implemented in the reef fish fishery, and inconsistencies with respect to provisions for transferability have created a confusing array of

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<sup>3</sup> In 1991, Amendment 3 provided that the target date for rebuilding an overfished stock could be changed depending on changes in scientific advice, except that the rebuilding period cannot exceed 1.5 times the generation time. In 1992, Amendment 4 changed the time of the year that TAC is specified from April to August. In 1993, Amendment 6 provided that the separate red snapper trip limits for endorsement holders and non-endorsement holders could be changed under the framework procedure.

permit conditions and possible inequities or enforcement loopholes in the system. Anecdotal information suggests that there have been abuses of the two day bag limit allowance for qualified charter or headboats out more than 24 hours. Reportedly, some vessels have been allowing their customers to keep a two day limit even when out less than 24 hours, and some vessels that do not carry paying customers have been claiming the allowance. The creation of a charter and headboat permit would provide sanctions to improve compliance with the two day limit provisions, and would enhance monitoring of the charter and headboat recreational fishery.

## **6.0 PROBLEMS REQUIRING A PLAN AMENDMENT**

This amendment addresses several diverse issues within reef fish management. The problems addressed in each issue is are given below with reference to the section in the amendment.

### **PROPOSED MODIFICATIONS OF FRAMEWORK PROCEDURE FOR SPECIFYING TAC**

Editorial revisions) The framework procedure for specification of TAC requires editorial revision to reflect current terminology and practices. These revisions do not make any fundamental changes in the framework procedure.

In-season Adjustments to TAC measures) The Council chose to retain the status quo, to not explicitly allow in-season adjustments to the TAC or measures for attaining TAC.

Optimum Yield Definition) The Optimum Yield definition for reef fish is currently set at the same rate and level as the overfishing definition. This is based on biological considerations only, and makes no provision for incorporation of social and economic considerations, as required by the Magnuson Act definition of OY. Furthermore, setting the OY level at the overfishing threshold may be insufficient to prevent overfishing from occurring, as required under the Section 602 guidelines. The Council's SPR Strategy Committee recommended that an optimum yield target be distinct and measurably different from an overfishing threshold.<sup>4</sup> A redefinition of Optimum Yield is needed to bring the reef fish OY into greater compliance with the Magnuson Act and Section 602 guidelines.

Use of OY in the Framework Procedure) This section was tabled until a specific definition can be developed for the preferred alternative. Section 8.4 discusses the use of OY in the absence of any alternative use. If separate definitions of overfishing and Optimum Yield are adopted, the framework procedure for specification of TAC could be modified to include guidelines for examination of stock condition relative to Optimum Yield.

Use of ABC Range for Specification of TAC) The current procedure for specification of TAC is highly restrictive in that it requires the Council to set TAC within or below the

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<sup>4</sup>Recommendation number 4 in, "An evaluation of the use of SPR levels as the basis for overfishing definitions in Gulf of Mexico finfish fishery management plans" (in preparation).

ABC range recommended by the stock assessment panel even for stocks that are not overfished. Removal of this constraint for stocks that are not overfished would allow more flexibility for the Council and would make the reef fish TAC procedure more consistent with the mackerel TAC procedure.

Authority to Specify the Restoration Period) The framework procedure for specification of TAC currently allows the Stock Assessment Panel to specify the restoration period for overfished stocks (within certain limits). Since this involves weighing biological risk against social and economic consequences, it is a policy decision that should be made by the Council.

Respecify the Generation Time Multiplier for Recovery Periods) The framework procedure for specification of TAC currently specifies a restoration period for overfished stocks by the year 2000 for all reef fish species other than red snapper, and 2009 for red snapper. It further provides that any alternative restoration period specified by the stock assessment panel cannot exceed 1.5 times the generation time. The year 2000 goal, set by Amendment 1 in 1990, is no longer realistic for stocks that may be found to be overfished in the future. In addition, the generation time multiplier of 1.5 is arbitrary and limits the flexibility of the Council to manage overfished stocks.

## PERMITTING REQUIREMENTS

Reef Fish Dealer and Vessel Permit Allowable Sales Provisions) Reef fish harvested and sold to non-permitted dealers may result in unreported landings. In addition, the purchase of reef fish by permitted dealers from non-permitted vessels creates an enforcement problem. Non-permitted vessels are not allowed to commercially harvest reef fish in the EEZ, but there is no way to verify where the fish were caught once a vessel returns to dock.

Transferability of Permits and Endorsements) A variety of commercial permits and endorsements currently exist in the reef fish fishery, e.g., vessel permits, red snapper endorsements, and fish trap endorsements. Amendment 7 proposed that the Regional Director (RD) could transfer a permit and/or endorsement upon the death or disability of a permit/endorsement holder. Because of differing interpretations between the Council and NMFS over the wording of Amendment 7, this provision was implemented only for red snapper endorsements and is not currently consistent for all reef fish permits and endorsements.

Transfer of Fish Trap Endorsements) When the fish trap moratorium took effect on February 7, 1994, 421 vessels that had been issued fish trap tags but had no records of fish trap landings during the eligibility period became ineligible to continue in the fishery. Approximately 56 persons can document that they entered the fish trap fishery and had landings after the November 19, 1992 cutoff date and before February 7, 1994. Allowance of a one time transfer of fish trap endorsements from current endorsement holders who are no longer active in the fishery to these individuals would allow persons

who were active in the fishery to reenter the fish trap fishery without expanding the number of endorsement holders.

Extension or Implementation of New Reef Fish Vessel Permit Moratorium) The reef fish vessel permit moratorium is scheduled to expire at the end of 1995, at which time there will no longer be a cap on number of vessels participating in the reef fish fishery, except for those segments that are under a moratorium or limited entry (e.g., fish traps and red snapper). There could be an increase in the number of vessels in the reef fish fishery from speculation on future limited entry systems or as a result of increased restrictions in other federal and state fisheries.

Charter and Head Boat Permits) Current rules allow charter and headboats to retain a two day bag limit of reef fish if they are out more than 24 hours. A permit for charter and headboats would help to identify vessels eligible for this provision, and would be consistent with the mackerel FMP.

Conditions of Reef Fish Vessel Permits to Comply With Federal Regulations) The Council chose to retain the status quo, and to not require that permitted vessels agree to comply with federal reef fish regulations regardless of where the fish are caught as a condition of a permit.

## 7.0 PROPOSED ACTIONS

The following actions are proposed alternatives in this amendment, listed by section.

### 8.0 PROPOSED MODIFICATIONS OF FRAMEWORK PROCEDURE FOR SPECIFYING TAC

#### 8.1 Editorial Revisions

**Proposed Alternative: Accept the editorial revisions to the procedure.**

#### 8.2 In-season Adjustments to TAC Measures

**Proposed Alternative: Status Quo - No Action**

#### 8.3 Optimum Yield Definition

**Proposed Alternative: Set OY for each stock based on a SPR level corresponding to  $F_{0.1}$  until an alternative operational definition that optimizes ecological, economic, and social benefits to the Nation has been developed by RFSAP, SEP, SSC, and AP and approved by Council.**

#### 8.4 Use of OY in the Framework Procedure



*This section was tabled by the Council. It is included as a discussion section only, and to maintain the same section numbers as in the public hearing draft of this document.*

8.5 Use of ABC Range for Specification of TAC

**Proposed Alternative:** Modify Step 4.a. as follows (change underlined): **For overfished stocks** set TAC within or below the ABC range or set a series of annual TACs to obtain the ABC level within three years or less.

8.6 Authority to Specify the Restoration Period

**Proposed Alternative:** Modify the procedure to specify the Council rather than the RFSAP will set the recovery period.

8.7 Respecify the Generation Time Multiplier for Recovery Periods

**Proposed Alternative:** Modify the procedure to allow setting a red snapper recovery period not greater than 2.0 times the biological generation time or a biologically based recovery period developed by the RFSAP, SEP, SSC, AP and approved by Council (other species remain at 1½ generation times).

9.0 PERMITTING REQUIREMENTS

9.1 Reef Fish Dealer and Vessel Permit Allowable Sales Provisions

**Proposed Alternative:** Permitted vessels shall sell reef fish only to permitted dealers, and federally-permitted dealers may purchase reef fish harvested in the EEZ only from federally-permitted vessels.

9.2 Transferability of Permits and Endorsements

**Proposed Alternative:** In the event of death or disability of a vessel permit holder or a fish trap endorsement holder, the permit or endorsement is transferrable, either permanently or temporarily, to a person specified by the permit/endorsement holder, their legal guardian, or the estate.

9.3 Transfer of Fish Trap Endorsements

**Preferred Alternative:** Allow a one-time transfer of the fish trap endorsement by current holders of the endorsement to any of the 56 individuals who had entered the trap fishery and had logbook records of landings from fish traps received by NMFS between November 19, 1992 and February 7, 1994 and who were excluded from the fishery by the moratorium.

9.4 Extension or Implementation of New Reef Fish Vessel Permit Moratorium

**Proposed Alternative:** Allow the existing moratorium to expire, and upon expiration, implement a new reef fish vessel permit moratorium for not more than 5 years, until December 31, 2000. Permits under the new moratorium would be restricted initially to vessels of owners who are eligible for renewal on December 31, 1995. Vessel permits under the new moratorium are transferable by an owner who is the income qualifier to other persons with vessels without transfer of the permitted vessel. The purpose of the new moratorium is to consider implementation of a limited access system in the reef fish fishery.

9.5 Charter and Head Boat Permits

**Proposed Alternative:** Require a permit for head and charter vessels.

9.6 Conditions of Reef Fish Vessel Permits to Comply With Federal Regulations

**Proposed Alternative:** Status Quo - no change.

The following issues were part of the public hearing draft of Amendment 11, but will be decided by the Council in a separate action as Amendment 12.

- COMMERCIAL HOOK-AND-LINE REEF FISH HARVEST BY SHRIMP VESSELS
- ENFORCEMENT ISSUES
  - Definition of Bait Allowed on Board
  - Possession of Reef Fish on Board for Personal Consumption
  - Permitted Dealers Transport Requirements
  - Recreational Bag Limit of Red Snapper on Commercial Vessels During Closures
- AMBERJACK
  - Amberjack Size and Bag Limits
  - Amberjack Florida Compatible Season Closures
- GAG AND BLACK GROUPER SIZE LIMITS
- RED SNAPPER MINIMUM SIZE LIMITS
- AGGREGATE BAG LIMIT FOR REEF FISH

## **8.0 PROPOSED MODIFICATIONS OF FRAMEWORK PROCEDURE FOR SPECIFYING TAC**

### **Editorial Revisions**

Several types of modifications are proposed. First are editorial modifications to the existing procedure under which rules are implemented by regulatory amendment. The current procedure with editorial revisions is as follows (additions in bold and deletions bracketed). The editorial revisions do not change the procedure, but reflect current practices used in the TAC setting process.

### **Optimum Yield**

The primary objective and definition of Optimum Yield for the Reef Fish Fishery Management Plan is to stabilize long term population levels of all reef fish species by establishing a certain survival rate of biomass into the stock of spawning age to achieve at least 20 percent spawning potential ratio (SPR).

### **Definition of Overfishing**

The following is the definition of overfishing contained in the Reef Fish Fishery Management Plan (FMP).

1. A reef fish stock or stock complex is overfished when it is below the level of 20 percent SPR.
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 SPR level.
3. 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 optimum yield on a continuing basis [(SPR)].

Optimum Yield (OY) can be achieved with annual total allowable catch (TAC) specifications for each species or species group. The Council has established a framework procedure **to attain the management goal of OY** where, on an annual basis, a scientific stock assessment panel will establish an ABC range and the Council will set a TAC and prescribe fishing restrictions [to attain the management goal of OY] for implementation by the Regional Director (RD) of NMFS prior to the beginning of a fishing year.

### **Procedure for Specification of TAC:**

1. Prior to **October 1** [August 1] each year, or such other time as agreed upon by the Council and RD, the **NMFS Southeast Fisheries Science Center [of NMFS] (SEFSC) and Economics and Trade Division (ETD), Southeast Regional Office (SERO)** will:

a) update or complete biological and economic assessments and analyses of the present and future condition of the stocks and fisheries for red snapper and other reef fish stocks or stock complexes; b) assess to the extent possible the current SPR levels for each stock; c) estimate fishing mortality (F) in relation to F(20 percent SPR) and  $F_{OY}$ ; d) estimate annual surplus production F(max) or other population parameters deemed appropriate; e) summarize statistics on the fishery for each stock or stock complex; f) specify the geographical variations in stock abundance, mortality, recruitment, and age of entry into the fishery for each stock or stock complex; and g) **provide information for analyzing social and economic impacts of any specification demanding adjustments of allocations, quotas, [or] bag limits or other fishing restrictions.**

2. The Council will convene a Scientific Reef Fish Stock Assessment Panel (RFSAP), and a Socioeconomic Assessment Panel (SEP) appointed by the Council, that will, as [a] working groups, review the SEFSC and ETD assessments, current harvest statistics, economic, social, and other relevant data. The RFSAP [It] will prepare a written report to the Council specifying a range of ABC for each stock or stock complex which is in need of catch restrictions for attaining or maintaining OY. The ABCs are catch ranges that will be calculated for those species in the management unit that have been identified by the Council, NMFS, or the working panels as in need of catch restrictions for attaining or maintaining OY. For overfished stocks, the range of ABCs shall be calculated so as to achieve reef fish population levels at or above the 20 percent SPR goal by January 1, 2000, for all reef fish except red snapper which has a January 2009 target date, or by a time period (target date), or set of time periods (target dates) specified by the RFSAP [stock assessment panel]. Any time period specified by the stock assessment panel for consideration by the Council under this framework procedure cannot exceed a period equal to 1.5 times the potential generation time of the stock or such other time period as specified by plan amendment. Generation times are to be specified by the stock assessment panel based on the biological characteristics of the individual stocks. For stock or stock complexes where data in the SEFSC reports are inadequate to compute an ABC based on the spawning stock biomass per recruit or SPR models, the RFSAP [above working group] will use other available information as a guide in providing their best estimate of an ABC range that should result in at least a 20 percent SPR level. The ABC ranges will be established to prevent an overfished stock from further decline. To the extent possible, a risk analysis should be conducted indicating the probabilities of attaining or exceeding the stock goal of 20 percent SPR, the annual transitional yields (i.e., catch streams) calculated for each level of fishing mortality within the ABC range. [and the] The SEP will examine the economic and social impacts associated with fishing restrictions required to attain those levels. The working groups reports [will] may include recommendations on bag limits, size limits, specific gear limits, season closures, and other restrictions required to attain management goals, along with the economic and social impacts of such restrictions, and the research and data collection necessary to improve the assessments. The RFSAP [stock assessment panel] may also recommend additional species for future analyses.

3. The Council will conduct a public hearing on the [stock assessment panel] **RFSAP and SEP** reports at, or prior, to the time it is considered by the Council for action. Other public hearings may be held also. The Council will request review of the reports by its Reef Fish Advisory Panel and [Standing] Scientific and Statistical Committees and may convene these groups before taking action.
4. The Council in selecting a TAC level, and a **stock restoration** time period (target date), if necessary, for each stock or stock complex for which an ABC range has been identified will, in addition to taking into consideration the recommendations **and information** provided for in (1), (2), and (3), utilize the following criteria:
  - a. Set TAC within or below the ABC range or set a series of annual TACs to obtain the ABC level within three years or less.
  - b. 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 1979-1987. However, if **for an overfished stock** the harvest in any year exceeds the TAC due to either the recreational or commercial user group exceeding its allocation, subsequent allocations pertaining to the respective user group will be adjusted to assure meeting the specified target date **for achieving the spawning potential ratio** [stock biomass per recruit] (SPR) goal.
5. The Council will provide its recommendations to the RD for any specifications in TACs and **stock restoration** target dates for each stock or stock complex, **and 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, or such other time as agreed upon by the Council and RD.
6. Prior to each fishing year, or other such time as agreed upon by the RD and Council, the RD 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 **Magnuson Act** National Standards, and other applicable law, he shall forward for publication notice of proposed **rules** for TACs and associated harvest restrictions by November 1, or such other time as agreed upon by the Council and RD (providing up to 30 days for additional public comment). The RD will take into consideration all **public comment and** information received and will forward for publication in the Federal Register the notice of final rule by December 1, or such other time as agreed upon by the Council and RD.
7. **Appropriate regulatory changes that may be implemented by proposed rule in the Federal Register [action] include:**
  - a. 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.

- b. Bag limits, size limits, vessel trip limits, closed seasons or areas, gear restrictions, and quotas designed to achieve the TAC level.
  - c. The time period (target date) specified for rebuilding an overfished stock with the restriction that a time period specified under this framework procedure cannot exceed a period equal to 1.5 times the generation time of the stock under consideration or such other time period specified by plan amendment.
8. If the NMFS decides not to publish the proposed rule of the recommended management measures, or to otherwise hold the measures in abeyance, then the Regional Director must notify the Council of his intended action within 15 days of receipt of the Council's proposal and the reasons for NMFS concern along with suggested changes to the proposed management measures that would alleviate the concerns. Such notice shall specify: 1) the applicable law with which the amendment is inconsistent, 2) the nature of such inconsistencies, and 3) recommendations concerning the actions that could be taken by the Council to conform the amendment to the requirements of applicable law.

#### **8.1 Editorial Revisions**

**Proposed Alternative:** Accept the editorial revisions to the procedure.

**Rejected Alternative 1:** Modify the editorial revisions to the procedure.

**Rejected Alternative 2:** Status quo - Make no editorial changes.

**Discussion:** The editorial revisions at this point reflect current management practices and are not intended to change the procedure.

#### **8.2 In-season Adjustments to TAC Measures**

The TAC procedure was originally designed to allow both pre-season adjustments to TAC and in-season adjustments to TAC and the management measures necessary to control landings within the TAC level. The Council previously implemented an in-season adjustments under the procedure in order to increase the 1991 shallow-water grouper quota to compensate for a premature closure in 1990. However, recently NOAA General Counsel has questioned whether the procedure allows in-season adjustments. This question apparently arose because there is no language in the procedure related to in-season adjustments or a protocol for addressing these adjustments. The permissive language is in the discussion of the procedure.

For some stocks, assessments may be available only every three or four years, and other available scientific information may indicate that TAC or the management measures related to TAC should be modified. The ability to be able to make in-season adjustments provides flexibility to make changes both within a season and in years when NMFS SEFSC cannot provide annual stock

assessments. However, frequent rule changes can be disruptive to businesses by preventing them to make long-range plans.

**Proposed Alternative: Status Quo - No Action**

**Rejected Alternative:** Include the following new Step 7 in the procedure (renumbering subsequent steps):

7. (new). Normally the actions cited above are related to pre-season adjustments to the management measures (under Step 8) necessary to control landings within TAC for a stock or stock complex and are based on stock assessments prepared by SEFSC. However, once a TAC has been set, the Council may make in-season adjustments to any of these management measures and to TAC at any time that additional scientific information related to the management measures or TAC becomes available. Such in-season adjustments would be based on new data or analyses of data developed by NMFS, Council Staff, RFSAP, SSC or the states. The RFSAP would review the data and analysis and provide a written report to the Council with their recommendations. The report would be reviewed by the SSC before the Council takes action, starting with Step 3 of this procedure. The Council may also provide the report and information to the Reef Fish AP and SEP for review and comment and may convene all these groups for the review.

**Discussion:** The Rejected Alternative would have provided a protocol within the procedure for addressing in-season adjustments to the management measures and TAC. Such actions would be based on scientific information and the recommendation of the RFSAP after review of that information. This would allow both in-season adjustments during the course of a fishing year and pre-season adjustments prior to the time a new stock assessment is available. Status quo does not include the new language; however, the Council's intent in adopting the current procedure was that it allowed in-season and annual adjustments to TAC and the management measures implemented under the procedure. The Council rejected this alternative and chose to retain the status quo because, in public testimony, fishermen stated that allowing in-season changes to the fishing rules prevents them from being able to plan for the fishing season and is disruptive to their business practices.

The Proposed Alternative does not prevent in-season adjustments from being made through emergency action, provided that an emergency can be justified under the criteria specified in 50 CFR Chapter VI - Policy Guidelines for the Use

of Emergency Rules<sup>5</sup>. Emergency rules can currently be implemented for a maximum of 90 days plus a 90 day extension. A proposed revision to the Magnuson Act would extend this time period to 180 plus 180 days. This should provide enough time for an emergency rule in-season adjustment to be supplanted by a plan amendment or annual regulatory amendment.

### 8.3 Optimum Yield Definition (Disapproved)

The OY statement of the FMP used as a preamble to the procedure sets OY at any level above the threshold level describing overfishing (i.e.,  $SPR = 20$  percent). From both biological and economic perspectives, management should be directed toward an OY level significantly greater than the overfishing threshold. However, it should be recognized that for overfished stocks, TACs must be set to achieve restoration of the stock before management can be directed toward a higher stock level for OY.

**Proposed Alternative:** Set OY for each stock based on a SPR level corresponding to  $F_{0.1}$  until an alternative operational definition that optimizes ecological, economic, and social benefits to the Nation has been developed by RFSAP, SEP, SSC, and AP and approved by Council.

**Rejected Alternative 1:** Set OY for each stock at a harvest level that optimizes ecological, economic and social benefits to the Nation.

**Rejected Alternative 2:** Set OY for each stock equivalent to a MSY that optimizes long-term harvest in terms of yield.

**Rejected Alternative 3:** Set OY for each stock at a level of SPR (about 30 percent) recommended by the Select Scientific Committee on SPR Strategy, until an operational level that optimizes ecological, economic and social benefits to the Nation has been developed by RFSAP, SEP, SSC, and AP and approved by the Council.

**Rejected Alternative 4:** Set OY at a harvest level maintaining over time an average SPR level that is at least 5 (or other) percentage points above the SPR level that defines overfishing.

**Rejected Alternative 5:** Status Quo - Retain OY of at least a 20 percent SPR level.

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<sup>5</sup> The emergency rule criteria are: (1) results from recent, unforeseen events or recently discovered circumstances; and (2) presents serious conservation or management problems in the fishery, including impacts on protected species or habitats; and (3) can be addressed through emergency regulations for which the immediate benefits outweigh the value of advance notice, public comment, and deliberative consideration of the impacts on participants to the same extent as would be expected under the normal rulemaking process.



**Discussion:** The existing FMP definition of OY (at least 20 percent SPR) contains no provision for incorporation of social and economic considerations, as required by the Magnuson Act definition of OY. Furthermore, the existing definition of OY sets the minimum level for OY at the same level as the overfishing threshold, and may be inadequate to prevent a stock from becoming overfished. The Section 602 guidelines state that the most important limitation on specification of OY is that it must prevent overfishing (Section 602.11(b)). The Proposed Alternative brings the FMP definition of Optimum Yield into greater compliance with the Magnuson Act definition of OY and with the Section 602 guidelines.

The Proposed Alternative and Rejected Alternative 3 include language that would make them interim statements of OY until the Council, with assistance of the RFSAP, SEP, SSC, and AP, specify an operational OY in terms of these benefits. The Proposed Alternative uses as an interim OY a SPR level corresponding to  $F_{0.1}$ , which results in a level of harvest more conservative than Rejected Alternative 3. For the reef fish species for which stock assessments have been prepared, under current management conditions, SPR at  $F_{0.1}$  is approximately 34% for red snapper<sup>6</sup>, 46% for red grouper<sup>7</sup>, and 48% for gag<sup>8</sup>. The RFSAP has recommended using  $F_{0.1}$  as a reference point for OY for fisheries that are not overfished (GMFMC 1993)

The Proposed Alternative and Rejected Alternative 3 provide for an unharvested reserve to moderate unanticipated impacts on the stocks from environmental effects. This level of harvest would likely more closely approach MEY. The Council preferred the Proposed Alternative to Rejected Alternative 3 because the Proposed Alternative sets an OY that is specific for each species based on its biology rather than a blanket default SPR value.

Rejected Alternative 1 is OY as defined by the Magnuson Act. Inherent in this definition is the maintenance of the stock that assures the biological integrity of the stock, i.e., prevents recruitment overfishing. The 50 CRF 602 Guidelines further interpret the Magnuson Act in the specification of OY to allow periodically exceeding OY, overfishing a minor stock in a stock complex if in the best interests of the Nation, and generally giving broad latitude to the Councils in specifying OY at a level above overfishing. In considering factors that optimize benefits to the Nation, particular consideration is to be given to food production and recreational opportunity. Determining the ecological, economic and social benefits for OY management strategies involves a multi-discipline approach by biologists, economists, social scientists, and fishermen. Therefore, expressing a harvest level under the preferred alternative should require that

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<sup>6</sup> source: figure 67 in the 1994 red snapper stock assessment (Goodyear 1994a)

<sup>7</sup> source: figure 59 in the 1993 red grouper stock assessment (Goodyear and Schirripa 1993)

<sup>8</sup> source: figure 58 in the 1994 gag stock assessment (Schirripa and Goodyear 1994)

type of approach and without this analysis is primarily a goal. The Council rejected this alternative because it does not contain an operational definition of OY.

Rejected Alternative 2 sets as an OY target or goal, maintenance of a stock at a MSY level that maximizes the biomass available for harvest from the resource. MSY as a concept is dependent on the status of the stock, practices used in prosecution of the fishery, and rules regulating harvest. For example, MSYs can be computed for stock equilibrium levels less than that which would optimize long term production from the biomass. Size limits (age at entry) and age composition of the stock also affect MSY levels. Rejected Alternative 2 would regulate harvest under that OY by allowing annual harvest at the maximum level. Maximum economic yield (MEY) is [always] less than MSY. However, if one is willing to allow sufficient fishing effort to harvest at the MSY level and forego the benefits associated with a lower fishing effort (i.e., determine that the economic and social benefits are greatest at the MSY harvest level), then Rejected Alternative 2 is acceptable. As with Rejected Alternative 1, the Council rejected this alternative because it does not contain an operational definition of OY.

Rejected Alternative 3 as an interim OY, would be based on the SPR level recommended by the Select Scientific Committee. That level cannot be specified at this time because the Committee did not provide specific recommendations SPR for OY. It was anticipated that this would result in an OY level for all reef fish species of 30 percent, or 10 percentage points above the overfishing threshold. This was rejected by the Council because it does not consider each individual species circumstances.

Rejected Alternative 4 would set OY at a SPR level fixed at 5 (or other) percentage points above the overfishing threshold to assure an adequate SPR that would avoid overfishing. The SEFSC (Brad Brown memorandum of 10/11/94) has pointed out that, while SPR is a useful measure of potential stock productivity, it is conceptually divorced from the yield obtained from the resource. A level of SPR can, however, be computed for the stock at the MSY maximizing yield, but productivity of the stock is not increased as a function of SPRs above that necessary to assure adequate larval recruitment, since other environmental factors govern maximum sustained production. The Council rejected this alternative because it does not take into account economic or social considerations.

Rejected Alternative 5 would retain the current FMP definition of OY in terms of a SPR level greater than that (20 percent SPR) necessary to prevent recruitment overfishing. The Council rejected this because it accepted the recommendation of the SPR Strategy Committee that OY should not be the same as the definition of overfishing, and because the existing definition does not fully comply with the Magnuson Act definition of OY and the Section 602 guidelines.

#### 8.4 Use of OY in the Framework Procedure

*Selection of a Proposed Alternative for this section was tabled by the Council until a specific definition is developed for the public hearing draft Preferred Alternative. It is included here as a discussion section only.*

In the absence of any selected alternative for alternative guidance, the RFSAP is required under step 2 of the procedure to specify:

"a range of ABC for each stock or stock complex which is in need of catch restrictions for attaining or maintaining OY"

When a stock is not overfished, and the OY target differs from the overfishing threshold, no time frame needs to be specified for achieving OY. For species or species groups that are not overfished but are below OY, it should be possible to specify an ABC that will eventually result in equilibrium SPR at OY regardless of the time involved (e.g., over a long time period, the recovery curve will approach an asymptote, which is the OY level, and ABC can be specified relative to that asymptote). This would be the least restrictive ABC that could possibly attain OY.

#### 8.5 Use of ABC Range for Specification of TAC (Disapproved)

**Proposed Alternative:** Modify Step 4.a. as follows (change underlined): For overfished stocks set TAC within or below the ABC range or set a series of annual TACs to obtain the ABC level within three years or less.

**Rejected Alternative:** Status Quo - retain original language.

**Discussion:** The insertion of "for overfished stocks" in the preferred alternative makes the procedure consistent with that used for mackerel. For the coastal pelagics (mackerel) fisheries the Council is constrained in setting TAC within the ABC range only for overfished stocks. However, for stocks that are not overfished the ABC range should normally include as its upper limit a level of harvest above the current level.

The Proposed Alternative does not relieve the Council of its obligation to comply with national standard 1. A stock that is not overfished cannot be deliberately driven into an overfished state. However, when stocks are not overfished, the ABC range specified by the RFSAP under the framework procedure is the range that will attain or maintain the higher OY target. There is no time frame for attaining this target. This alternative does not allow driving the stock into an overfished state, but does allow a temporary digression from achieving the long-term OY target if benefits to the nation can be optimized by addressing short-term economic or social concerns.

## **8.6 Authority to Specify the Restoration Period**

Currently, the procedure under Step 2 provides that the RFSAP will specify the restoration period for an overfished stock which cannot exceed 1.5 times the generation time of the stock. The RFSAP also develops the generation time which is a biological parameter. The risk analysis prepared by the RFSAP assesses the probabilities of attaining or exceeding the goal of 20 percent SPR. However, this risk analysis and the probabilities are functions of the recovery period date. Since the Council is the entity that must weigh the biological risk and probability of achieving the biological goal against the social and economic consequences of the level specified for TAC, this section addresses the issue of whether the council or the RFSAP should set the restoration period for each stock through the TAC procedure. (Note: the Council has that authority by plan amendment).

**Proposed Alternative:** Modify the procedure to specify the Council rather than the RFSAP will set the recovery period.

**Rejected Alternative:** Status Quo - RFSAP sets the recovery period under the procedure or Council sets it by plan amendment.

**Discussion:** Under either alternative the duration of the recovery period would be bounded by the generation time multiplier adopted under Section 8.7. The Proposed Alternative recognizes that the Council receives advice on the social and economic implications of setting the TAC level from the SEP and from the SSC (which has three economists and three social scientists). The RFSAP does not have this socioeconomic advice and considers only the biological implications of the ABC range, which is also a function of the recovery period since attaining the SPR goal is a function of the recovery period. The definition of OY (Section 8.3), the Magnuson Act and Executive Order 12866 provide that the Council consider the social and economic impacts in setting forth any management measure.

## **8.7 Respecify the Generation Time Multiplier for Recovery Periods (Disapproved)**

Currently, the TAC Procedures specifies a recovery period of the year 2000 for all reef fish species, other than red snapper (2009). It also provides that the RFSAP may specify a recovery period for each stock based on the biological generation time for that stock, but the period may not exceed 1.5 times the generation time. Generation time is defined in Amendment 3 as the age at which the average female achieves half of her expected lifetime egg production. This provides a standard for the biological scientists to specify the recovery period and allows the Council and NMFS to implement it through the TAC procedure for other stocks, if needed. The year 2000 has no biological basis (i.e., it was a ten-year period from implementation of Amendment 1, which included the TAC Procedure).

**Proposed Alternative:** Modify the procedure to allow setting a red snapper recovery period not greater than 2.0 times the biological generation time or a biologically based recovery period developed by the RFSAP, SEP, SSC, AP and approved by Council (other species remain at 1½ generation times).

**Rejected Alternative 1:** Modify the procedure to allow setting a recovery period not greater than 2.0 times the biological generation time.

**Rejected Alternative 2:** Delete the generation time criteria for specifying the recovery period under the procedure.

**Rejected Alternative 3:** Status Quo - no change to the procedure.

**Discussion:** Reef fish, in general, are longlived fish (e.g., to 40 + years, for red snapper). After consideration of all the alternatives for restoring red snapper in 1990, the RFSAP indicated it was unrealistic to consider restoring the overfished red snapper stock in less than a biological generation time. After authorization by Amendment 3, they have used 1.5 times the generation time as the recovery period for red snapper.

Generation time for red snapper is currently estimated to be 13.6 years (with a natural mortality rate estimate of  $M=0.2$ ). This allows a maximum recovery target date of 2010 at 1.5 generation times ( $1990 + 1.5 * 13.6$ ), or 2017 at 2.0 generation times ( $1990 + 2.0 * 13.6$ ). The most recent evaluation of red snapper generation time was made in October 1994 (Goodyear 1994b) and produced a slight extension over the previously reported estimate of 13 years in the 1994 red snapper stock assessment (Goodyear 1994a).

The Proposed Alternative respecifies the generation time multiplier as 2.0 for red snapper only, providing the option to specify a longer red snapper recovery period. It leaves the multiplier at 1.5 for other reef fish species. This alternative does not automatically increase the red snapper recovery period, but rather provides greater flexibility for the Council to balance economic and social consequences against biological risk. (Under National Standard 2 and the Section 602 guidelines, scientific information includes, but is not limited to, information of a biological, ecological, conomic, or social nature.) These are factors that will be addressed if and when the Council actually makes a change in the recovery period, probably through a regulatory amendment. The selection of the 1.5 generation time multiplier was described as somewhat arbitrary at the time it was adopted in Amendment 3 (GMFMC 1991). While there is no biological information available on the risk level associated with a recovery period based on 1.5 generation times nor any other multiplier, the selection of a recovery period multiplier is not purely a biological determination, but rather a determination that incorporates biological, economic and social considerations.

The Council selected the Proposed Alternative because red snapper is a species that many fishermen are heavily dependent on, and the increased flexibility will

allow the Council to more fully consider and account for social and economic considerations in the recovery plan. Furthermore, red snapper stocks were already in an overfished condition when the current recovery protocol was adopted. As a result, the red snapper fishery has unique social and economic conditions that may not be applicable to other stocks. If other stocks are later determined to be overfished, a recovery program can be implemented as soon as the overfishing determination is made, and before the level of overfishing becomes as severe as existed for red snapper. The TAC procedure as currently drafted provides the RFSAP, rather than the Council, will specify the recovery period. If the Rejected Alternative under Section 8.6 had been selected, the RFSAP, although constrained from exceeding the generation time multiplied by the multiplier (1.5 or 2.0), may feel a shorter restoration period is more scientifically appropriate for various stocks, without consideration of social and economic concerns.

Rejected Alternative 1 would have extended the generation time multiplier for all reef fish species. the Council rejected this alternative because the social and economic concerns that led to consideration of the 2.0 multiplier are specific to the red snapper fishery, and are not applicable to other species.

Rejected Alternative 2 would result in there being no guideline for specifying recovery periods for other reef fish stocks under the TAC Procedure, requiring specification by plan amendment. The Council rejected this alternative because it would result in there being no objective basis on which to specify a recovery period.

Rejected Alternative 3 would retain the current procedure and 1.5 multiplier. Presumably, none of the other stocks will reach an overfished state similar to red snapper, but status quo provides for implementation of a recovery period other than year 2000. The Council rejected this alternative because the biological constraint imposed by the 1.5 generation time multiplier is arbitrary and does not allow them sufficient flexibility to consider social and economic concerns under the red snapper recovery program.

## **9.0 PERMITTING REQUIREMENTS**

**(Note: NMFS would be authorized to charge administrative fees for issuance, renewal or transfer of permits.**

### **9.1 Reef Fish Dealer and Vessel Permit Allowable Sales Provisions**

**Proposed Alternative:** Permitted vessels shall sell reef fish only to permitted dealers, and federally-permitted dealers may purchase reef fish harvested in the EEZ only from federally-permitted vessels.

**Rejected Alternative 1:** Permitted vessels shall sell reef fish only to permitted dealers.

**Rejected Alternative 2:** Require that federally-permitted dealers may purchase reef fish harvested in the EEZ only from federally-permitted vessels.

**Rejected Alternative 3:** Status Quo - No Action.

**Discussion:** Red snapper are taken as part of the multi-species fishery for reef fish. Amendment 7 required permits for all reef fish dealers and required certain record keeping to facilitate completion and tracking of reef fish landings. Two provisions of that permit requirement were subsequently disapproved by NMFS. The provision that permitted vessels shall sell reef fish only to permitted dealers was disapproved by NMFS because it had not been discussed at public hearings. An earlier version of the provision that federally-permitted dealers may purchase reef fish only from federally-permitted vessels was disapproved by NMFS because of concern that the measure may impose unwarranted restraints on commercial transactions between non-permitted reef fish vessels lawfully fishing exclusively in state waters and dealers who purchase their fish. These provisions are included in the Proposed Alternative, with the second provision revised to address NMFS's concerns.

Because of the multi-species nature of the reef fish fishery and landings, it is very important that all reef fish landings, including particularly red snapper, are accounted for. The Proposed Alternative facilitates such accounting by requiring landings with the dealers who are subject to the record keeping requirements under their permits. These records include poundage of each species landed by each vessel for each trip. Such records must be retained for one year at a permanent facility at a fixed location, and must be made available for inspection by enforcement officers or agents of the Center Director. The measure was proposed in Amendment 7 but disapproved because it was not discussed at public hearings.

The Council's Law Enforcement AP (LEAP) felt that the second part of the Proposed Alternative would facilitate enforcement of reef fish regulations. However, as the permitted dealers are currently required to keep records of

landings for each vessel, the records should allow identification of both permitted and non-permitted vessels, as well as the composition of their landings. The original wording of the measure in Amendment 7 would have precluded dealers from purchasing from fishermen fishing state waters with no federal vessel permit for species not subject to regulations under the FMP. Conversely, it may have resulted in fewer or no (local) outlets for sale of such fish by state-water fishermen. Both such dealers and fishermen would have been adversely impacted. NOAA General Counsel, in Washington, expressed concern over the measure and recommended disapproval. Specifically, they were concerned that the measure could impose unwarranted restraints on commercial transactions between non-permitted reef fish vessels lawfully fishing exclusively in state waters and dealers who purchase their fish. General Counsel suggested it was more appropriate for the states to implement such a rule.

In response to NOAA General Counsel concerns, the second part of the Proposed Alternative was reworded to apply only to reef fish caught in federal waters. As a result, the Proposed Alternative does not affect dealer purchases of reef fish harvested in state waters by vessels that fish exclusively in state waters, including non-federally permitted vessels. The states' ability to regulate within their waters is not affected, and there is no restraint on trade of legally harvested fish.

Draft Reef Fish Amendment 8, if implemented, provides for permitted vessels to sell red snapper taken if an ITQ system is adopted to a federally permitted dealer. The Proposed Alternative broadens this requirement to apply to all reef fish and also provides it will apply to red snapper if Amendment 8 alternatives other than ITQs are implemented.

The Proposed Alternative is a combination of Rejected Alternatives 1 and 2. The Council proposed this alternative, and rejected Alternatives 1 and 2, because it felt that these two provisions complement each other, and they should be implemented together.

Under the no action alternative, permitted vessels can sell to other non-permitted dealers and dealers can purchase from any vessel. The Council rejected this alternative because it felt that the additional monitoring and enforceability provisions were needed, as discussed above.

## **9.2 Transferability of Permits and Endorsements**

Under the red snapper endorsement system, a provision adopted in Amendment 7 allows transfer of the endorsement upon death or disability of the endorsement holder. To date, there have been three transfers of red snapper endorsements under the death or disability provision (source: NMFS/SERO Regulations and Permits Branch, 5/23/95). No such transferability currently



exists under the other reef fish moratoria (e.g., vessel permit and fish trap endorsement moratoria).

**Proposed Alternative:** In the event of death or disability of a vessel permit holder or a fish trap endorsement holder, the permit or endorsement is transferrable, either permanently or temporarily, to a person specified by the permit/endorsement holder, their legal guardian, or the estate.

**Rejected Alternative:** Status Quo - No Action.

**Discussion:** Under the FMP, commercial vessels have been issued permits which allow for sale of reef fish harvested from the EEZ. Currently, there is a moratorium on the issuance of additional vessel permits which ends December 31, 1995 unless extended, as proposed in Section 9.4. Vessel permits under the moratorium can be transferred only with transfer of the vessel to another owner. Currently under the FMP, endorsements to the permits are issued for harvest of red snapper and for use of fish traps as gear. The red snapper endorsement allows the vessel to harvest a larger trip limit of red snapper (currently 2,000-pounds per trip) versus a smaller trip limit for non-endorsed vessels (currently 200-pounds<sup>9</sup>). The red snapper endorsement is currently scheduled to terminate in 1995. Amendment 7 provided for transfer of these endorsement on death or disability of the permit holder.

There is a moratorium on issuance of additional fish trap endorsements to vessel permits for a three-year period, effective February 7, 1994. Amendment 7 provided for transfer of these endorsements by the holder to immediate family members.

Adoption of the Proposed Alternative would allow transfers of the other permits and endorsements under moratorium on the same basis as for the red snapper endorsement. However, unless the current moratorium on vessel permits is extended there is little reason to provide for transfer of the permits, i.e., any qualified person can obtain a vessel permit after December 31, 1995. Currently, any person can obtain an existing vessel permit by transfer of the permit upon transfer of the permitted vessel. Under the proposed new vessel permit moratorium (Section 9.4), the vessel permit will be freely transferable without the current requirement that the vessel also be transferred. Since, under current rule, the fish trap endorsement can be transferred to immediate family members, in cases of death the endorsement could be transferred to a family member by will of the deceased or by probate of the estate, but it could not be transferred to another person by the family or estate. The Proposed Alternative will allow this. Probating the estate in the absence of a

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<sup>9</sup> The red snapper endorsement system is scheduled to end on December 31, 1995, and to be replaced in 1996 with an Individual Transferable Quota system under Reef Fish Amendment 8.

will could require a significant amount of time, during which the vessel could not fish traps, or possibly even fish.

The Council is proposing this alternative in order to be fair to all reef fish permit/endorsement holders and allow the same death or disability transfer provisions as are allowed for the red snapper endorsement.

### **9.3 Transfer of Fish Trap Endorsements**

The Council decided to implement a three year moratorium on the use of fish traps at a meeting held on November 19, 1992, and they made the date of their decision the cutoff date to qualify for a fish trap endorsement under the moratorium. When the moratorium was implemented on February 7, 1994, fishermen who had entered the trap fishery between November 19, 1992 and February 7, 1994 were excluded. The Council subsequently considered, but rejected, a proposal to expand the number of trap endorsements in order to allow fishermen who were excluded back into the fishery. However, some of the fish trap endorsements that were issued are not currently being used.

**Proposed Alternative:** Allow a one-time transfer of the fish trap endorsement by current holders of the endorsement to any of the 56 individuals who had entered the trap fishery and had logbook records of landings from fish traps received by NMFS between November 19, 1992 and February 7, 1994 and who were excluded from the fishery by the moratorium.

**Rejected Alternative:** Status Quo - do not allow such a transfer.

**Discussion:** Amendment 5 to the FMP created a fish trap endorsement to the vessel permit which allowed use of fish traps by historical fish trap fishermen and established a 3-year moratorium on the issuance of additional endorsements (effective February 7, 1994). The purpose of the moratorium was to prevent expansion of the fish trap fishery while NMFS gathers information on the impacts of the fish trap fishery in the Gulf EEZ. To qualify for the endorsement persons must have had logbook records of landings of reef fish from traps during the period 1991 through November 19, 1992. The endorsements were not transferable except to immediate family members as subsequently provided by Amendment 7).

Out of 136 vessels that qualified for a fish trap endorsement under the Amendment 5 criteria, 104 vessels were issued endorsements.<sup>10</sup> Currently, 99 vessel permits have fish trap endorsements (source: NMFS Regulations and Permits Branch). Since there was no deadline to apply for an endorsement, the 37 vessels that qualify for an endorsement but do not have one remain eligible

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<sup>10</sup> The numbers of vessels qualifying for and receiving fish trap endorsements were provided by the NMFS Permits and Regulations Branch and reported in Public Hearing Draft Amendment 10 (which was disapproved by the Council and was not submitted to NMFS).

to apply for an endorsement, provided that the vessel is permitted and the current owner meets the requisite landings criteria.

During the period from approval of Amendment 5 by the Council (November 19, 1992) and implementation of the amendment (February 7, 1994), NMFS continued to issue permits to fish with traps. This resulted in some of those persons investing in gear and vessels to participate in the trap fishery and subsequently being denied the privilege of fishing. During this period approximately 56 additional persons turned in logbook records indicating landings by fish traps. In Draft Amendment 10 the Council considered issuing endorsements to these 56 persons and to other persons with demonstrated cases of fiscal hardship. Following public hearings on Amendment 10, the Council rejected these proposed provisions since they may have allowed up to 150 additional persons to enter the trap fishery, a number greater than the participants originally issued endorsements.

The Proposed Alternative will allow transfer of the endorsements, some of which are not being used to fish traps by current endorsement holders, to persons who were excluded by implementation of the moratorium. **The term "current holder" is interpreted the same as for Amendment 8, and will cap the number of endorsements eligible for the transfer at the current level of 99 vessels plus any additional vessels that are qualified and apply for an endorsement prior to publication of the proposed rule (up to 37 additional vessels).** This will provide the opportunity for persons who entered the fish trap fishery without being aware of the impending moratorium and were subsequently excluded to participate in the fishery for the duration of the moratorium, while the effects of use of traps are evaluated (see Amendment 5).

**Persons who enter the fishery as a result of this provision should be aware that permanent rules that the Council might consider to replace the moratorium could be either more or less restrictive than the moratorium, including a possible ban on fish traps.**

The Rejected Alternative would not allow a transfer (except under the death or disability provision of Section 9.2, if adopted), and would result in a gradual reduction of fish trap effort from attrition, as fishermen leave the fishery. The Council rejected this alternative because there was an unusually long time period between the announcement of Amendment 5 and its actual implementation, and the Council felt it was inequitable to fishermen who may have entered the fishery during the intervening time period and were unaware of the impending moratorium.

#### **9.4 Extension or Implementation of New Reef Fish Vessel Permit Moratorium**

Currently, the moratorium will terminate on December 31, 1995. The moratorium was put into effect while the Council considered limited access systems for red snapper. That action was completed in May 1995, and resulted in proposal of an ITQ system. Rules implementing the proposed red

snapper system will be effective in 1996. However, new restrictions in other fisheries, including the Florida net ban and quotas on large coastal sharks could result in effort shifting into the reef fish fishery when the permit moratorium expires.

**Proposed Alternative:** Allow the existing moratorium to expire, and upon expiration, implement a new reef fish vessel permit moratorium for not more than 5 years, until December 31, 2000. Permits under the new moratorium would be restricted initially to vessels of owners who are eligible for renewal on December 31, 1995. Vessel permits under the new moratorium are transferable by an owner who is the income qualifier to other persons with vessels without transfer of the permitted vessel. The purpose of the new moratorium is to consider implementation of a limited access system in the reef fish fishery.

**Rejected Alternative 1:** Allow the existing moratorium to expire, and upon expiration, implement a new reef fish vessel permit moratorium for 3 years, until December 31, 1998. Permits under the new moratorium would be restricted initially to vessels permitted as of December 31, 1995. Vessel permits under the new moratorium are transferable by an owner who is the income qualifier to other persons with vessels without transfer of the permitted vessel. The purpose of the new moratorium is to consider implementation of a limited access system in the reef fish fishery.

**Rejected Alternative 2:** Extend the moratorium until December 31, 1996.

**Rejected Alternative 3:** End the moratorium upon implementation of this amendment.

**Rejected Alternative 4:** Extend the moratorium indefinitely (i.e., until repealed by plan amendment).

**Rejected Alternative 5:** Extend the moratorium indefinitely, but make vessel permits transferable by the owner to other persons with vessels without transfer of the permitted vessel.

**Rejected Alternative 6:** Status Quo - moratorium will end December 31, 1995.

**Discussion:** The Council feels that it would be beneficial to extend the moratorium to prevent new entry into the fishery. Since the purpose of the original moratorium is expected to be completed by 1996, NMFS has suggested that a new moratorium with a new purpose be created rather than an extension of the old moratorium.

The Proposed Alternative creates a new moratorium for a five year period for the purpose of considering a permanent limited access system in the reef fish fishery. It also eliminates the requirement that permits can be transferred only upon sale of a permitted vessel. Permits where the vessel owner is the income

qualifier can be transferred to other vessel owners without the need to transfer the vessel. Permits where the vessel operator is the income qualifier will continue to be non-transferable, as is the case under the existing moratorium. **Except for the changes noted, the new moratorium will function in a manner identical to the existing moratorium, including the one year grace period for the permit buyer to meet the earned income requirement, provided that the seller meets that requirement.** Note: although the Proposed Alternative does not create a permanent limited access system, it does contain elements of such a system. Therefore, a discussion of the Magnuson Act Section 303 considerations for limited access is presented below.

Rejected Alternative 1 is similar to the Proposed Alternative, but would create a new moratorium for three years instead of five. The Council rejected this alternative because it felt, based on its experience with developing a red snapper limited access system, that additional time would be needed to develop a reef fish limited access system.

Rejected Alternative 2 would extend the moratorium for one year. Since the Council has selected a limited access system for red snapper beginning in 1996, continuation of the current moratorium is not necessary for red snapper. However, the Council has decided to consider limited access for other reef fish fisheries, and a one year extension is insufficient time to develop a new limited access system.

Rejected Alternative 3 would end the moratorium sooner, i.e., on implementation of this amendment. The moratorium did have the effect of reducing permits from about 2,200 to 1,560, but likely many of those not renewed were permits obtained on speculation they would be valuable. The Council rejected this alternative because it felt that continuation of a moratorium was needed to prevent speculative entry and effort shifting from other restricted fisheries while a limited access system was considered in the reef fish fishery.

Rejected Alternatives 4 and 5 would extend the moratorium indefinitely, but differ in their permit transferability provisions. Rejected Alternative 5 was recommended by the Reef Fish AP and the Ad Hoc Red Snapper AP, who felt there were too many vessels in the reef fish fishery. Permits issued to fish commercially by reef fish vessels increased to about 2,200 after the Council began discussing limited access for red snapper. Active permits have declined to about 1,560 currently, largely through non-renewal of permits annually. Continuation of the moratorium would likely result in further reductions in permits through attrition. Currently, under provisions of the FMP, vessel permits are transferable with the sale of the vessel to another individual. Therefore, the system allows new entrants to the fishery. Rejected Alternative 5 would remove the restriction requiring permits be transferred only with the transfer of the vessel, similar to the Proposed Alternative, essentially creating a license limitation system for reef fish to complement the system for red snapper implemented by Amendment 8. Rejected Alternative 4 would retain the

provision requiring the vessel be transferred with the permit for the duration of the moratorium. The Council rejected these alternatives because of NOAA General Counsel concerns regarding the legality of an indefinite moratorium without due consideration of the Magnuson Act Section 303 considerations for limited access systems.

Rejected Alternative 6, status quo, was rejected because the Council felt that it was necessary to consider a limited access system for the reef fish fishery, and to continue the moratorium while that system was developed, as discussed above.

### **Magnuson Act Considerations for Limited Access**

The Magnuson Fishery Conservation and Management Act, 16 U.S.C. 1853, Section 303 provides that the Council may establish a system for limiting access to the fishery in order to achieve optimum yield if, in developing such system, the Council takes into account:

- (A) present participation in the fishery,
- (B) historical fishing practices in, and dependence on, the fishery,
- (C) the economics of the fishery,
- (D) the capability of fishing vessels used in the fishery to engage in other fisheries,
- (E) the cultural and social framework relevant to the fishery, and
- (F) any other relevant considerations.

The current moratorium on reef fish vessel permits provides for transfer of the permit with transfer of the vessel; therefore, new participants can enter the fishery. The moratorium, implemented through Amendment 4, complied the Magnuson Act provisions for establishing limited access systems [§303(b)(6)]. The present participation in the fishery was taken into account by grandfathering in all current participants. In fact, another 940 persons obtained permits between the time the moratorium was first discussed and the time of implementation. Many of these permits were likely obtained on the speculation that they may become valuable. Approximately 600 of the 2,200 permits were not renewed between 1992 and 1995.

The historical fishing practices in, and dependence on, the fishery were taken into account by the action described above by grandfathering in all current participants. The moratorium which is a form of a license limitation system did not alter any of the fishing practices. Persons with permitted vessels can select the gear they use and the areas they fish. The moratorium (or license limitation system) did not alter the economics of the fishery that existed at the time of its implementation. However, by capping the number of participants, the

moratorium likely prevented further overcapitalization and thereby further erosion of the economic viability of individual operations (i.e., small business ventures). Continuation of the moratorium at a time when numerous fishermen with vessels have been displaced from the New England groundfish fishery and by the Florida net ban will tend to stabilize this economic viability.

The capability of fishing vessels used in the fishery to engage in other fisheries was taken into account in implementing the moratorium (or license limitation system). Any person who could meet the permit income criteria (i.e., 50 percent earned income from commercial or charter fishing) could obtain permits. The current permitted vessels in the fishery include many vessels that participate in other fisheries for shrimp, sharks, tuna, stone crab, spiny lobster, swordfish, mackerels and in recreational charter/head boat fisheries. In many of these fisheries other gear is required. Vessels can freely depart the reef fish fishery to other fisheries when most advantageous to the owner.

The cultural and social framework relevant to the fishery was taken into account by grandfathering in all historical participants under the moratorium. Maintaining the moratorium, as a license limitation system, is particularly important to protecting the cultural and social framework associated with the reef fish fishery. Termination of the moratorium, in this time of large displacement of fishermen from other fisheries, will adversely impact the existing cultural and social structure of the fishery through the economic effects of overcapitalization.

## **9.5 Charter and Head Boat Permits**

Currently, there is no requirement under the Reef Fish FMP for permits for recreational-for-hire vessels, although there is one for the Coastal Pelagics FMP. These vessels may, however, obtain a commercial permit based on income from chartering and many of them fish commercially in the off-season for chartering.

**Proposed Alternative:** Require a permit for head and charter vessels.

**Rejected Alternative 1:** Require a permit for head and charter vessels based on the requirement that at least 50 percent of earned income is from chartering and/or commercial fishing.

**Rejected Alternative 2:** Status Quo - no permitting requirement.

**Discussion:** Charter and head boats take a significant portion of the landings of reef fish. Under the Coastal Pelagics (mackerel) FMP charter and head boats (recreational-for-hire vessels) are required to have permits. Under current rules, charter and head boats on trips of greater than 24 hours duration are allowed possession of two bag limits per person and it would be helpful to identify such vessels by permit.

The Proposed Alternative establishes a head and charter vessel permit for the reef fish recreational for-hire industry that is similar to an existing permit in the Coastal Pelagics FMP. There is no income criteria to qualify for the permit. The Council proposed this alternative as a means to monitor the recreational for-hire industry and identify vessels that may qualify for the two bag limit allowance. **If a permit is required, the rule definition of recreational-for-hire vessels should require the vessels possess the appropriate license required by the states (e.g., charter, head or guide boat license), since all Gulf states have licenses. In addition, head and charter boat captains should be put on notice that income requirements may be considered at a future time. Benefits of establishing this permit include :**

- use of permit sanctions for curbing the activities of repeat offenders,
- enumeration of the number and distribution of vessels classified as participants in the recreational for hire industry,
- compilation of a mailing list of recreational industry vessels that could be used to distribute Notices to Fishermen for actions affecting the recreational industry, similar to the use of the list of commercially permitted vessels, and
- identification of the universe of participants in the recreational for-hire industry in the event that a logbook or other data collection system is implemented in the future, or in the event that a future system of limiting access in the recreational for-hire industry is implemented based on historical participation (note: the November 1, 1989 control date for limited access only referred to the commercial reef fish fishery. No control date has been published for the recreational for-hire industry.).

Rejected Alternative 1 would require vessel owners to demonstrate at least 50 percent of earned income is from chartering and/or commercial fishing. According to reports from charter vessel operators, some recreational fishermen are qualifying for the U.S. Coast Guard "6-pack" license to carry passengers in order to harvest two bag limits per person on weekend trips as charter vessels. Rejected Alternative 1 would preclude that practice and limit charter vessels in the reef fish fishery to full-time participants. The Council rejected this alternative because of concern that consideration had not been adequately given to vessels that operate full-time, but for a variety of purposes, e.g., oil rig ferries, non-fishing excursion trips, etc., so that 50 percent of their income does not come from chartering or commercial fishing. However, the Council felt that an income requirement may be appropriate at some future time in order to enforce the bag limit provisions, and if needed to stabilize the industry by restricting participation to those permit applicants who can demonstrate some level of economic dependence on charter or headboat operations. **For-hire captains are therefore placed on notice that the issue of an income criteria could be brought up again (see above).**



Rejected Alternative 2, status quo, would not require fishing permits for for-hire vessels in federal waters. The Council rejected this alternative because it felt that a permit was needed to monitor the for-hire fishery and to put for-hire captains on notice that a qualifying criteria may be implemented in the future.

## **9.6 Conditions of Reef Fish Vessel Permits to Comply With Federal Regulations**

NMFS recommended inclusion in Amendment 11 to the reef fish FMP of a measure that would make it a condition of a permit that a permitted vessel comply with federal reef fish regulations regardless of where the reef fish were harvested or possessed, in order to enhance enforceability of several additional management measures. Among the rules that would be affected by this provision are:

- (1) Minimum size limits, as specified in § 641.21(a);
- (2) Head and fins intact, as specified in § 641.21(b);
- (3) Prohibition on use of poisons and explosives and on possession of dynamite, as specified in § 641.22(a); and
- (4) Quota closures, as specified in § 641.26.

**Proposed Alternative:** Status Quo - no change.

**Rejected Alternative 1:** Require as a condition for the reef fish vessel permit that the applicant abides by all federal reef fish regulations regardless of where the fish are caught.

**Rejected Alternative 2:** Include as conditions for the reef fish vessel permit all or part of the provisions cited above.

**Discussion:** Permit conditions can be used as an enforcement tool in that for multiple violations sanctions can be exercised against the permit, revoking it temporarily or permanently. In certain instances (e.g., requiring logbooks to be turned in) reissuance of the permit can be delayed until the condition is met. The conditions proposed by NMFS would fall into the former category.

The current regulations on the Gulf reef fish fishery specify that, as a condition of a reef fish permit, no permitted vessel may exceed the appropriate vessel trip or landing limits for red snapper and no permitted vessel may transfer a red snapper at sea, regardless of where the red snapper are harvested or possessed. In addition, during the delayed season openings for red snapper in 1993 and 1994, and anticipated in 1995, as a condition of a reef fish permit no permitted vessel may exceed the bag and possession limits or sell red snapper, regardless of where the red snapper are harvested or possessed.

In addition, the FMP requires as a condition for renewing the permit annually that all required logbook records must be turned in to NMFS before the permit will be reissued. This requirement is specified on the application form and agreed to by the applicant in signing the application form.

NMFS believes these permit conditions have been essential to the effectiveness of the red snapper trip/landing limits and delayed season openings. Equally important, they appear to have been accepted by commercial fishermen as reasonable measures.

However, state agency representatives questioned whether these permit conditions preempt states rights to manage fisheries in their waters. Of particular concern was whether these conditions would nullify state regulations that are more restrictive than federal regulations. In the Coastal Pelagics FMP, the Council has approved as a preferred alternative in a future amendment a condition that applicants for commercial and charter vessel permits agree to comply with the more stringent of state or federal regulations when fishing in state waters. The Council was unable to consider a similar condition in the Reef Fish FMP because it had not been included as an alternative in the public hearing draft of Amendment 11. Therefore, the Council rejected the provisions that were in the draft amendment and selected status quo.

## **REGULATORY IMPACT REVIEW**



## **10.0 REGULATORY IMPACT REVIEW**

### **10.1 Introduction**

The National Marine Fisheries Service (NMFS) requires a Regulatory Impact Review (RIR) for all regulatory actions that are of public interest. The RIR does three things: 1) it provides a comprehensive review of the level and incidence of impacts associated with a proposed or final regulatory action, 2) it provides a review of the problems and policy objectives prompting the regulatory proposals and an evaluation of the major alternatives that could be used to solve the problem, and 3) it ensures that the regulatory agency systematically and comprehensively considers all available alternatives so that the public welfare can be enhanced in the most efficient and cost-effective way.

The RIR also serves as the basis for determining whether any proposed regulation is a "significant regulatory action" under certain criteria provided in Executive Order 12866 and whether the proposed regulations will have a significant economic impact on a substantial number of small entities in compliance with the Regulatory Flexibility Act of 1980 (RFA).

This RIR analyzes the probable impacts of the proposed plan amendment to the Fishery Management Plan for Reef Fish Resources of the Gulf of Mexico (FMP). The analysis focuses on impacts on the fishery participants.

### **10.2 Problems and Objectives**

The general problems and objectives are found in the FMP, as amended. Sections 5.0 and 6.0 of this document contain the purpose and need for the present plan amendment. The current plan amendment addresses two issues: 1) modifications of framework procedure for specifying TAC, and 2) permitting requirements.

### **10.3 Methodology and Framework for Analysis**

The basic approach adopted in this RIR is the determination of changes in costs and benefits to society. The net effects are stated in terms of changes in producer and consumer surpluses to the various sectors of the reef fishery. Also included in the determination of net effects are the public and private costs associated with changing and enforcing regulations on the reef fishery. The RIR attempts to determine these changes to the extent possible, albeit qualitatively.

#### **10.4 Impacts of Proposed Alternatives**

For easy reference, the alternatives are presented with the same number identifier as in Sections 8 and 9.

##### **8.0 PROPOSED MODIFICATIONS OF FRAMEWORK PROCEDURE FOR SPECIFYING TAC**

##### **8.1 Editorial Revisions**

**Proposed Alternative:** Accept the editorial revisions to the procedure, or

**Rejected Alternative 1:** Modify the editorial revisions to the procedure.

**Rejected Alternative 2:** Status quo - Make no editorial changes.

The various proposed editorial revisions are specified in Section 8.0 of the amendment document. Such revisions are mainly procedural in nature and so have no direct economic effects on fishing participants. Some revisions, e.g., the inclusion of the SEP in the review process, are more formal statements of the current practice.

##### **8.2 In-season Adjustments to TAC Measures**

**Proposed Alternative:** Status Quo - No Action

**Rejected Alternative:** Include the following new Step 7 in the procedure (renumbering subsequent steps):

7. (new). Normally the actions cited above are related to preseason adjustments to the management measures (under Step 8) necessary to control landings within TAC for a stock or stock complex and are based on stock assessments prepared by SEFSC. However, once a TAC has been set, the Council may make in-season adjustments to any of these management measures and to TAC at any time that additional scientific information related to the management measures or TAC becomes available. Such in-season adjustments would be based on new data or analyses of data developed by NMFS, Council Staff, RFSAP, SSC or the states. The RFSAP would review the data and analysis and provide a written report to the Council with their recommendations. The report would be reviewed by the SSC before the Council takes action, starting with Step 3 of this procedure. The Council may also provide the report and information to the Reef Fish AP and SEP for review and comment and may convene all these groups for the review.

The Rejected Alternative provides the Council some flexibility in reviewing new information and in revising TAC or management measures. This enables the Council to react with immediacy to the changed status of the stock or the fishery in general. The negative side of this is that some business plans may have already been in place and could not be changed without incurring major losses to the business. To the extent, however, that the various advisory groups and the public in general are involved in the process, those adverse effects may be minimized or at least given some consideration. In contrast, maintaining the status quo would alleviate any concern that rules would be changed without giving much time to participants to adapt to the change. But at the same time, any changes that could benefit fishing participants would not be immediately adopted. The net effect then of adopting any of the alternatives is not known, although such effect may be viewed mainly as short-run in nature. Any adverse effects on the fish stock or on the fishing participants that may occur by adopting either alternative may be addressed in the next season, or if such effects are too disruptive to providing a sustainable fishery, the Council may adopt an emergency action to address the problem.

### **8.3 Optimum Yield Definition**

**Proposed Alternative:** Set OY for each stock based on a SPR level corresponding to  $F_{0.1}$  until an alternative operational definition that optimizes ecological, economic, and social benefits to the Nation has been developed by RFSAP, SEP, SSC, and AP and approved by Council.

**Rejected Alternative 1:** Set OY for each stock at a harvest level that optimizes ecological, economic and social benefits to the Nation.

**Rejected Alternative 2:** Set OY for each stock equivalent to a MSY that optimizes long-term harvest in terms of yield.

**Rejected Alternative 3:** Set OY for each stock at a level of SPR (about 30 percent) recommended by the Select Scientific Committee on SPR Strategy, until an operational level that optimizes ecological, economic and social benefits to the Nation has been developed by RFSAP, SEP, SSC, and AP and approved by the Council.

**Rejected Alternative 4:** Set OY at a harvest level maintaining over time an average SPR level that is at least 5 (or other) percentage points above the SPR level that defines overfishing.

**Rejected Alternative 5:** Status Quo - Retain OY of at least a 20 percent SPR level.

It may be stressed at this stage that these various alternatives have no direct effects on fishing participants, since they merely introduce changes into the framework procedure. Specific measures adopted later through the modified

framework procedure would have direct effects on fishing participants. The effects of such measures will be analyzed when they are proposed. In the present case, it suffices to mainly discuss the various issues surrounding the determination of OY, particularly along the line suggested by the Proposed Alternative.

Among the alternatives, Rejected Alternative 1 is the most encompassing statement of OY. It is also the most difficult to quantify. Rejected Alternative 2 may or may not address economic and social issues in the determination of OY. In all likelihood it does not address economic efficiency, since given a management system, for example an ITQ system, that allows achievement of maximum economic yield (MEY), the likely level of harvest that corresponds to MEY is below MSY. It may, however, address certain social issues, such as employment of more labor in the industry. The Proposed Alternative and Rejected Alternative 3 specify the biological portion of OY and allow for other factors to be included as it becomes practicable to do so. Rejected Alternatives 4 and 5 lean more on the biological parameter determining OY and do not explicitly consider economic and social factors.

Rejected Alternative 1 is probably the more appropriate statement of OY as a general principle. But the Proposed Alternative and Rejected Alternative 3 provide the first steps to defining OY along the line suggested by Rejected Alternative 1. In fact either of these two latter alternatives contains the general principle of defining OY that Rejected Alternative 1 proposes. Thus, the Proposed Alternative, or Rejected Alternative 3, provides an operational concept of OY and also the flexibility to modify OY as information on social and economic factors becomes available.

While the Proposed Alternative itself does not have direct impacts on fishing participants, it does set the tone for the type of management measures that may be adopted later. In this regard, there are certain issues that are worth raising at this juncture.

First, it is understood that both in the initial stage when only the biological component of OY is specified and later when other factors are included, OY itself corresponds to a certain level of allowable harvest. In this manner, the harvest level corresponding to OY may change as other factors are considered or as more information on the fishery become available. Measures designed to achieve such level of harvest are the ones that have direct effects on fishing participants.

Second, a biological factor is introduced as the starting point for rendering OY to be measurable. Considering the relative amount of resources devoted to biological research, there is a better chance for the biological component of OY to be defined more adequately than the economic and social factors. It thus appears reasonable to start defining OY along the line suggested by the Proposed Alternative. In addition, the presence of an overfishing definition for



reef fish invariably implies that the biological component of OY must be one that maintains the fish stocks above the overfishing threshold. In the meantime that economic and social factors are not considered, measures adopted to achieve OY would then be governed by the need to achieve the biological target. There is a very high possibility that the level of harvest allowed under such condition may not be coincident with the level demanded by economic or social factors. In this way, the Proposed Alternative would force the fishing participants to forgo economic or social benefits. That is, if the measures are very restrictive, short-run benefits may be forgone although the long-term status of the fish stock may be preserved. Measures less restrictive than those that may be required for social and economic reasons are very unlikely.

Third, the process of incorporating social and economic factors in the determination of OY may involve more than a determination of a fixed or variable harvest level. The process could involve adoption of a management regime that would enable achievement of OY at some harvest levels. In determining OY, the economic process involves, among others, the translation of sustainable harvests into consumer and producer surpluses. One way of doing this is to perform a constrained optimization exercise whereby consumer and producer surpluses are maximized over time subject to a minimum level of SPR or an attribute of the minimum SPR level. For example, if the stock is not overfished, the binding constraint could be a specific level of SPR, say 20 percent. If the stock is overfished, the binding constraint could be an attribute of the chosen level of SPR, such as the direction, absolute magnitude, or rate of change of the SPR. A similar exercise of constrained optimization may be performed incorporating social factors. As the process continues, OY that incorporates the factors mentioned in Rejected Alternative 1 would be measurable. It may be noted, however, that while the process discussed may determine the level of harvest corresponding to OY, achieving that level of harvest with the highest possible economic and social benefits may require certain type of management regimes, such as ITQ or some other effort limitation programs. In the absence of this management regime, constraining the harvest level to one that was determined to correspond to OY may not achieve OY itself.

The last issue that needs mentioning is the strong possibility that a satisfactory incorporation of economic and social factors in the determination of OY may take several years. In the meantime, the biological component may be the overriding concern, but as long as the Council through its various advisory groups is able to infuse social and economic factors in designing measures to achieve OY the Proposed Alternative may not require very restrictive measures that result in significant adverse consequences to the fishing participants.

#### **8.4 Use of OY in the Framework Procedure**

The public hearing draft of Amendment 11 contained three options under this subsection, including the Council's preferred alternative. The Council tabled discussion on this issue until a more specific language is introduced into the preferred alternative. This subsection, however, is maintained here to make the numbering system consistent with that of the public hearing document.

#### **8.5 Use of ABC Range for Specification of TAC**

**Proposed Alternative:** Modify Step 4.a. as follows (change underlined): For overfished stocks set TAC within or below the ABC range or set a series of annual TACs to obtain the ABC level within three years or less.

**Rejected Alternative:** Status Quo - retain original language.

The Proposed Alternative modifies status quo by making the condition that TAC be set no greater than the upper bound of ABC applicable mainly to overfished stocks. The same condition does not necessarily hold for stocks that are not overfished, although TACs may still be chosen in a similar way if only to prevent the stock from becoming overfished. Since the current practice still applies for overfished stocks, the proposed measure would have no impacts on those who fish for these stocks. The impacts on those who fish for non-overfished stocks depend on the specific action taken by the Council.

Under the proposed measure the Council has wider latitude in selecting allowable catch for non-overfished stocks. TACs may be set to accommodate fluctuations in the cost and revenues of harvesting fish, and in this way the selected level may be within or outside the estimated ABC range. Short-run economic impacts are likely to arise from this action. And so long as such TAC setting does not jeopardize the long-term status of the stock, the long-run effects of the proposed measure may also be economically positive. It may be noted, though that over the long run, the type of management system adopted for the fishery becomes the more binding factor in determining whether or not economic benefits are generated by the fishery.

#### **8.6 Authority to Specify the Restoration Period**

**Proposed Alternative:** Modify the procedure to specify the Council rather than the RFSAP will set the recovery period.

**Rejected Alternative:** Status Quo - RFSAP sets the recovery period under the procedure or Council sets it by plan amendment.

This set of alternatives has no direct effects on fishing participants. However, the Proposed Alternative offers a means whereby the public can have direct

input on what the "investment horizon" should be like considering that they are the ones mainly affected by the nature of regulations imposed over the recovery period.

#### **8.7 Respecify the Generation Time Multiplier for Recovery Periods**

**Proposed Alternative:** Modify the procedure to allow setting a red snapper recovery period not greater than 2.0 times the biological generation time or a biologically based recovery period developed by the RFSAP, SEP, SSC, AP and approved by Council (other species remain at 1½ generation times).

**Rejected Alternative 1:** Modify the procedure to allow setting a recovery period not greater than 2.0 times the biological generation time.

**Rejected Alternative 2:** Delete the generation time criteria for specifying the recovery period under the procedure.

**Rejected Alternative 3:** Status Quo - no change to the procedure.

While the choice of a recovery period does not directly impact the fishing participants, it provides the tone for the type of management measures adopted in order to achieve the objectives of the fishery plan. That is, a short recovery period would almost entail restrictive management measures for a given level of stock overfishing, and the more the stock is overfished the more stringent the measures become. Relating the recovery period of an overfished stock to the biology of the species partly eliminates the arbitrariness of selecting a recovery period. In this sense, Rejected Alternative 2 may be rated the lowest among the three alternatives.

In the Proposed Alternative and Rejected Alternatives 1 and 3, some arbitrariness creeps in due to the selection of a multiplier for expanding the recovery period beyond that provided by the biology of the stock. However, providing such multiplier would enable the Council to consider other factors that relate to the changing status of the stock (or to new information regarding the status of the stock) and to the economic and social effects of the likely measures that would be adopted for a given recovery period. Incorporation of these other factors is particularly apparent in the Proposed Alternative. As knowledge of these other factors accumulate, the multiplier may be accordingly adjusted. In this sense, the change proposed under the Proposed Alternative may have some justification.

The choice of a recovery period entails an economic tradeoff of costs and benefits over time. For a given level of overfished status of the stock, a longer recovery period, as in the Proposed Alternative, involves smaller short-run costs and possibly smaller long-run benefits while a shorter recovery period, as in the status quo alternative, involves larger short-run costs and possibly larger

long-run benefits. Currently, it is not possible to conduct calculations in order to ascertain whether the proposed action would be more beneficial than status quo. In the event that this part of the framework procedure is employed, actual calculations will have to be done in order to ascertain whether a longer recovery period would result in higher net benefits to society.

## **9.0 PERMITTING REQUIREMENTS**

### **9.1 Reef Fish Dealer and Vessel Permit Allowable Sales Provisions**

**Proposed Alternative:** Permitted vessels shall sell reef fish only to permitted dealers, and federally-permitted dealers may purchase reef fish harvested in the EEZ only from federally-permitted vessels.

**Rejected Alternative 1:** Permitted vessels shall sell reef fish only to permitted dealers.

**Rejected Alternative 2:** Require that federally-permitted dealers may purchase reef fish harvested in the EEZ only from federally-permitted vessels.

**Rejected Alternative 3:** Status Quo - No Action.

Currently, vessels commercially harvesting reef fish in the Gulf EEZ are required to secure permits from NMFS. A moratorium on the issuance of additional commercial vessel permits was begun in 1992, with about 2,200 permits issued. Currently, there are about 1,534 vessels with current reef fish permit. The actual number varies almost by day as permits expire and renewed. The distribution of permitted vessels by home port is: Alabama - 47, Florida - 1,209, Louisiana - 127, Mississippi - 18, Texas - 117, and other states - 16 (Miller, pers. comm., 1995). If the permit moratorium is not extended and is allowed to expire on December 31, 1995, more vessels can be expected to secure the required permit to commercially fish for reef fish in the EEZ. But only a select number of vessels can fish for red snapper under the Council's proposed ITQ system for that fishery. This plan amendment, however, contains a set of alternatives dealing with the extension of the permit moratorium (see Section 9.4).

Similar to reef fish vessels, dealers handling reef fish caught in the Gulf EEZ are also required to obtain permits from NMFS. Permitting of dealers was begun in 1994, and at present there are about 261 licensed dealers around the Gulf. These dealers are distributed as follows: Alabama - 14, Florida - 173, Louisiana - 33, Mississippi - 4, Texas - 31, and other states - 6 (Miller, pers. comm., 1995). There are no moratorium or limited entry system planned for federal dealer permits.

Under current rule (i.e., status quo) reef fish vessels can sell their fish to any (state licensed) fish dealer, whether or not the dealer has a federal permit. Likewise dealers can buy reef fish from any vessel, whether or not the vessel has a federal reef fish permit. One exception to this latter occurs in Florida where the state has classified snappers, groupers and amberjacks, among others, as restricted species, and requires a federal reef fish vessel permit to sell these species. The various alternatives to status quo would change the practice of buying and selling reef fish caught in EEZ waters.

The Proposed Alternative is a combination of Rejected Alternatives 1 and 2. The major benefits expected of these alternatives come in the form of enhancing the enforcement of reef fish rules and the monitoring of reef fish harvest, especially of those fish that are subject to several regulations including the proposed ITQ system for red snapper. In addition, these alternatives would also provide a better enumeration of businesses potentially affected by fishery regulations. Such benefits would be larger under the Proposed Alternative than under either Rejected Alternatives 1 or 2.

The three alternatives to status quo would provide a clear identification of dealers buying reef fish directly from Gulf fishermen and of fishermen selling reef fish to a particular dealer. These alternatives would also ensure that reef fish caught in the Gulf EEZ pass through known markets, at least up through the first buyers of reef fish. Federally permitted dealers are now required to record every transaction (which includes, among others, the actual amount of each species of reef fish sold) between the Gulf reef fishermen and dealers. Such records are to be kept in some known sites and made available to federal law enforcement agents when a need arises. In addition, federally permitted reef fish vessels are required to file logbooks for every trip made. Such clear identification of participants in the commercial reef fish fishery and availability of records provide a means of checking and cross-checking landings for adherence to reef fish regulations. Again clear identifications of participants would be achieved better under the Proposed Alternative than under either Rejected Alternatives 1 or 2.

Most reef fish species under the FMP's management unit are subject to one or more types of regulations, e.g., size limits on most reef fish, closure when commercial quota is filled for red snapper and groupers (deep and shallow), trip limits for red snapper, non-sale of recreationally caught reef fish, etc. While at-sea and dockside checking are still the core of enforcing these regulations, dealers now may be expected to add pressure on fishermen to abide by the rules, since they (dealers) would eventually stand to lose their permit to participate in reef fish business when buying "illegally caught" fish. Currently vessel owners and dealers are already subject to some penalties at the federal and state level for selling (vessel owner) and buying (dealers) "illegally caught" fish. The Proposed Alternative and to some extent, Rejected Alternatives 1 and 2, would increase the probability of imposing penalties on such vessel owners and dealers.

More important than the pressures that dealers may impose on fishermen is the fact that another record is available to enforcement officials. The use of such record could strengthen the case against violators without, in some instances, the need of actually observing a violation in progress at sea. The availability of such record from dealers may also prompt certain fishermen to file more accurate catch records when submitting logbooks. It goes without saying that not all types of violations can be ferreted out by an examination of dealer records, but it is hoped that some flagrant ones may be adequately addressed, like violations of trip limits on red snapper and sales of recreationally caught reef fish where prohibited.

Closely related to an enhanced enforcement of regulations expected from the three alternatives to status quo is the improvement in the accuracy of estimating commercial harvests of red snapper and groupers which are currently subject to overall quota management. There are several points to consider here. First, the commercial fisheries in the EEZ for red snapper and groupers close when the respective quotas are filled. EEZ closures have been complemented by state water closures enacted by the Gulf states, except Texas. Monitoring of quota for closure purposes has relied heavily on reports from dealers. With practically all dealers of reef fish identified under the dealer permitting system, reports from all such establishments may not only be collected but in certain instances some dealer records may be examined by authorized state and federal personnel. This situation would enable a better accounting of landings in determining when the fishery should be closed without the threat of significant quota overrun or underrun. When the fishery is closed, the dealer permitting provides a mechanism to determine the major sources of continued landings of reef fish. Some of these landings may be from states that still allow sales of reef fish when the EEZ commercial fishery for that species is closed, and in such situation at-sea or dockside enforcement may be focused in known areas of landings to ensure that fish are not harvested illegally. Second, both commercial and recreational fishermen fish for various species of reef fish. While red snapper and grouper commercial fishermen are subject to numerical quotas with closures, their recreational counterparts are subject mainly to bag limits without closures. This situation demands then an appropriate accounting of catches by both the commercial and recreational sectors. Currently, the reef fish FMP, as amended, requires a federal vessel permit when sales of reef fish to any buyers are involved. The states of Louisiana and Florida have complementary regulations in this regard and even further since these states imposed such requirements on their fishermen and dealers; other states require either a state commercial vessel license and/or state dealer licenses for sale of marine fish. The three alternatives to status quo would require that sales of reef fish, at least those caught in the EEZ, transpire only among permitted vessels and dealers and that a record of each such transaction be kept and made available for examination by authorized personnel when a need arises. In this sense, a more accurate assignment of sales of reef fish to a commercial quota may be achieved. This becomes particularly important to support any limited entry system adopted for any segment of the reef fishery. Sales of reef

fish outside of the system may not be counted towards the commercial quota or harvest.

From an economic efficiency standpoint, the three alternatives to status quo may be seen as means to deter fishermen and dealers from undertaking "avoidance activities." The cost of such activities is implicit in the sense that resources producing goods and services elsewhere in the economy are directed to the fishery, and this cost has no net offsetting benefits (Anderson, 1987). Such avoidance activities also lead to less than full realization of the benefits from the management program. To some extent, minimization of such implicit cost and of such reduction in benefits from the management program depends on the level of enforcement and of avoidance activities exercised in relation to the sale and purchase of reef fish between permitted vessels and dealers.

Like any other regulatory measures, the three alternatives to the status quo would impose certain costs on vessel owners and/or dealers. The major cost items are compliance costs to vessels and dealers, threat to vessel owners and dealers of losing reef fish and other seafood business, decrease in competition at the dealer level, and possible conflict with state licensing or other regulations. These costs may vary from fishermen to fishermen and dealer to dealer within a state or among the five Gulf states.

Compliance costs to vessels and dealers consist of ascertaining that they transact business only with entities that possess valid reef fish vessel or dealer permits. The cost of determining whether an entity is licensed or not is likely to be relatively small, but actual transactions may involve some additional cost to fishermen if permitted dealers are not found in their usual areas of landing and to dealers if permitted fishermen land in other ports not necessarily serviced by other permitted dealers. In addition, some implicit cost, i.e., cost wherein no actual dollar outlay is incurred but instead an additional activity demanding extra labor is performed, may also be incurred. These costs are related more to tasks performed by vessel owners or dealers to ensure that they do not become parties to any type reef fish rule infractions which may result in heavy fines or outright loss of reef fish and other seafood business. These tasks could involve more careful identification, counting, and measurement of the size of fish or refusal to sell or buy reef fish from otherwise legally qualified suppliers of reef fish. Some of these activities could result in missing good market windows for fresh fish.

Another potential cost is the possible reduction in the competitive stature of the reef fish dealer market. Less competition in this market could result in lower price offered to fishermen or no fish sold to a dealer not as a result of demand and supply interactions but as a direct result of market inefficiencies. This situation only offers fishermen a fertile ground for selling fish to non-permitted dealers/buyers or for dealers to buy fish from non-permitted vessels. Fishermen and dealers would go by this route to the extent that additional revenues offset additional costs, including expected penalty costs. Before dealer permitting

took effect in 1994, it was reported that based on state licenses sold there were about 479 primary dealers purchasing reef fish in the Gulf of Mexico. Many more were potentially engaged in dealer activities. For example, in the 1990-1991 fiscal year, Florida sold 772 resident county wholesale seafood dealer and 2,859 resident retail seafood dealer (primary) licenses for Atlantic and Gulf coasts, Louisiana sold 1,243 resident wholesale/retail dealer-for business licenses, Mississippi sold 86 seafood dealer licenses, and Texas sold 387 wholesale fish dealer and 2,902 retail fish dealer licenses (GSMFC, 1992). One should note, however, the many classes of licenses sold in each state, the possibility that one company may own several classes of licenses or the same class of licenses for each establishment, and the requirements to whom commercial fishermen may sell their catch varies (for details see GSMFC, 1992). For example, Florida requires that commercial fishermen sell their fish to wholesale dealers. There are also a number of seafood buyers in other parts of the U.S. that may potentially buy fish from Gulf fishermen [see NMFS lists of seafood brokers (1993), seafood processors (1993), and primary receivers of imported fishery products (1991)]. Some of these potential buyers, of course, may be buying from Gulf fishermen although in small amounts or might have bought fish before but have ceased temporarily or permanently. As of the writing of this draft plan amendment, only 261 entities secured a federal dealer license. Of course, additional dealers may secure federal permits even if any of the alternatives to status quo were implemented, since the requirements to obtain dealer permits do not appear to be too restrictive.

Another potential cost from adopting any of the three alternatives to status quo is the presence of federal dealer permits in addition to state dealer permits. Presumably, entities with federal dealer permits would still need to secure state dealer permits to operate as fish buyers in state territories. On the other hand, state permitted fish dealers do not need to secure federal dealer permits to continue operating as dealers in state territories. While these dealers may not buy reef fish caught in the EEZ without first securing federal dealer permits, they may legally continue to buy reef fish caught in state waters. The same would be true of some reef fish fishermen. They may catch reef fish from state waters and thus would be legally allowed to sell their fish. This situation, however, is likely to arise in states possibly other than Florida and Louisiana, primarily because these latter two states currently require their respective dealers to purchase reef fish from federally permitted vessels. If, on the other hand, dealers without federal permits stop buying reef fish even if caught in state waters, they would stand to lose this portion of their seafood business. Moreover, fishermen without federal vessel permits who catch reef fish in state waters mainly as bycatch in their fishing operation would also lose a portion of their business. Naturally, the extent of this identified problem depends to a large degree on the amount of reef fish caught in state waters. In the case of red snapper, fish caught in state waters appear to be relatively small, perhaps more so in more recent years when most states close their waters to commercial reef fishing when commercial fishing in the EEZ is closed.



## 9.2 Transferability of Permits and Endorsements

**Proposed Alternative:** In the event of death or disability of a vessel permit holder or a fish trap endorsement holder, the permit or endorsement is transferrable, either permanently or temporarily, to a person specified by the permit/endorsement holder, their legal guardian, or the estate.

**Rejected Alternative:** Status Quo - No Action.

A moratorium on the issuance of additional commercial reef fish permit is currently in effect and, if not extended, will terminate on December 31, 1995.

Under the permit moratorium, permits may be transferred only from one vessel to another owned by the same permit holder, with the sale of the permitted vessel, or in the event of death or disability of the person who was the qualifier for the permit. The red snapper endorsement may be transferred only in the event of death or disability of the person who was the qualifier for the endorsement. These conditions of permit and red snapper endorsement transfer will remain under either the status quo or proposed alternative. The red snapper endorsement system will terminate upon implementation of the proposed ITQ for the fishery.

A moratorium on the issuance of additional fish trap endorsement was implemented in 1994 and, if not extended, will terminate on February 7, 1997. Currently fish trap endorsements may be transferred only among members of the endorsement holder's immediate family. The Proposed Alternative would also allow transfer of fish trap endorsement in the event of death or disability of the fish trap endorsement holder to anybody designated by the deceased's legal guardian or estate. In effect then the Proposed Alternative would render the fish trap endorsement on par with red snapper endorsement with respect to transfer in the event of death or disability of the holder.

The Proposed Alternative addresses a special situation wherein upon the decease or incapacitation of the permit/endorsement holder such permit/endorsement may be transferred to certain specified individuals. Thus this alternative can address hardship cases in terms of allowing a family dependent on fish trapping for livelihood to continue its fishing operation in the event that the endorsement recipient is permanently or temporarily unable to fish for traps and no family member is capable of taking over the harvesting portion of the family business. In this sense, this action creates social benefits relative to the status quo beyond the costs of implementing this proposed regulation. In absolute terms, however, such net social benefits may be considered small since only a few of the estimated 100 fish trap fishermen may be unfortunate enough to avail of such transfer provision. But relative to those affected by this provision, the net impacts would be relatively significant. Thus, the Proposed Alternative would not negate the intent of the moratorium.

### **9.3 Transfer of Fish Trap Endorsements**

**Proposed Alternative:** Allow a one-time transfer of the fish trap endorsement by current holders of the endorsement to any of the 56 individuals who had entered the trap fishery and had logbook records of landings from fish traps received by NMFS between November 19, 1992 and February 7, 1994 and who were excluded from the fishery by the moratorium.

**Rejected Alternative:** Status Quo - do not allow such a transfer.

When the fish trap endorsement was implemented last year, about 136 vessels were determined to be eligible to receive the endorsement. About 150 additional vessels could potentially enter the fishery. Of the 150, about 56 entered or re-entered the fishery within the time period the Council approved the endorsement rule (November 19, 1992) and its implementation (February 7, 1994). To date there are 99 vessel permits with fish trap endorsements (source: NMFS Regulations and Permits Branch, 1995).

The Proposed Alternative would not increase the number of fish trap endorsement holder, because no additional endorsements would be issued. Directly benefited by this alternative are those who made relatively substantial investments in the fish trap fishery but were excluded when the moratorium took effect. They could potentially recoup part of their investments made in the fishery. But the entrance of these individuals into the fish trap fishery would tend to increase fishing effort in this segment of the reef fishery, because in all likelihood only those endorsements that would not be used by their original owners would be transferred. How significant that increase in effort will be cannot be determined. It may only be said that these individuals offer the potential to render the fishery more efficient to the extent that their investments were made to improve their economic viability in the fishery. In this sense, the Proposed Alternative would not materially negate the intent of the moratorium. There is even a possibility that it would improve the efficiency of the harvest sector.

### **9.4 Extension or Implementation of New Reef Fish Vessel Permit Moratorium**

**Proposed Alternative:** Allow the existing moratorium to expire, and upon expiration, implement a new reef fish vessel permit moratorium for not more than 5 years, until December 31, 2000. Permits under the new moratorium would be restricted initially to vessels of owners who are eligible for renewal on December 31, 1995. Vessel permits under the new moratorium are transferable by an owner who is the income qualifier to other persons with vessels without transfer of the permitted vessel. The purpose of the new moratorium is to consider implementation of a limited access system in the reef fish fishery.

**Rejected Alternative 1:** Allow the existing moratorium to expire, and upon expiration, implement a new reef fish vessel permit moratorium for 3 years, until December 31, 1998. Permits under the new moratorium would be restricted initially to vessels permitted as of December 31, 1995. Vessel permits under the new moratorium are transferable by an owner who is the income qualifier to other persons with vessels without transfer of the permitted vessel. The purpose of the new moratorium is to consider implementation of a limited access system in the reef fish fishery.

**Rejected Alternative 2:** Extend the moratorium until December 31, 1996.

**Rejected Alternative 3:** End the moratorium upon implementation of this amendment.

**Rejected Alternative 4:** Extend the moratorium indefinitely (i.e., until repealed by plan amendment).

**Rejected Alternative 5:** Extend the moratorium indefinitely, but make vessel permits transferable by the owner to other persons with vessels without transfer of the permitted vessel.

**Rejected Alternative 6:** Status Quo - moratorium will end December 31, 1995.

The moratorium on the issuance of additional commercial permit for reef fish was implemented in May 1992, originally scheduled to expire in May 1995, but was subsequently extended to December 31, 1995. In May 1995 the Council decided to adopt an ITQ program for the red snapper fishery. With respect then to the red snapper fishery, an extension of the moratorium is no longer needed. But such extension may have a bearing on other segments of the commercial reef fishery.

It may be recalled that the original moratorium implemented in 1992 was partly intended to stabilize the reef fishery in terms of the number of fishing participants while the Council started considering a limited access system for the entire reef fishery. That same year marked the onset of derby fishing in the red snapper fishery, and since then consideration of limited access system has solely focused on red snapper. The moratorium's extension from May to December 1995 was primarily intended to accommodate the process of completing the development of a limited access system for the red snapper fishery. In some important respects the moratorium helped in developing limited access system for the red snapper fishery. The number of participants in the red snapper fishery did not substantially increase during the planning period for limited entry system for the fishery. While the endorsement system also helped in limiting such an increase, the moratorium prevented the increase of vessels catching red snapper under the 200 pound trip limit. In addition, the restrictive condition for permit transfer resulted in minimal change in the composition of those permitted to continue operating in the fishery. These effects have made

the determination of eligible participants and of their potential level of participation in the limited access system for fishery relatively manageable. Furthermore, the moratorium has restricted investment of vessels and gear in the red snapper fishery and reef fishery in general. In doing so the moratorium has not only constrained further overcapitalization in the fishery but has also limited the loss to any investor who would be ineligible to initially participate in the limited access program.

If a limited access system is planned for other segments of the reef fish fishery, a moratorium on permits would provide benefits similar to those mentioned for the red snapper fishery. Ending the current moratorium altogether may be expected to result in a surge in permit applications -- some for valid reasons to enter or re-enter the fishery and others for speculative purposes. This is likely to complicate the development of a limited entry for the subject fishery, particularly if initial distribution of fishing privileges is based on some level of current participation in the fishery.

An extension of the moratorium (Rejected Alternatives 2, 4 and 5) or implementation of a new one with restrictive proviso on those allowed in the fishery (Proposed Alternative and Rejected Alternative 1) could hold off a substantial increase in actual or potential effort in the reef fishery, and possibly would give enough time to study the feasibility of a limited entry system for other reef fisheries under a relatively more stable fishing environment. Such benefits are even better achieved under an indefinite extension (e.g., Rejected Alternatives 4 or 5), especially if the moratorium is tied to the implementation of a limited access system. Under this latter alternative, the moratorium can be extended from less than a year to a maximum that is reasonably allowable, with the termination date being determined by the implementation of a limited access system. The foregoing negative aspects of ending the reef fish moratorium may be mitigated by an alternative that considers only certain time period, such as the 1990-1992 period for red snapper, for initial allocation of fishing privileges under a limited access system.

While an end to the moratorium will not preclude successful consideration of a limited access system for the rest of the reef fisheries, any limited access discussion without the benefit of a moratorium is bound to attract more effort into the reef fishery. If in fact there is less effort in other (than red snapper) reef fisheries, termination of the moratorium would enable expansion of benefits from these other fisheries and would also widen the distribution of benefits to a larger number of fishermen. If in addition these other species are also way above the overfished condition for reef fish, then many of the restrictions currently in place must have only restricted the economic benefits derivable from the fishery. If, on the other hand, there is enough effort for full utilization of reef fishery resources, termination of the moratorium would likely add obstacles to efficient allocation of labor and capital in the fishery.

The extension of the moratorium, whether or not followed with a limited entry system, will allocate most of the benefits of utilizing the reef fish resources to permit holders. The recreational sector will also partly benefit from the extension even though there is a separate recreational allocation, because anglers will be faced with less competition for the resource. But more likely such recreational benefits will be local in character and will be mainly in terms of less fishing competition within a given area or period.

It may be recalled that the moratorium was implemented in 1992 in order for the Council to consider a limited access system for the reef fishery, and for the fishermen to understand at least the major issues surrounding certain forms of limited access system. A crucial issue then in extending the moratorium is the consideration of a limited access for the fishery. To date only the red snapper fishery has been studied for the purpose of implementing a limited entry system, and the Council has already decided to implement an ITQ system for this fishery by 1996. Perhaps the closest idea to considering a limited entry system for other reef fisheries is that implied by Rejected Alternative 5. It is more like a temporary license limitation system. As a license limitation system, it is deficient in many respects, foremost of which are the determination of those who are eligible to hold the transferable permit and the nature of the permits themselves. As a moratorium it provides no indication that it is considered a prelude to a comprehensive limited access system.

The Proposed Alternative differs from Rejected Alternative 1 only with regard to the duration of the extension -- that is, 5 years for the former and 3 years for the latter. A 5-year extension would bring the moratorium to a total of more than 8 years in duration. Whether a longer extension would be more beneficial depends on the complexity of the process of evaluating the rest of the reef fish fishery for establishing a limited access system. A little more than 3 years for red snapper appears to be sufficient. The same duration may also be sufficient for such fishery as grouper, especially that some of the informational infrastructure for a limited access system has already be set up. But unlike the red snapper case, there appears to be no pressing need to address access limitation for the grouper fishery. It is then perhaps more instructive to conduct an evaluation of the suitability of a multi-species limited access system for the rest of the reef fish fishery. In this case, a longer extension for a permit moratorium would be the better approach.

## **9.5 Charter and Headboat Permits**

**Proposed Alternative:** Require a permit for head and charter vessels.

**Rejected Alternative 1:** Require a permit for head and charter vessels based on the requirement that at least 50 percent of earned income is from chartering and/or commercial fishing.

**Rejected Alternative 2: Status Quo - no permitting requirement.**

From a management standpoint, there are essentially two major uses of the permit requirement on head and charter vessels. First, it provides information regarding the characteristics of the for-hire industry. Second, permits can be used for enforcement purposes.

The information that a permit provides depends on the data supplied during the permit application process. More complicated criteria for securing permits, such as income requirement, would tend to provide more information. The number, geographic or size distribution, and other features of for-hire vessels can be generated through the permitting process. Such information can in turn be used to address management issues specific to or affecting the for-hire industry, for example, issuance of logbooks or consideration of limited access for the for-hire industry.

The enforcement uses of permits on for-hire vessels are twofold. First, permits may be used to sanction vessels with records of repeated violations. Second, the threat of permit sanctions could help in enforcing fishing rules, such as size and bag limits, especially those that are used to protect overfished stocks.

While the permit requirement could enhance fishery management, it does impose certain costs on the industry. Requiring permits on head and charter vessels to fish for reef fish in the EEZ imposes both a direct and indirect costs on the business operation of these vessel. The direct cost of the permit is currently about \$40 plus the burden time in filling the application form. This is merely an additional item to the fixed cost of the business. While this may partly show in higher prices charged to customers of for-hire vessels and partly on reduced profits of the for-hire business operation, such effects are deemed to be relatively minimal.

The indirect costs of the permit come in the form of precautionary measures against possible violations and permit suspension or revocation. The latter definitely entails an enormous cost to the business operation, and to prevent incurring such cost, for-hire vessel owners/operators would have to expend resources on precautionary measures. This expenditure may range from minimal to substantial depending on the number and complexity of fishing rules affecting the for-hire vessels.

The number of permits issued would be greater under the Proposed Alternative than under Rejected Alternative 1. To the extent that some fish would be conserved by restricting the number of participants in the fishery, some economic rent could be generated under Rejected Alternative 1. The extent of this effect, however, is probably minimal since it is very likely that the major participants of this fishery readily meet the requirement. In addition, if such a rent ever exists, it will be easily dissipated since entry into the head and charter vessel industry is open to anybody meeting the income qualification. In

addition, access to the resource by commercial and private recreational anglers may also be open and thus could pose as major source of dissipating the rent that may be generated under Rejected Alternative 1. In this event, the economic effects of the Proposed Alternative may not significantly differ from those of Rejected Alternative 1.

Despite the presence of costs mentioned above, the Proposed Alternative may bring about a net increase in benefits relative to the status quo, primarily because it enhances management of an important component of the reef fish fishery.

#### **9.6 Conditions of Reef Fish Vessel Permits to Comply With Federal Regulations**

**Proposed Alternative:** Status Quo - no change.

**Rejected Alternative 1:** Require as a condition for the reef fish vessel permit that the applicant abides by all federal reef fish regulations regardless of where the fish are caught.

**Rejected Alternative 2:** Include as conditions for the reef fish vessel permit all or part of the provisions cited above.

Under current rule (status quo), there are already several requirements imposed as conditions for the reef fish vessel permit, such as non-transfer of red snapper at sea regardless of where the fish are harvested, bag limit and no-sale requirement on red snapper during closed season regardless of where the fish are harvested, and submission of all required logbooks. In addition, any severe fishing violation may be considered ground for non-issuance of permit. What Rejected Alternative 1 would add to status quo are all other federal rules as conditions for issuance or re-issuance of permits. Rejected Alternative 2 would add only some of the existing federal fishing rules.

One major problem these alternatives attempt to address is the effective enforcement of federal rules. Enforcement gets complicated when state and federal regulations differ. Under differing regulations, the rejected alternatives would require vessels with reef fish permit to abide by federal rules. While such requirement mainly affects the actions of vessel permit holders, it does imply that federal rules apply to state waters with respect to the actions of the permit holders. Non-permit holders are not bound by such requirement, but they would not also be allowed to fish in federal waters.

To the extent that the rejected alternatives clarify the type of rules that would have to be followed by permit holders, such alternatives could enhance the enforcement of existing federal rules. Rejected Alternative 1, in particular, imposes conditions that would enable a better enforcement of reef fish rules. From an efficiency standpoint, this alternative may be seen as a means to

counteract "avoidance activities" practiced by some fishermen. As mentioned elsewhere in this RIR, such type of activities only entails a cost to the fishery and has no offsetting benefits. Because Rejected Alternative 1 minimizes the expending of cost due to "avoidance activities" and at the same time enhances the probability of realizing the benefits of the reef fish rules, it may be deemed superior to maintaining the status quo. Its inclusion of most federal fishing rules also makes it more effective than Rejected Alternative 2.

The fact that in many instances the conflict between state and federal rules involves one set of regulations being more restrictive than the other presents some complicating issues that have a bearing on the effects of regulations on the stock and on the economics of the fishery. If federal rules that apply to fish caught in state waters are more stringent, in the sense that they give the fish stock more protection, their likely economic effects will be negative in the short run due to restricted harvest and positive in the long run due to stock protection. The opposite happens if state rules are more stringent than federal rules. In either situation the net economic effects cannot be determined to be positive or negative.

The foregoing discussion indicates that some positive economic effects may be effected by the rejected alternatives, but the extent of such effects is not known.

#### 10.5 Government Costs of Regulation

The preparation, implementation, enforcement and monitoring of this or any federal action involves the expenditure of public and private resources which can be expressed as costs associated with the regulations. Costs associated with this amendment include:

Council costs of document preparation, meetings, public hearings, and information dissemination .....	\$ 25,000
NMFS administrative costs of document preparation, meetings and review .....	10,000
Law enforcement costs .....	none
Public burden associated with permits .....	47,680
TOTAL .....	\$82,680

The cost items above have been identified as the likely cost to be incurred in preparing and implementing this plan amendment. Council costs and NMFS administrative costs



were associated with meetings, travels, preparation of various documents, and reviews of all documents. There are no additional law enforcement costs inasmuch as the same enforcement activities under status quo will be undertaken under this amendment. The public cost of permits refers to the cost associated with securing charter and head boat permits. The cost estimate is based on 1,192 charter and head boats operating in the Gulf and a \$40 cost per permit. In the event, though, that a charter or head boat permit is secured in addition to other permits, the cost drops to \$10. The burden time for each permit application has been estimated at 15 minutes per permit, or 298 hours for all the 1,192 permits. There is no additional cost associated with the moratorium, since the proposed system mainly extends the one currently in existence.

## **10.6 Summary of Impacts of Proposed Action**

The proposed plan amendment constitutes changes in management for the Gulf reef fish fishery. While many of the alternatives, particularly those related to the framework procedure, have rather very general effects, some definitive statements can be made about the proposed changes contained in this plan amendment. This summary of impacts mainly deals with the effects of the proposed alternatives.

It may be stressed here that the proposed changes affecting the framework procedure have no immediate effects on fishing participants. These changes rather set the tone for the type of management measures that the Council may propose through the framework procedure. Measures that will be proposed later through the framework procedure will be analyzed at that time. In the meantime only general statements may be made about the effects of the proposed measures on the framework procedure.

The proposed editorial revisions to the framework procedure have no effects on fishing participants in the sense that most of those revisions merely incorporate formally into the procedure some of the current practice. The proposed alternative for in-season adjustment is status quo, and so it has no effects on fishing participants. The optimum yield definition has bearing on the long-term management actions. The proposed alternative sets up a process whereby a biological parameter is taken as the operational benchmark for OY until various advisory groups recommend modifications thereto. Relative to status quo, this process of setting OY has economic merit in the sense that factors other than the biology of the stock is taken into account. The short-run offshoot, however, of such a process is that measures that may be taken to achieve OY may be too restrictive, although such restrictive measures may afford the fishery a healthy stock in the long-run. The proposed measure to render the setting of TAC within the ABC range mainly to overfished stock provides the Council some flexibility in setting TAC for non-overfished stock. In this way TAC for non-overfished stock may be set to meet economic and social objectives, and thus the measure may be adjudged to result in net economic and social benefits. The proposed measure giving the Council the authority to specify the restoration period would likely allow economic and social factors to be included in determining the period of stock recovery through the framework procedure. While such is the case the more likely effect would be mainly

a reduction in government and public cost of changing rules, since the Council already has this authority through a plan amendment. The proposed measure respecifying the multiplier to apply to generation time for specifying recovery period is bound to result in short-run economic and social benefits. The long-run effects depend on the management system that will be adopted as the stock gradually recovers.

The proposed alternative regarding the sale and purchase of fish caught in the EEZ between permitted vessels and dealers can enhance enforcement of regulations particularly for species that need to be closely monitored. But it is bound to increase the operating cost of both vessels and dealers and could also restrict the market for fish. The attendant cost notwithstanding, the proposed alternative may be expected to at least reduce avoidance activities that may only negate the benefits of existing fishing rules. The proposed alternative for transferability of permits and endorsements provides social benefits to those affected and is not expected to negate the intent of the moratorium. It may be noted, however, that such benefits would disappear once the endorsement or permit moratorium is terminated or replaced with a system that allow transferability of the permit or endorsement. The proposed measure to allow a one-time transfer of fish trap endorsement provides a temporary relief to those initially disallowed to continue fishing for traps. This measure may increase to some unknown degree the effort in the fish trap fishery. The proposed extension of the moratorium would allow time to evaluate the potential of limited access system for the rest of the reef fish fishery under a relatively stable number of participants. It would also restrain future large investment that may unreasonably add to the capitalization of the fishery. The transferability of permits during the moratorium will not increase the number of permits but may complicate the evaluation of certain features of a limited access system, such as the initial distribution of privileges. The proposed permit on charter and head boats would, on balance, result in net increase in benefits primarily because it enhances the management of an important component of the reef fish fishery. The proposed action on the conditions of reef fish vessel permits relative to compliance with federal regulations is to maintain status quo.

Government costs for preparing and implementing the set of actions proposed in this amendment are estimated at \$35,000. The fishing participants are expected to bear the cost of permits amounting to \$47,680 and burden hours estimated at 298.

#### **10.7 Determination of a Significant Regulatory Action**

Pursuant to E.O. 12866, a regulation is considered a "significant regulatory action" if it is likely to result in: a) an annual effect on the economy of \$100 million or more; b) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or c) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

In 1993, the entire Gulf commercial reef fish harvest sector landed reef fish with an ex-vessel value of about \$45 million. There is no current valuation of the harvest of reef fish by the recreational sector. Because the measures considered in this amendment do not significantly affect the total revenues generated by the commercial sector or the harvest of the recreational sector, a \$100 million annual impact due to the measures is not likely to happen. Some measures in this amendment, such as sale provision on dealers and fishermen may tend to raise the price to consumers and cost to producers. But other measures, such as permit moratorium and transferability of permits and endorsement may bring about opposite effects. Some of the measures regarding permitting requirements, such as permit moratorium and charter and head boat permits, may adversely affect competition and investment, but the magnitude of such effects is not known.

Based on the foregoing, it is concluded that this regulation if enacted would not constitute a "significant regulatory action."

## **10.8 Initial Regulatory Flexibility Analysis**

### **Introduction**

The purpose of the Regulatory Flexibility Act is to relieve small businesses, small organizations, and small governmental entities from burdensome regulations and record keeping requirements. The categories of small entities likely to be affected by the proposed plan amendment are commercial harvest and dealer operations and recreational for-hire operations in the reef fish fishery. The impacts of the proposed action on these entities have been discussed above. The following discussion of impacts focuses specifically on the consequences of the proposed action on the mentioned business entities.

An Initial Regulatory Flexibility Analysis (IRFA) is conducted to primarily determine whether the proposed action would have a "significant economic impact on a substantial number of small entities." Although an IRFA focuses more on adverse effects, determination of beneficial significant effects is also an integral component of the analysis. In addition to analyses conducted for the Regulatory Impact Review (RIR), the IRFA provides an estimate of the number of small businesses affected, a description of the small businesses affected, and a discussion of the nature and size of the impacts.

### **Description of Economic Impact on Small Entities**

In general, a "substantial number" of small entities is more than 20 percent of those small entities engaged in the fishery (NMFS, 1992). At present there are 1,534 commercial reef fish permits and 261 dealer permits issued. There are about 1,110 charter vessels and 82 head boats operating in the Gulf area. The number of recreational anglers in the Gulf is not known. The Small Business Administration (SBA) defines a small business in the commercial fishing activity as a firm with receipts of up

to \$2.0 million annually. Since the proposed action will affect all participants of the reef fish fishery in the Gulf area, the "substantial number" criterion will be met.

Economic impacts on small business entities are considered to be "significant" if the proposed action would result in any of the following: a) reduction in annual gross revenues by more than 5 percent; b) increase in total costs of production by more than 5 percent as a result of an increase in compliance costs; c) compliance costs as a percent of sales for small entities are at least 10 percent higher than compliance costs as a percent of sales for large entities; d) capital costs of compliance represent a significant portion of capital available to small entities, considering internal cash flow and external financing capabilities; or e) as a rule of thumb, 2 percent of small business entities being forced to cease business operations (NMFS, 1992).

Modifications to framework procedure for specifying TAC measures, respecification of the restoration period procedure, and respecification of the time multiplier for recovery periods may have significant positive or negative effects on the revenue of commercial harvest sector and of the for-hire sector. Their specific effects, however, can be assessed only when a regulatory amendment pursuant to the proposed changes to the framework procedure is enacted.

The sale provision on dealers and vessel operators would have effects of unknown amount on both the revenues and costs of dealers and vessels. The transferability of permits and endorsement would also affect, with the level unknown, the revenue generating ability of some vessels and would add costs to others. The extension of the moratorium may not directly affect the revenue status of those included in the moratorium, but their revenue position may be substantially protected by excluding many vessels from participating in the reef fish fishery. In this sense, the effects of the moratorium on vessel revenues may be deemed significant. Since permits may be transferred during the moratorium, these permits would command certain price in the market. This price could be substantial. The permit requirement on for-hire vessels has minimal direct impacts on the costs of these vessels, but the indirect cost could range from minimal to substantial.

Considering that all participants in the commercial reef fishery and for-hire sector of the fishery may be deemed small business entities, the issue of big versus small business operations is not relevant in determining distributional/regional effects of regulations, and it thus also rules out disproportionate effects on capital costs of compliance.

None of the proposed measures would directly force any businesses to cease operation. In fact, the transferability condition for permits and endorsement may allow businesses to continue operation albeit under a different owner. To the extent, that the moratorium would include all those holding permits as of a certain date, this action would not force any business out.

It can be inferred from the foregoing discussion that, on a cumulative basis, the measures proposed in this amendment would result in a significant economic impact

on a substantial number of small entities in the reef fish fishery. On this account, an IRFA has been prepared. The following comprises the remaining portions of the IRFA.

#### Explanation of Why the Action is Being Considered

Refer to the section on Problems and Objectives in the RIR and to Sections 5 and 6 of this amendment.

#### Objectives and Legal Basis for the Rule

Refer to the section on Problems and Objectives in the RIR and to Section 5 of this amendment. The Magnuson Fishery Conservation and Management Act of 1976 provides the legal basis for the rule.

#### Demographic Analysis

Refer to the Reef Fish Fishery Management Plan, as amended.

#### Cost Analysis

Refer to the Government Cost section of the RIR.

#### Competitive Effects Analysis

The industry is composed entirely of small businesses (harvesters and for-hire boats operations). Since no large businesses are involved, there are no disproportional small versus large business effects.

#### Conclusion

The foregoing information and pertinent portions of the RIR of this amendment and of the Reef Fish Fishery Management Plan, as amended, are deemed to satisfy the analysis required under the RFA.



## **ENVIRONMENTAL CONSEQUENCES**





## **11.0 ENVIRONMENTAL CONSEQUENCES**

The Supplemental Environmental Impact Statement of Amendment 5 examined the effects of the fishery on the environment. The purpose and need for action and problems requiring a plan amendment are discussed in sections 5 and 6 of this amendment. Additional discussion of the impacts of the alternatives accompanies the sections containing the alternatives (sections 8 and 9), and supplements the information provided below. Additional information concerning human impacts is contained in the RIR.

### **11.1 Effects on Physical, Human, Fishery and Wetlands Environments**

For easy reference, the alternatives are presented with the same number identifier as in Sections 8 and 9.

## **8.0 PROPOSED MODIFICATIONS OF FRAMEWORK PROCEDURE FOR SPECIFYING TAC**

### **8.1 Editorial Revisions**

**Proposed Alternative:** Accept the editorial revisions to the procedure, or

**Rejected Alternative 1:** Modify the editorial revisions to the procedure.

**Rejected Alternative 2:** Status quo - Make no editorial changes.

*Physical Environment:* The alternatives in this section will have no impact on the physical environment.

*Human Environment:* Editorial revisions will clarify the framework procedure by reflecting current terminology and management practices but will not result in any functional changes, and will have no impact on the human environment.

*Fishery Resources:* The alternatives in this section will have no impact on the fishery resources.

*Impact on Other Fisheries:* The alternatives in this section will have no impact on other fisheries or living marine resources.

*Effect on Wetlands:* The alternatives in this section have no effect on wetlands.

### **8.2 In-season Adjustments to TAC Measures**

**Proposed Alternative:** Status Quo - No Action

**Rejected Alternative: Include the following new Step 7 in the procedure (renumbering subsequent steps):**

7. (new). Normally the actions cited above are related to pre-season adjustments to the management measures (under Step 8) necessary to control landings within TAC for a stock or stock complex and are based on stock assessments prepared by SEFSC. However, once a TAC has been set, the Council may make in-season adjustments to any of these management measures and to TAC at any time that additional scientific information related to the management measures or TAC becomes available. Such in-season adjustments would be based on new data or analyses of data developed by NMFS, Council Staff, RFSAP, SSC or the states. The RFSAP would review the data and analysis and provide a written report to the Council with their recommendations. The report would be reviewed by the SSC before the Council takes action, starting with Step 3 of this procedure. The Council may also provide the report and information to the Reef Fish AP and SEP for review and comment and may convene all these groups for the review.

***Physical Environment:*** The alternatives in this section will have no impact on the physical environment.

***Human Environment:*** Until recently, the Council believed that it had authority to make in-season adjustments under the existing framework procedure. The Proposed Alternative, status quo, accepts the current legal interpretation by NOAA General Counsel and reduces the frequency with which rule changes can be made through the framework procedure to not more than once per year or when a new stock assessment is prepared. **This does not prevent the Council from making in-season changes through an emergency action.** The rejected alternatives would have allowed the Council to respond to changing conditions or new information in-season through the framework procedure. Less frequent rule changes provide stability in the business environment and allows fishermen to plan ahead. More frequent regulatory changes increase the difficulty for fishermen attempting to plan for the short term (less than one year). Should a rapid response by the Council be needed, it can be implemented by emergency action. Emergency action rules can be effective for a maximum of 180 days, and a proposed revision to the Magnuson Act would allow emergency actions to be effective for a maximum of 360 days, which would allow time for an annual regulatory amendment to be enacted. A drawback to increased reliance on emergency actions for in-season adjustments is that it allows Council actions to be taken without advance public notice and comment, which could ultimately increase rather than decrease uncertainty in the human environment.

***Fishery Resources:*** The Alternatives in this section will have no impact on fishery resources since the Council will continue to have the emergency action process available for short term changes. Under the current Magnuson Act maximum of 180 days for emergency action rules, management changes by emergency action have to be followed up by a full plan amendment to be made permanent. Under the proposed extension of emergency rule effectiveness to 360 days, emergency action rules can be left in place long enough to implement an annual regulatory amendment.

***Impact on Other Fisheries:*** The Alternatives in this section will have no impact on other fisheries or living marine resources for the reasons given above under fishery resources.

***Effect on Wetlands:*** The alternatives in this section have no effect on wetlands.

### 8.3 Optimum Yield Definition

**Proposed Alternative:** Set OY for each stock based on a SPR level corresponding to  $F_{0.1}$  until an alternative operational definition that optimizes ecological, economic, and social benefits to the Nation has been developed by RFSAP, SEP, SSC, and AP and approved by Council.

**Rejected Alternative 1:** Set OY for each stock at a harvest level that optimizes ecological, economic and social benefits to the Nation.

**Rejected Alternative 2:** Set OY for each stock equivalent to a MSY that optimizes long-term harvest in terms of yield.

**Rejected Alternative 3:** Set OY for each stock at a level of SPR (about 30 percent) recommended by the Select Scientific Committee on SPR Strategy, until an operational level that optimizes ecological, economic and social benefits to the Nation has been developed by RFSAP, SEP, SSC, and AP and approved by the Council.

**Rejected Alternative 4:** Set OY at a harvest level maintaining over time an average SPR level that is at least 5 (or other) percentage points above the SPR level that defines overfishing.

**Rejected Alternative 5:** Status Quo - Retain OY of at least a 20 percent SPR level.

***Physical Environment:*** The alternatives in this section will have no impact on the physical environment.

*Human Environment:* The Proposed Alternative will likely produce the most conservative level of OY. The Proposed Alternative and Alternatives 3 and 4 specify a level of OY that is more conservative than the overfishing definition. Both the Proposed Alternative and Rejected Alternative 3 allow the OY definition to be later modified when ecological, economic and social factors are taken into account. If combined with changes to the framework procedure to direct management toward the OY level rather than the overfishing level (under section 8.4), this could result in more restrictive management measures than the status quo. Rejected Alternatives 1 and 2 do not provide a functional OY target and will have the same impact as the status quo (see below). The status quo provides the lowest OY target of those alternatives that specify a level of OY, and will result in the least restrictive regulations on the fishery. However, the status quo has the greatest risk of the stock slipping into an overfished state and resulting in the need for a recovery program with restrictive regulations. As a result, Rejected Alternatives 1 and 2 and the status quo equally provide the greatest risk of long term instability for the human environment.

*Fishery Resources:* The Proposed Alternative and Alternatives 3 and 4 specify a level of OY that is more conservative than the overfishing definition. If combined with changes to the framework procedure to direct management toward the OY level rather than the overfishing level (under section 8.4), they will result in a higher stock spawning or biomass level and greater stock stability. Rejected Alternatives 1 and 2 do not provide a functional OY target and will have the same impact as the status quo. The status quo sets OY at or above the same level as the overfishing threshold. The Alternatives 2 and 3 and the status quo equally provide the greatest likelihood that the directed fishery resource will be managed to the verge of overfishing, and have the greatest risk of the stock becoming overfished.

*Impact on Other Fisheries:* An OY definition that results in management toward a more conservative spawning stock or biomass level than the overfishing level may result in greater restrictions on the directed fishery and effort shifting to other fisheries, but the specific impacts depend upon the specific changes implemented.

*Effect on Wetlands:* The alternatives in this section have no effect on wetlands.

#### **8.4 Use of OY in the Framework Procedure**

Section was tabled.

#### **8.5 Use of ABC Range for Specification of TAC**

**Proposed Alternative:** Modify Step 4.a. as follows (change underlined): For overfished stocks set TAC within or below the ABC range or set a series of annual TACs to obtain the ABC level within three years or less.

**Rejected Alternative:** Status Quo - retain original language.

*Physical Environment:* The alternatives in this section will have no impact on the physical environment.

*Human Environment:* The Proposed Alternative removes the constraint that TAC be set within the ABC range when stocks are not overfished. This allows the Council to set increased levels of TAC and provides increased short-term flexibility for fishermen, but may ultimately result in the stock becoming overfished, resulting in the need for increased restrictions and a recovery program. The status quo reduces short-term management flexibility but increases long-term stability for the human environment.

*Fishery Resources:* The Proposed Alternative removes the constraint that TAC be set within the ABC range when stocks are not overfished. A TAC that is above the ABC will, if filled, may result in overfishing as defined in the FMP for stocks that are not overfished, i.e., 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 optimum yield on a continuing basis. The status quo retains the requirement that TAC be set within the ABC range. If the stock is not overfished, then the upper level of ABC will generally be at or above the current level of harvest. However, if the stock is above the overfishing threshold but below the OY target, an ABC range to achieve OY could result in a level below current harvest rates.

*Impact on Other Fisheries:* The Proposed Alternative permits a greater harvest level on the directed fishery than the status quo and may result in effort shifting from other fisheries, but the specific impacts depend upon the specific changes implemented.

*Effect on Wetlands:* The alternatives in this section have no effect on wetlands.

## **8.6 Authority to Specify the Restoration Period**

**Proposed Alternative:** Modify the procedure to specify the Council rather than the RFSAP will set the recovery period.

**Rejected Alternative:** Status Quo - RFSAP sets the recovery period under the procedure or Council sets it by plan amendment.

***Physical Environment:*** The alternatives in this section will have no impact on the physical environment.

***Human Environment:*** The alternatives in this section are procedural in nature and will have no impact on the human environment.

***Fishery Resources:*** The alternatives in this section will have no impact on the fishery resources.

***Impact on Other Fisheries:*** The alternatives in this section will have no impact on other fisheries or living marine resources.

***Effect on Wetlands:*** The alternatives in this section have no effect on wetlands.

### **8.7 Respecify the Generation Time Multiplier for Recovery Periods**

**Proposed Alternative:** Modify the procedure to allow setting a red snapper recovery period not greater than 2.0 times the biological generation time or a biologically based recovery period developed by the RFSAP, SEP, SSC, AP and approved by Council (other species remain at 1 ½ generation times).

**Rejected Alternative 1:** Modify the procedure to allow setting a recovery period not greater than 2.0 times the biological generation time.

**Rejected Alternative 2:** Delete the generation time criteria for specifying the recovery period under the procedure.

**Rejected Alternative 3:** Status Quo - no change to the procedure.

***Physical Environment:*** The alternatives in this section will have no impact on the physical environment.

***Human Environment:*** The Proposed Alternative increases the generation time multiplier from 1.5 to 2.0 for red snapper only. This allows a 33 percent increase in the length of a recovery program. With the current estimate of red snapper generation time (13.6 years), this allows the maximum time period for recovery to be extended from the year 2010 to 2017. This proposal does not by itself extend the recovery time for red snapper, but it gives the Council the flexibility to consider a longer recovery period at a future time. Extending the recovery program allows less restrictive management measures and results in a reduction in short-term negative impacts to fishermen. An extended recovery period can also facilitate a change in recovery strategy from a fixed TAC to a fixed fishing mortality rate. However, it increases the time period until fishermen can benefit from a fully recovered stock. Rejected Alternative 1 would increase the generation time multiplier to 2.0 for all overfished reef fish species. No reef fish species other than red snapper is currently classified as

overfished (Red grouper were determined to be not overfished by the RFSAP in 1994). Red snapper were already overfished when the current recovery procedure was implemented, and the social and economic disruptions created by the existing criteria may be unique to this fishery. Rejected Alternative 2 eliminates the generation time criteria for specifying a recovery period. Without a time criteria, the recovery period set by the Council and resulting impacts cannot be predicted. Rejected Alternative 3, status quo, limits the ability of the Council to respond to social and economic disruptions that have occurred under the shorter recovery period.

*Fishery Resources:* The Proposed Alternative by itself does not change the recovery period and has no impact on the fishery resources. It does, however, give the Council the flexibility to extend the red snapper recovery period in the future. If the Council chooses to exercise this option, the impacts on fishery resources will need to be considered at the time that the action is proposed. Stocks that are in an overfished state are at increased risk of spawning failure. This risk may be small for any given year, but is compounded by time. Extending the recovery period increases the amount of time that stocks remain in an overfished condition and results in an increased risk of spawning failure.

*Impact on Other Fisheries:* See the above discussion, under fishery resources.

*Effect on Wetlands:* The alternatives in this section have no effect on wetlands.

## **9.0 PERMITTING REQUIREMENTS**

### **9.1 Reef Fish Dealer and Vessel Permit Allowable Sales Provisions**

**Proposed Alternative:** Permitted vessels shall sell reef fish only to permitted dealers, and federally-permitted dealers may purchase reef fish harvested in the EEZ only from federally-permitted vessels.

**Rejected Alternative 1:** Permitted vessels shall sell reef fish only to permitted dealers.

**Rejected Alternative 2:** Require that federally-permitted dealers may purchase reef fish harvested in the EEZ only from federally-permitted vessels.

**Rejected Alternative 3:** Status Quo - No Action.

*Physical Environment:* The alternatives in this section will have no impact on the physical environment.

*Human Environment:* There are no criteria associated with obtaining a dealer permit. A buyer who does not presently have a permit need only apply for one

and pay the necessary fees. Therefore, the provision requiring that permitted vessels sell reef fish only to permitted dealers should not result in any loss of flexibility for permitted fishermen to sell their catch. Non-permitted fishermen who fish exclusively in state waters will be unaffected since these alternatives place no restrictions on the sale or purchase of fish caught in state waters, whether the dealer is permitted or not. Since it is already illegal for a non-permitted fisherman to sell reef fish caught in the EEZ, the provision that permitted dealers buy reef fish caught in the EEZ only from permitted vessels will have no impact other than to establish accountability for the dealer as well as the fisherman for an illegal transaction. Enforceability of this provision may be difficult because it is not possible once a boat returns to the dock to determine whether a fish on a non-permitted vessel was caught in state or federal waters. The states' ability to regulate within their waters is not affected.

*Fishery Resources:* The Proposed Alternative and Rejected Alternative 1 require that reef fish be sold to permitted, and therefore known, dealers. This will improve monitoring of landings and should improve the accuracy of fishery-dependent data used in stock assessments, ultimately resulting in more appropriate management measures. Rejected Alternative 2 and the status quo do not require reef fish to be sold to permitted dealers and will result in no change in monitoring of the resource.

*Impact on Other Fisheries:* The alternatives presented in this section have no impact on other fisheries or living marine resources since, as discussed under human environment, they should not limit the flexibility of fishermen to sell their reef fish catch, and should therefore not create effort shifting to other fisheries.

*Effect on Wetlands:* The alternatives in this section have no effect on wetlands.

## 9.2 Transferability of Permits and Endorsements

**Proposed Alternative:** In the event of death or disability of a vessel permit holder or a fish trap endorsement holder, the permit or endorsement is transferrable, either permanently or temporarily, to a person specified by the permit/endorsement holder, their legal guardian, or the estate.

**Rejected Alternative:** Status Quo - No Action.

*Physical Environment:* The alternatives in this section will have no impact on the physical environment.

*Human Environment:* The Proposed Alternative extends to vessel permits and fish trap endorsements the same transferability provisions that exist for red snapper endorsements. This will improve the flexibility of fishermen or their families with death or disability hardships. However, vessel permits are



currently transferable upon transfer of a permitted vessel, and under the proposed alternative for vessel moratorium (Section 9.4) vessel permits will be transferable to any qualified person without transfer of the vessel. The red snapper endorsements will cease to exist after 1995. Fish trap endorsements will cease to exist after February 7, 1997 unless the fish trap moratorium is extended, and may be eliminated sooner if the Council chooses to address the fish trap issue. Because vessel permits are currently transferable, and red snapper and fish trap endorsements are of short-term duration, there will be only limited impacts on the human environment.

***Fishery Resources:*** Under the Proposed Alternative, the increased flexibility in transferability of permits and endorsement will increase the likelihood that current levels of fishing effort will be maintained in the fishery. The status quo may increase the rate of attrition in the fishery and lead to reduced fishing effort. However, as described under Human Environment, any such impacts are expected to be limited.

***Impact on Other Fisheries:*** Increasing the flexibility of fishermen to enter the reef fish fishery may result in less effort being directed toward other fisheries, but as previously explained, any such impacts will be limited.

***Effect on Wetlands:*** The alternatives in this section have no effect on wetlands.

### **9.3 Transfer of Fish Trap Endorsements**

**Proposed Alternative:** Allow a one-time transfer of the fish trap endorsement by current holders of the endorsement to any of the 56 individuals who had entered the trap fishery and had logbook records of landings from fish traps received by NMFS between November 19, 1992 and February 7, 1994 and who were excluded from the fishery by the moratorium.

**Rejected Alternative 1:** Status Quo - do not allow such a transfer.

***Physical Environment:*** Fish traps are in physical contact with the bottom. Lost fish traps may continue to ghost fish until the degradable panels open up, at which time they may become part of the bottom relief and may provide some habitat enhancement until the trap itself degrades. Anecdotal information from fishermen and past studies in south Florida by Florida DNR (now Florida DEP) suggest that loss of fish traps occurs less frequently in the Gulf of Mexico than in the Atlantic Ocean. Damage to coral heads from crustacean and fish trap trawl lines has been documented on videotape in the Atlantic Ocean, but has not been documented in the Gulf of Mexico. The alternatives presented in this section will result in very little change in the current level fish trap fishing, and will result in no significant change on impact on the physical environment.

*Human Environment:* Currently there are 99 fish trap endorsements. Vessel logbook records show that, since implementation of the fish trap endorsement on February 7, 1994, there have been 119 vessels with landings from fish traps. The discrepancy in numbers can be explained by the limited transferability provisions currently in effect or by vessels that were issued and used fish trap endorsements but did not renew them (thus, those endorsements no longer exist). Most of the endorsements that remain are probably being used. Anecdotal information from fishermen suggests that only a very small number of endorsements will be transferred under this alternative. However, a selling opportunity could result for current endorsement owners who anticipate an eventual fish trap ban and who feel that they can get more value from selling their endorsement than from remaining in the fishery. Buyers will be unable to subsequently resell the endorsements and will be taking a speculative risk that fish traps will not be banned.

*Fishery Resources:* Under the Proposed Alternative, the existence of up to 37 vessels that remain eligible to apply for fish trap endorsements could result in a slight increase in fish trap effort. The status quo may result in a continuation of a gradual rate of attrition. However, the number of endorsements that would be transferred under the Proposed Alternative is expected to be small. Differences in fishing effort and the resulting mortality on the resource between the alternatives will be negligible.

*Impact on Other Fisheries:* Bycatch in fish traps is an issue of concern that is currently being evaluated by NMFS through a vessel observer program. The results of that study are not yet available. Because any change in fishing effort between the two alternatives is expected to be small, any resulting change in impact on bycatch is expected to be negligible.

*Effect on Wetlands:* The alternatives in this section have no effect on wetlands.

Note: Amendment 5, which established the fish trap moratorium and additional regulations on the use of fish traps, contains additional discussion on the impacts of fish traps on the environment.

#### **9.4 Extension or Implementation of New Reef Fish Vessel Permit Moratorium**

**Proposed Alternative:** Allow the existing moratorium to expire, and upon expiration, implement a new reef fish vessel permit moratorium for not more than 5 years, until December 31, 2000. Permits under the new moratorium would be restricted initially to vessels of owners who are eligible for renewal on December 31, 1995. Vessel permits under the new moratorium are transferable by an owner who is the income qualifier to other persons with vessels without transfer of the permitted vessel. The purpose of the new moratorium is to consider implementation of a limited access system in the reef fish fishery.

**Rejected Alternative 1:** Allow the existing moratorium to expire, and upon expiration, implement a new reef fish vessel permit moratorium for 3 years, until December 31, 1998. Permits under the new moratorium would be restricted initially to vessels permitted as of December 31, 1995. Vessel permits under the new moratorium are transferable by an owner who is the income qualifier to other persons with vessels without transfer of the permitted vessel. The purpose of the new moratorium is to consider implementation of a limited access system in the reef fish fishery.

**Rejected Alternative 2:** Extend the moratorium until December 31, 1996.

**Rejected Alternative 3:** End the moratorium upon implementation of this amendment.

**Rejected Alternative 4:** Extend the moratorium indefinitely (i.e., until repealed by plan amendment).

**Rejected Alternative 5:** Extend the moratorium indefinitely, but make vessel permits transferable by the owner to other persons with vessels without transfer of the permitted vessel.

**Rejected Alternative 6:** Status Quo - moratorium will end December 31, 1995.

*Physical Environment:* The alternatives in this section will have no impact on the physical environment.

*Human Environment:* The Proposed Alternative and Rejected Alternative 1 extend the time that the reef fish fishery will operate under a permit moratorium, but differ in the duration of the moratorium. In addition, they put fishermen on notice that a permanent limited access system may be implemented in the reef fish fishery. This notice should encourage fishermen who are attempting to "wait out" the moratorium to reevaluate to reevaluate their position and act accordingly. The Proposed Alternative's duration of up to five years should allow the Council sufficient time to account for a limited access moratorium if such a moratorium is implemented as part of the Magnuson Act reauthorization. Rejected Alternative 2 provides a short-term one year extension, which would only delay any long-term impacts from ending the moratorium. Rejected Alternatives 4 and 5 extend the existing moratorium indefinitely. However, the impacts of an indefinite extension have not yet been evaluated. Because these alternatives limit the number of available vessel permits, they could be considered to be a form of limited entry. However, permits can be transferred upon sale of the vessel (or without sale of a vessel under the Proposed Alternative and Rejected Alternatives 1 and 5), without the permit recipient having to first meet the income criteria. Without the moratorium persons who do not meet the earned income requirement are restricted from entering the fishery. Thus, both the moratorium and termination of the moratorium result in forms of limited entry.

Rejected Alternative 3 and the status quo terminate the moratorium on or before the end of 1995, and Rejected Alternative 2 provides only a short term extension, through 1996. Implementation of Florida's net ban in July 1995 is expected to result in effort shifting to other fisheries including reef fish. Some increase in effort can be expected from net fishermen who are current owners or operators of permitted vessels. Termination of the permit moratorium could result in additional new entrants into the reef fish fishery, both from effort shifting from other fisheries, and from speculative entry in anticipation of an eventual limited entry system.

A Florida state regulation requires that reef fish vessels fishing in state waters on the Gulf side must have a federal reef fish permit after July 1995. This law was created after implementation of the permit moratorium. Fishermen who fish exclusively in state waters and did not need or have a federal permit prior to the moratorium will be adversely affected by an extension or implementation of a new moratorium. However, since this affects only fishermen who fish exclusively in Florida state waters, it is an issue that can be addressed by the state.

Note: A discussion of Magnuson Act considerations for limited access is contained in the discussion under the specific alternatives (Section 9.4).

*Fishery Resources:* If a red snapper limited entry system is implemented on January 1, 1996, a vessel permit moratorium will no longer have an impact on that fishery. If the red snapper limited entry system is delayed, expiration of the moratorium in combination with expiration of the red snapper endorsement system will allow anyone who can meet the permit qualification criteria to enter the red snapper fishery, which will result in increased harvest rates and the red snapper quota being met more rapidly than present.

In the eastern Gulf, the predominant reef fish species harvested are gag and red grouper. When the moratorium expires, several factors could lead to a surge in fishing effort in this area. In addition to the previously discussed Florida net ban and potential speculative entry into the reef fish fishery, a scheduled increase in large coastal shark quotas has been postponed indefinitely by NMFS, which will cause shark fishermen to look for other resources. Alternatives that will be considered in a subsequent amendment, Amendment 12, amendment could allow shrimp vessels, which are currently prohibited from commercially harvesting reef fish while shrimping, to participate in the reef fish fishery.

*Impact on Other Fisheries:* Extension or implementation of a new moratorium could result in effort shifting to other fisheries that are not restricted. Since much of the potential increase in effort is expected to come from fishermen displaced from Florida's state net fishing, other coastal fisheries may be the primary alternatives. These include crustacean trap fisheries and hook and line fishing of coastal species.

*Effect on Wetlands:* The alternatives in this section have no effect on wetlands.

## 9.5 Charter and Head Boat Permits

**Proposed Alternative:** Require a permit for head and charter vessels.

**Rejected Alternative 1:** Require a permit for head and charter vessels based on the requirement that at least 50 percent of earned income is from chartering and/or commercial fishing.

**Rejected Alternative 2:** Status Quo - no permitting requirement.

*Physical Environment:* The alternatives in this section will have no impact on the physical environment.

*Human Environment:* The Proposed Alternative and Rejected Alternative 1 create additional paperwork requirements for head and charter vessels, but will allow more accurate monitoring of those sectors of recreational effort. Rejected Alternative 1 would exclude some vessels that are not in the for-hire industry but for which the vessel owner has acquired a Coast Guard "6-pack" license in order to qualify for the two bag limit for charter vessels that are out for more than 24 hours. It could also exclude some vessels that are used full-time but for a variety of functions other than commercial fishing or chartering, such as sightseeing trips or ferrying oil workers to rigs, so that less than 50% of the applicant's income is of the qualifying type. There has been anecdotal information that some for-hire vessels are permitting their customers to retain a two bag limit of fish even when out for less than 24 hours. The permit requirement should improve compliance with the two bag limit rule by allowing permit suspension as a sanction for rule violations.

*Fishery Resources:* There may be some reduction in recreational harvest from increased compliance with the two bag limit rule. The magnitude of any such impact is not known.

*Impact on Other Fisheries:* There may be a small increase in recreational fishing for non-reef fish species as a result of increased compliance with the two bag limit rule, but any such impact is likely to be negligible.

*Effect on Wetlands:* The alternatives in this section have no effect on wetlands.

## 9.6 Conditions of Reef Fish Vessel Permits to Comply With Federal Regulations

**Proposed Alternative:** Status Quo - no change.

**Rejected Alternative 1:** Require as a condition for the reef fish vessel permit that the applicant abides by all federal reef fish regulations regardless of where the fish are caught.

**Rejected Alternative 2:** Include as conditions for the reef fish vessel permit all or part of the provisions cited above.

*Physical Environment:* The alternatives in this section will have no impact on the physical environment.

*Human Environment:* The Proposed Alternative (status quo) will not change the existing impacts. Commercial fishermen, for species other than red snapper, are subject to the rules for whichever jurisdiction they are in. Where state regulations are less restrictive than federal rules, this can provide a means for noncompliance by fishermen claiming that their catch came from state waters. Both of the rejected alternatives would place conditions on federally permitted vessels while fishing in state waters that do not apply to non-federally permitted vessels fishing exclusively in state waters. This would enhance enforcement of federal regulations but could result in a differential ability between permitted and non-permitted fishermen to compete for the same resource in state waters. It is also possible that the rejected alternatives could result in pre-emption of state rules when state rules are more restrictive than federal rules.

*Fishery Resources:* The Proposed Alternative (status quo) will not change the existing impacts. The rejected alternatives could result in some decrease in legal reef fish harvest in state waters and illegal harvest in federal waters that is claimed to come from state waters where state regulations are less restrictive than federal, and some increase where state regulations are more restrictive than federal. The magnitude of any such impact is not known. Most reef fish harvest occurs in federal waters, and the amount of noncompliance suggested in this discussion is not known.

*Impact on Other Fisheries:* The alternatives in this section have no effect on other non-reef fish fisheries.

*Effect on Wetlands:* The alternatives in this section have no effect on wetlands.

## **11.2 Effect on Endangered Species and Marine Mammals**

Previous Section 7 consultations under the Endangered Species Act concluded that the Reef Fish FMP, Amendments 1, 2, 3, 4, 5, 6, 7 and 9, and various regulatory amendments were not likely to jeopardize the continued existence of threatened or endangered sea turtles or marine mammals or result in the destruction or adverse modification of critical habitat for those species. A Section 7 consultation was conducted by NMFS regarding the impact of this proposed Amendment 11, and

determined that populations of threatened/endangered species would not be adversely affected by the proposed actions.

### **11.3 Conclusion**

Mitigation measures related to the proposed action and fishery: No significant environmental impacts are expected; therefore, no mitigating actions are proposed. Unavoidable adverse effects with implementation of the proposed actions and any negative net economic benefits are discussed in the Regulatory Impact Review. Irreversible and irretrievable commitment of resources involved with government costs are those related to permitting alternatives for which NMFS is permitted to charge its administrative costs.

### **11.4 Finding of No Significant Environmental Impact**

In view of the analysis presented in this document, I have determined that the fishery and the proposed action in this amendment to the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico would not significantly affect the quality of the human environment with specific reference to the criteria contained in NDM 02-10 implementing the National Environmental Policy Act. Accordingly, the preparation of a Supplemental Environmental Impact Statement for this proposed action is not necessary.

Approved: \_\_\_\_\_  
Assistant Administrator for Fisheries Date

## **12.0 OTHER APPLICABLE LAW**

### **12.1 Habitat Concerns**

Reef fish habitats and related concerns were described in the FMP and updated in Amendments 1 and 5. The actions in this amendment do not affect the habitat.

### **12.2 Vessel Safety Considerations**

A determination of vessel safety with regard to compliance with 50 CFR 605.15(b)(3) has been requested from the U.S. Coast Guard. Actions in this amendment are not expected to affect vessel safety.

### **12.3 Coastal Zone Consistency**

Section 307(c)(1) of the Federal Coastal Zone Management Act of 1972 requires that all federal activities which directly affect the coastal zone be consistent with approved state coastal zone management programs to the maximum extent practicable. The proposed changes in federal regulations governing reef fish in the EEZ of the Gulf of Mexico will make no changes in federal regulations that are inconsistent with either existing or proposed state regulations.

While it is the goal of the Council to have complementary management measures with those of the states, federal and state administrative procedures vary, and regulatory changes are unlikely to be fully instituted at the same time.

This amendment is consistent with the Coastal Zone Management programs of the states of Alabama, Florida, Louisiana, and Mississippi to the maximum extent possible; Texas does not have an approved Coastal Zone Management program. This determination has been submitted to the responsible state agencies under Section 307 of the Coastal Zone Management Act administering approved Coastal Zone Management programs in the states of Alabama, Florida, Mississippi, and Louisiana.

### **12.4 Paperwork Reduction Act**

The purpose of the Paperwork Reduction Act is to control paperwork requirements imposed on the public by the Federal Government. The authority to manage information collection and record keeping requirements is vested with the Director of the Office of Management and record keeping requirements is vested with the Director of the Office of Management and Budget. This authority encompasses establishment of guidelines and policies, approval of information collection requests, and reduction of paperwork burdens and duplications.

The Council proposes, through this amendment, to establish additional permits and modify existing permit criteria. The total public reporting burdens for these collections of information, including the time for reviewing instructions, searching existing data



sources, getting and maintaining the data needed, and completing and reviewing the collection of information, are estimated to be about 298 hours.

## **12.5 Federalism**

Section 9.1 (Reef Fish Dealer and Vessel Permit Allowable Sales Provisions) proposes a condition on federally permitted vessels pertaining to the sale of harvested reef fish regardless of where the fish are caught, and a condition on federally permitted dealers pertaining to the purchase of all reef fish harvested from the EEZ. Since this alternative affects only dealers and fishermen who are federally permitted, it is not expected to raise federalism issues. Except as noted, no federalism issues have been identified relative to the actions proposed in this amendment. Therefore, preparation of a federalism assessment under Executive Order 12612 is not necessary.

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