

**AMENDMENT 17**

**TO THE**

**REEF FISH FISHERY MANAGEMENT PLAN**

**FOR THE REEF FISH RESOURCES OF**

**THE GULF OF MEXICO**



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Abbreviations Used in This Document

ABC	Acceptable Biological Catch	ITQ	Individual Transferable Quota
Council	Gulf of Mexico Fishery Management Council	NMFS	National Marine Fisheries Service
EEZ	Exclusive Economic Zone	RFSAP	Reef Fish Stock Assessment Panel
F	Fishing Mortality Rate (measured as an instantaneous rate)	SMZ	Special Management Zone
FMP	Fishery Management Plan	SPR	Spawning Potential Ratio
IFE	Individual Fisherman's Effort	SSBR	Spawning Stock Biomass Per Recruit
IFQ	Individual Fisherman's Quota	TAC	Total Allowable Catch

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## 1.0 INTRODUCTION

This plan amendment specifically addresses the expiration of the commercial reef fish permit moratorium. First implemented in 1992, the moratorium has been extended twice and is presently scheduled to expire on December 31, 2000. The current moratorium differs from the initial moratorium and its first extension mainly in the provision for transferability of the permits. This provision stipulates that a permit may be transferred by an owner who is the income qualifier (income of more than 50 percent from commercial fishing) to other qualifying persons with vessels without transfer of the vessel. In addition, a permit for which the vessel operator is the income qualifier may be transferred when the recipient of the permit is the income qualifying operator. Furthermore, the permitting system allows the owner of a vessel with a reef fish permit that is issued based on the income of the operator to become the holder of the permit. This new permit owner has one year to meet the income qualification criterion. In essence, the current moratorium is not a closed system as were the previous ones. Due, however, to the restrictions on permit recipients, the current moratorium still possesses some of the characteristics of a closed system.

## 2.0 HISTORY OF MANAGEMENT

### 2.1 Management Activities Other Than Regulatory Amendments

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 (TL) 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). The 1988 assessment also identified shrimp trawl bycatch as a significant source of mortality.

**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 deepwater quota. A framework procedure for specification of TAC was created to

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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.

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., sharks) 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.

On November 7, 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.

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

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.

**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 TL 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 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.

**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.

**Amendment 8**, which proposed establishment of a red snapper Individual Transferable Quota (ITQ) system, was approved by NMFS and final rules were published in the Federal Register on November 29, 1995. This amendment provided for an initial allocation of percentage shares of the commercial red snapper quota to vessel owners and historical operators based on fishermen's historical participation in the fishery during the years 1990-1992, set a four-year period for harvest under the ITQ system, during which time the Council and NMFS would monitor and evaluate the program and decide whether to extend, terminate or modify it, and established a special appeals board, created by the Council, to consider requests who contest their initial allocations of shares or determination of historical captains. The appeals board was originally scheduled to meet during January 1996, with the ITQ system itself to become operational in April 1996. However, the federal government shutdown of December 1995-January 1996 forced an indefinite postponement of the appeals board meetings, and concerns about

Congressional funding of the ITQ system made it inadvisable for the ITQ system to become operational, pending Congressional action. In October 1996, Congress, through reauthorization of the Magnuson-Stevens Act, repealed the red snapper ITQ system and prohibited Councils from submitting, or NMFS from approving and implementing, any new individual fishing quota program before October 1, 2000.

**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. 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.

**Amendment 11** was partially approved by NMFS and implemented in January 1996. The six approved provisions are: (1) limit sale of Gulf reef fish by permitted vessels to permitted reef fish dealers; (2) require that permitted reef fish dealers purchase reef fish caught in Gulf federal waters only from permitted vessels; (3) allow transfer of reef fish permits and fish trap endorsements in the event of death or disability; (4) implement a new reef fish permit moratorium for no more than 5 years or until December 31, 2000, while the Council considers limited access for the reef fish fishery; (5) allow permit transfers to other persons with vessels by vessel owners (not operators) who qualified for their reef fish permit; and, (6) allow a one time transfer of existing fish trap endorsements to permitted reef fish vessels whose owners have landed reef fish from fish traps in federal waters, as reported on logbooks received by the Science and Research Director of NMFS from November 20, 1992 through February 6, 1994. NMFS disapproved a proposal to redefine Optimum Yield from 20 percent SPR (the same level as overfishing) to an SPR corresponding to a fishing mortality rate of  $F_{0.1}$  until an alternative operational definition that optimizes ecological, economic, and social benefits to the Nation could be developed. In April 1997, the Council resubmitted the Optimum Yield definition with a new proposal to redefine Optimum Yield as 30 percent SPR. The resubmission document was disapproved by NMFS.

Following the Congressional repeal of the red snapper ITQ system in Amendment 8, an emergency interim action was published in the Federal Register on January 2, 1996 to extend the red snapper endorsement system for 90 days. That emergency action was superseded by another emergency action, published in the Federal Register on February 29, 1996, that extended the red snapper endorsement

system through May 29, 1996, and subsequently, by agreement of NMFS and the Council, for an additional 90 days until August 27, 1996.

**Amendment 12**, submitted in December 1995 and implemented in January 1997, reduced the greater amberjack bag limit from 3 fish to 1 fish per person, and created an aggregate bag limit of 20 reef fish for all reef fish species not having a bag limit. NFS disapproved proposed provisions, for the commercial sector, to cancel the automatic red snapper size limit increases to 15 inches TL in 1996 and 16 inches TL in 1998, and for the recreational sector, a proposal to include lesser amberjack and banded rudderfish along with greater amberjack in an aggregate 1-fish bag limit and 28-inch fork length minimum size limit.

**Amendment 13**, implemented in September 1996, further extended the red snapper endorsement system through the remainder of 1996 and, if necessary, through 1997, in order to give the Council time to develop a permanent limited access system that was in compliance with the new provisions of the Magnuson-Stevens Act.

In late 1996 the Reef Fish Stock Assessment Panel (RFSAP) reviewed a new stock assessment on vermilion snapper and concluded that the vermilion snapper fishery in the Gulf of Mexico, while not currently overfished, was showing typical signs of overfishing. Given that SPR was decreasing at current fishing rates and that the proposed optimum yield level is 30 percent SPR, the RFSAP recommended that fishing mortality be reduced to a rate corresponding to  $F_{30\% \text{ SPR}}$ , or  $F = 0.32$ . The RFSAP did not have sufficient information to assess the impact of closed seasons or other measures, but suggested that a 10-inch TL size limit would be an effective intermediate measure until a new stock assessment and additional analysis could be completed. In March 1997, the Council requested that NMFS increase the minimum size limit from 8 inches TL to 10 inches TL under the new interim measures provision of the Magnuson-Stevens Act, while a permanent increase to 10 inches TL was developed through Amendment 15.

**Amendment 14**, implemented in March and April 1997, provided for a ten-year phase-out for the fish trap fishery; allowed transfer of fish trap endorsements for the first two years and thereafter only upon death or disability of the endorsement holder, to another vessel owned by the same entity, or to any of the 56 individuals who were fishing traps after November 19, 1992 and were excluded by the moratorium; and prohibited the use of fish traps west of Cape San Blas, Florida. The amendment also provided the Regional Administrator (RA) of NMFS with authority to reopen a fishery prematurely closed before the allocation was reached and modified the provisions for transfer of commercial reef fish vessel permits.

**Amendment 15**, implemented in January 1998, established a permanent two-tier red snapper license limitation system to replace the temporary red snapper endorsement system. Under the new system, Class 1 licenses and initial 2,000 pound trip limits were issued to red snapper endorsement holders as of March 1, 1997. Class 2 licenses, and initial 200-pound trip limits are issued to other holders of reef fish permits as of March 1, 1997 who had any landings of red snapper between January 1, 1990 and March 1, 1997. Vessels without a Class 1 or Class 2 red snapper license are prohibited from commercial harvest of red snapper, and licences are fully transferable. The commercial red snapper season was split in two, with two thirds of the quota allocated to a February 1 opening and the remaining quota to a September 1 opening. The commercial fishery will open from noon of the first day to noon of the fifteenth day of each month during the commercial season. Amendment 15 also prohibits harvest of reef fish from traps other than permitted reef fish traps, stone crab traps, or spiny lobster traps;



permanently increases the vermilion snapper size limit from 8 inches to 10 inches TL; removes black sea bass, rock sea bass, bank sea bass, and all species of grunts and porgies from the Reef Fish FMP; closes the commercial greater amberjack fishery Gulfwide during the months of March, April, and May; and removes sand perch and dwarf sand perch from the recreational 20-reef fish aggregate bag limit.

**Amendment 16A**, submitted to NMFS in June 1998, has been partially approved. The approved measures provide: (1) that the possession of reef fish exhibiting the condition of trap rash on board any vessel with a reef fish permit that is fishing spiny lobster or stone crab traps is prima facie evidence of illegal trap use and is prohibited except for vessels possessing a valid fish trap endorsement; (2) that NMFS establish a system design, implementation schedule, and protocol to require implementation of a vessel monitoring system (VMS) for vessels engaged in the fish trap fishery, with the cost of the vessel equipment, installation, and maintenance to be paid or arranged by the owners as appropriate; and, (3) that fish trap vessels submit trip initiation and trip termination reports. Prior to implementing this additional reporting requirement, there will be a one-month fish trap inspection/compliance/education period, at a time determined by the NMFS Regional Administrator and published in the Federal Register. During this window of opportunity, fish trap fishermen will be required to have an appointment with NMFS enforcement for the purpose of having their trap gear, permits, and vessels available for inspection. The disapproved measure pertains to the prohibition to fish traps south of 25.05 degrees north latitude beginning February 7, 2001. The status quo 10-year phase-out of fish traps in areas in the Gulf EEZ is maintained.

**Proposed Amendment 16B** was submitted to NMFS in January 1999, and is currently under review. It proposes to: (1) set a slot limit of 14 to 22 inches fork length (FL) for banded rudderfish and lesser amberjack for both the commercial and recreational fisheries; (2) remove queen triggerfish from the Reef Fish FMP; (3) remove the distinction between reef fish species in the management unit and those in the fishery but not in the management unit, with the intent that sand perch and dwarf sand perch will not be included in the aggregate reef fish bag limit; (4) adopt a 12-inch TL minimum size limit for cubera snapper, dog snapper, mahogany snapper, schoolmaster, gray triggerfish, and hogfish and 16-inch TL minimum size limit for mutton snapper and scamp; (5) adopt a recreational bag limit of 5 hogfish per person for the entire Gulf EEZ; and, (6) set a recreational bag limit of 1 speckled hind and 1 Warsaw grouper per vessel, with the prohibition on the sale of these species when caught under the bag limit.

## 2.2 Regulatory Amendments

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 July 1991 regulatory amendment provided a one-time increase in the 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 November 1991 regulatory amendment raised the 1992 commercial quota for shallow-water groupers from 9.2 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.

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).

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 TL size limit for gag, red, Nassau, yellowfin and black grouper.

An October 1994 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 a year ahead of the scheduled automatic increase.

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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.

A rejected December 1994 regulatory amendment would have reduced the minimum size limit for red grouper from 20 inches to 18 inches in response to complaints from the commercial sector that regulations were too restrictive to allow them to harvest their quota of shallow-water grouper. NMFS rejected the proposed action because of concern that it would result in the recreational sector exceeding its allocation. In March 1995 a revised regulatory amendment was submitted to NMFS that would reduce the red grouper size limit to 18 inches for only the commercial sector. That regulatory amendment was rejected by NMFS because newly discovered biases in the growth rate data collected in recent years resulted in uncertainty about the current status of the red grouper stock. Further analysis by NMFS biologists and the RFSAP reduced that uncertainty to the point where the status of red grouper stocks was determined to be most likely at or above 27 percent SPR, well above the overfishing threshold. In September 1995 a second revised regulatory amendment was submitted to NMFS to reduce the commercial red grouper size limit to 18 inches. This second revision was rejected by NMFS because they felt it would create user conflicts, produce long term economic losses to commercial fishermen, allow the harvest of juvenile fish, and potentially lead to the commercial quota being filled early and create a derby fishery.

A regulatory amendment to set the 1996 red snapper TAC, dated December 1995, raised the red snapper TAC from 6 million pounds to 9.12 million pounds, with 4.65 million pounds allocated to the commercial sector and 4.47 million pounds allocated to the recreational sector. Recreational bag and size limits remained at 5 fish and 15 inches total length. The recovery target date to achieve 20 percent SPR was extended to the year 2019, based on new biological information that red snapper live longer and have a longer generation time than previously believed. A March 1996 addendum to the regulatory amendment split the 1996 and 1997 commercial red snapper quotas into two seasons each, with the first season opening on February 1 with a 3.06 million pound quota, and the second season opening on September 15 with the remainder of the annual quota.

A March 1997 regulatory amendment changed the opening date of the second 1997 commercial red snapper season from September 15 to September 2 at noon and closed the season on September 15 at noon; thereafter the commercial season was opened from noon of the first day to noon of the fifteenth day of each month until the 1997 quota was reached. It also complied with the new Magnuson-Stevens Act requirement that recreational red snapper be managed under a quota system by authorizing the NMFS Regional Administrator to close the recreational fishery in the EEZ at such time as projected to be necessary to prevent the recreational sector from exceeding its allocation.

Subsequent to implementation of a recreational red snapper quota, the recreational red snapper fishery filled its 1997 quota of 4.47 million pounds, and was closed on November 27, 1997 for the remainder of the calendar year.

A November 1997 regulatory amendment canceled a planned increase in the red snapper minimum size limit to 16 inches TL that had been implemented through Amendment 5, and retained the 15-inch TL minimum size limit.

A January 1998 regulatory amendment proposed maintaining the status quo red snapper TAC of 9.12 million pounds, but set a zero bag limit for the captain and crew of for-hire recreational vessels in order to extend the recreational red snapper quota season. The NMFS provisionally approved the TAC, releasing 6 million pounds, with release of all or part of the remaining 3.12 million pounds to be contingent upon the capability of shrimp trawl bycatch reduction (BRDs) devices to achieve better than a 50 percent reduction in juvenile red snapper shrimp trawl mortality. The zero bag limit for captain

and crew of for-hire recreational vessels was not implemented. Following an observer monitoring program of shrimp trawl BRDs conducted during the Summer of 1998, NMFS concluded that BRDs would be able to achieve the reduction in juvenile red snapper mortality needed for the red snapper recovery program to succeed, and the 3.12 million pounds of TAC held in reserve was released on September 1, 1998.

A December 1998 regulatory amendment, currently under review by NMFS, proposes to maintain the status quo red snapper TAC of 9.12 million pounds; reduce the recreational bag limit for red snapper to 4 fish for recreational fishermen and zero fish for captain and crew of for-hire vessels; set the opening date of the recreational red snapper fishing season at March 1; reduce the minimum size limit for red snapper to 14 inches TL for both the commercial and recreational fisheries; and, change the opening criteria for the second commercial red snapper fishing season from the first 15 days to the first 10 days of each month beginning September 1, until the suballocation is met or the season closes on December 31. This regulatory amendment follows up the same set of proposals requested under an emergency action, of which NMFS approved only the proposal for a 4-fish bag limit.

An interim rule implemented by NMFS in January 1999 reduced the recreational bag limit for red snapper from 5 to 4 fish per person and retained the 15-inch TL minimum size limit for both the commercial and recreational sectors. It also provided for the reopening of the recreational fishing season to commence in January 1999.

An August 1999 regulatory amendment proposed increasing the commercial size limit for gag from 20 to 24 inches TL, the recreational size limit for gag from 20 to 22 inches TL with a 1-inch increase in size each year thereafter until it reaches 24 inches TL. It proposes to prohibit commercial sales of gag, black, and red groupers each year from February 15 to March 15 (during the peak of gag spawning season). It also establishes 2 marine reserves on gag spawning aggregation sites that will be closed year-round to all fishing. The 2 sites cover 219 square nautical miles near the 40-fathom contour, off west central Florida.

### **3.0 PROBLEM REQUIRING A PLAN AMENDMENT**

In 1992, the moratorium on the issuance of new commercial reef fish permits was initiated and intended to last for 3 years. It was subsequently extended twice, the second of which was in 1995 for a duration of 5 years that would terminate on December 31, 2000. However, during the moratorium the Council developed an individual transferable quota (ITQ) system for red snapper (Amendment 8) and a license limitation system (Amendment 15) after Congress prohibited ITQ systems. The development and implementation of these two amendments required 2½ years. The primary issue at hand involves dealing with the expiring commercial reef fish permit moratorium. Extending this moratorium requires a plan amendment, while allowing the moratorium to lapse on its current expiration date does not.

### **4.0 PURPOSE AND NEED FOR ACTION**

One major purpose of the moratorium, when it was first implemented under Amendment 4, was to provide a stable environment in the fishery for evaluation and development of a more comprehensive controlled access system for the entire commercial reef fish fishery. Amendment 9 extended the moratorium in order to provide about the same fishery environment under which the development of limited access in the red snapper fishery could be completed. Amendment 11 had as its major purpose

in extending the moratorium for the second time, the consideration of implementing a limited access system in the reef fish fishery. Through the course of the years, Council deliberations and actions have focused on problems in the red snapper fishery and paid little attention to controlled access issues for the rest of the commercial reef fish fishery. Under the moratorium, the number of permits has declined from 2,200 in 1992 to approximately 1,204 today. If the moratorium lapse before a permanent system is implemented, the number of permits obtained by fishermen will likely exceed the 1992 level.

The major purpose of this plan amendment is to address the expiration of the moratorium. While the status quo, i.e., allowing the moratorium to expire, is a legitimate alternative with choice thereof negating the need for this amendment, addressing the moratorium issue logically entails consideration of the moratorium's major purpose — evaluation of controlled access system for the entire commercial reef fish fishery. At present, however, this evaluation would be limited by the current ban on the Council's recommendations regarding individual fisherman's quota (IFQ) or individual fisherman's effort (IFE). The Council has determined that consideration of a broader set of alternatives, including IFQs and IFEs, would provide a better perspective in designing a long-term management program for the entire commercial reef fish fishery. The current Congressional prohibitions on IFQs under Sections 303(d) and 407 of the Magnuson-Stevens Act constrains the Council from recommending such a system before October 2000. Due primarily to the complexity of the commercial reef fish fishery, development of a controlled access program for the fishery is expected to span a period extending beyond the expiration date of the current moratorium.

## **5.0 MANAGEMENT ALTERNATIVES AND REGULATORY IMPACT REVIEW**

### **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 regulations are 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). The primary purpose of the RFA is to relieve small businesses, small organizations, and small governmental jurisdictions (collectively: "small entities") of burdensome regulatory and recordkeeping requirements. The RFA requires that if regulatory and recordkeeping requirements are not burdensome, then the head of a Federal agency must certify that the requirement, if promulgated, will not have a significant effect on a substantial number of small entities.

This RIR analyzes the probable impacts that the alternatives for extending the present moratorium on issuance of new commercial reef fish permits would have on fishing participants of the reef fish fishery in the Gulf of Mexico. In this document, the "Economic Impacts" section comprises the bulk of the RIR. The problems and objectives are described in previous sections of this plan amendment as a part of the RIR by reference.

## Management Alternatives and Regulatory Impacts

**Proposed Alternative: Extend the commercial reef fish permit moratorium for another 5 years, from its current expiration date of December 31, 2000 to December 31, 2005, unless replaced sooner by a comprehensive controlled access system.**

**Rejected Alternative 1: Extend the commercial reef fish permit moratorium for another 3 years, from its current expiration date of December 31, 2000 to December 31, 2003, unless replaced sooner by a comprehensive controlled access system.**

**Rejected Alternative 2: Extend the commercial reef fish permit moratorium for another 4 years, from its current expiration date of December 31, 2000 to December 31, 2004, unless replaced sooner by a comprehensive controlled access system.**

**Rejected Alternative 3: Status quo - The current moratorium on the issuance of new commercial reef fish permits expires on December 31, 2000.**

Rationale: The Proposed Alternative embodies the Council's intent to evaluate a broad range of controlled access systems, including IFQ and IFE, for the commercial reef fish fishery under a more stable fishery environment. The current moratorium is set to expire in approximately 1½ years, and that allows insufficient time to evaluate and develop a comprehensive controlled access system for the complex reef fish fishery. In addition, the development and submission of an IFQ or IFE type of controlled access system is hampered by the current Congressional ban on submission of such a system at least until October 1, 2000. Even if the Council eventually decides on a relatively simple license limitation for the fishery, the time period for adequate consideration of other controlled access systems, such as an IFQ, IFE, or a more complex license limitation system, for the complex reef fish fishery is expected to extend beyond the current expiration date of the moratorium.

Without the benefit of a moratorium, open access in the reef fish fishery is bound to invite more fishing participants. This was experienced when the moratorium was first considered and implemented whereby the number of permits issued increased from approximately 1,585 in 1990 to 2,200 in 1992, the year the moratorium took effect. In the present time, a similar or even heightened reaction is very likely to occur given the public's current awareness of the effects of a controlled access system. An influx of new entrants raises at least two major issues. First, fishing effort on and consequent fishing mortality of certain species would increase, thus most likely requiring more stringent regulations that could complicate the development of a controlled access system. Second, the allocation of fishing privileges may be weighted more toward historical rather than present participation in the fishery, as happened in the red snapper fishery. This weighting system penalizes new entrants by reducing the value of their investments in the fishery. The Council's decision to extend the moratorium while it considers a controlled access system for the fishery may be expected to mitigate the adverse impacts of an increase in the number of fishery participants.

A 5-year extension of the moratorium is chosen over the shorter ones in order to provide adequate time for the Council to evaluate (and develop if considered appropriate) more complex controlled access systems, such as IFQ or IFE. In and by themselves, these systems are already complicated and their ramifications are numerous especially when applied to the complex reef fish fishery. A thorough evaluation of these systems and their development for the entire fishery or a segment thereof would be greatly aided by the choice of a longer extension period for the moratorium.

Another advantage proffered by a longer moratorium extension is that it allows the Council to sequentially consider a controlled access system for the various segments of the commercial reef fish

fishery. This approach assumes particular significance if a certain type of controlled access system, e.g., license limitation, is determined to be more appropriate for one segment of the fishery and a different system, e.g., IFQ, for another. The overall time required under this approach may be longer but a more focused consideration of each segment of the fishery would be achieved.

A 5-year extension of the moratorium also provides current and potential fishery participants a longer time horizon for planning their fishing operations. While the Council may terminate the moratorium any time it determines the suitability of such an action (after considering relevant information including public input), the choice of an extension period expresses the Council's intent to maintain status quo at least over the chosen period. Experiences in the reef fish and stone crab fisheries (the commercial king mackerel permit moratorium is also being proposed to be extended) have shown the Council's need for moratoriums longer than 3 years. Under the Proposed Alternative then, fishermen can reasonably expect a more stable regulatory environment over the chosen time frame under which they can make business decisions, particularly in the area of new investments. However, they would have to take into account the proviso that the moratorium may be replaced sooner by a controlled access system.

Discussion: Adoption of the status quo, i.e., allowing the moratorium to expire on December 31, 2000, means that the only regulatory restriction on the number of permits that may be issued is the income requirement. This requirement has proved to be ineffective in limiting the number of permits issued as demonstrated by the experience in the early 1990s. Vessel permits for the commercial reef fish fishery were created by Amendment 1 and were first issued in April 1990. In 1990, about 1,585 reef fish permits were issued by the NMFS Permits and Regulations Branch. In 1991, that number rose to 1,694, and by the time the reef fish permit moratorium took effect in May 1992, total permits issued increased to 2,200 (2,020 active as of December 31, 1992). The number of active permits subsequently declined, and currently (as of March 25, 1999) stands at 1,204. (see Table 1).

Table 1 below shows the number of active permits (column 2) and the number of vessels reporting logbooks. The number of vessels reporting logbooks (column 3) includes those that reported some landings at any time during the year (column 4) and those that reported no landings for the whole year (column 5). It may be noted that the current rule on logbook reporting requires submission of logbooks whether or not a permitted vessel was used for fishing. One information the table suggests is that there still much larger capacity in terms of permitted vessels than is possibly necessary to harvest the reef fish landings each year.

Table 1. Vessels with commercial reef fish permits and logbook reports by year.

Year	No. of Active Permits <sup>1</sup>	No. of Vessels with Logbook Reports (including no fish) <sup>2</sup>	No. of Vessels with Logbook Landings <sup>2</sup>	No. of Vessels with No Logbook Landings
1993	1,731	1,836	1,216	620
1994	1,592	1,874	1,245	629
1995	1,504	1,781	1,176	605
1996	1,440	1,851	1,092	759

1997	1,389	2,003	1,204	799
1998	1,307	2,179	1,385	794
1999	1,204	n.a.	n.a.	n.a.

Sources: 1 - NMFS Permits and Regulations Branch - March 25, 1999. Permits are active as of Dec. 31 of each year, except the 1999 permits which are active as of March 25. A permit holder has one year from the expiration of the permit on his/her birthdate to renew it. However, he/she cannot land fish without an active permit.

2 - Reef Fish Vessel Logbook database - NMFS/SERO, Miami.

Note: A permit that was transferred to another vessel will be recorded as an additional vessel for logbook reporting purposes, but the number of active permits remains the same.

At any month or day during the year, there are active and inactive permits, the latter being either in the process of being renewed or eventually not renewed at all. Any permittee has one year after the permit's expiration date to renew his/her permit. On a month to month basis, the number of inactive permits remains low, ranging from 0 to 5 percent of active permits (Slagle, pers. comm. 1999). Since permits are tied to vessels, the number of permits (as shown in Table 1) also reflects the number of vessels in the fishery, whether or not those vessels are actively fishing during the year. The decline in the number of active permits from 1,731 in 1993 to 1,204 in 1999 reflects the decline in the number of vessels in the commercial reef fish fishery. Thus, the reduced number of permits approximates the corresponding number of vessels exiting the commercial reef fish fishery.

The number of vessels in the logbook system differs from what the permit system indicates, as can be seen from Table 1. There are at least two factors that can explain this difference. The first one, which accounts for a relatively minor portion of the discrepancy, pertains to the way permit transfers are handled in the permit system and in logbook reporting. Since 1993, the vessel identification number has been used as the permit number. When a permit is transferred from one vessel to another, whether the latter vessel is owned by the same person or by a different one, a new vessel appears in the permit system replacing the old one. In the logbook system, however, two vessels covered by one and the same permit would be recorded. This happens especially if one vessel was used for fishing part of the year and the other, for the rest of the year.

The second factor, which accounts for most of the discrepancy between the number of vessels in the permit system and the one in the logbook system, is the "no fish" logbook reporting requirement. Anybody who has a permit is required to submit logbooks every month, detailing the fishing activities undertaken the prior month. Logbook reports have to be submitted whether or not the permitted vessel was engaged in any fishing activity the prior month. Column 3 of Table 1 records the total number of vessels reporting logbooks, including those vessels that had no landings for the entire year. Column 4 of the same table records only the vessels that reported any landings for the year. As can be gleaned from the table, the number of vessels reporting logbook landings (column 4) is lower than that in the permit system (column 2) for every year, except 1998. This latter year is not totally an anomaly, since the number of vessels reporting logbook landings for this year is still lower than the number of permits existing at the beginning of 1998. As happened in the previous years, expiring permits were not renewed during the latter part of the year. Column 5 of the same table records the number of vessels reporting no fishing activity for the entire year. Some of these vessels may be permitted in fisheries other than the Gulf commercial reef fish fishery but anyway reported logbooks that were included in the logbook database for the Gulf commercial reef fish fishery. Since these vessels are not cross-



checked with existing active permits, it is very likely that most of them do not actually participate in the Gulf commercial reef fish fishery.

In a sum, the permit system reflects the number of vessels (1,204 as of March 25, 1999) that potentially participates in the fishery while the logbook system shows the actual number of vessels participating in the fishery. This latter number is closely approximated by the number of vessels reporting logbook landings.

With the stipulation that permits are tied to vessels, any increase in permits means an increase in the number of vessels that could potentially harvest reef fish. A significant increase in the number of permits and vessels could affect the fishing performance of practically all reef fish fisheries in the Gulf, especially those that face increasing restrictions on harvest. Although there is presently a license limitation program in the commercial red snapper fishery, this fishery is not totally protected from competition posed by the new entrants. New entrants could buy or lease any unused or minimally used red snapper licenses, thus increasing the competition in the red snapper fishery. In addition, these new entrants would also compete against red snapper fishermen in other fisheries this latter group of fishermen also participates in. In this situation, red snapper fishermen may only be forced to intensify their effort on the red snapper fishery. Even the recreational fishery is not immune to the impacts new entrants would bring about, since new entrants could fish in areas ordinarily frequented by recreational anglers and catch species targeted or caught by these anglers. Because an increase in the number of vessels permitted to commercially fish could affect the performance of existing reef fish commercial and recreational participants, the fishery may be expected to undergo dramatic changes. Council consideration of any form of controlled access system for the entire commercial reef fish fishery, or for that matter any segment of this fishery, would only invite further increases in permits and introduce more changes in the fishery, both in terms of participation and fishing patterns.

The commercial reef fish permit moratorium has now been in existence for about 7 years. So far only limited entry systems for the red snapper fishery have been considered, culminating initially in an ITQ system and subsequently in a license limitation system that was implemented beginning the 1998 fishing season for red snapper (see discussion of Amendments 8 and 15). There now remains less than 2 years for consideration of controlled access systems for the rest of the reef fish fishery before the moratorium expires on December 31, 2000. While experience and deliberation with the red snapper controlled access systems (ITQ and license limitation) was extensive and thus could serve as an excellent guide for a similar consideration for the rest of the reef fish fishery, there are at least three issues that may complicate or lengthen the process. First and foremost, there are more vessels, landing ports, and dealers to consider. Second, the reef fish fishery is multispecies in nature and vessels engaged in the fishery are also multipurpose in the sense that they harvest many reef fish and non-reef fish species, use various gear types, or fish in various geographical locations. Third, the recent re-authorization of the Magnuson-Stevens Act has precluded Council development and recommendation of controlled access systems, other than license limitation system, until at least October 1, 2000. The first two issues are likely to demand more time in the formulation of alternatives, selection of preferred alternatives, determination of eligible participants and their corresponding shares in the event an IFQ of IFE were adopted as the proposed system, and the design of an appropriate enforcement mechanism. The third issue outrightly delays submission of an IFQ/IFE system for Secretarial review and approval, and thus the implementation of such a type of controlled access system before the moratorium expires. **The various options to extend the moratorium are designed to provide sufficient time for consideration of a full range of controlled access systems, including IFQ and IFE, under a more stable environment for the reef fish fishery.**

All the alternatives indicate the Council's intent to evaluate the applicability of a controlled access system for the commercial reef fish fishery. Given the potentially complex process of designing such a system, a 5-year extension of the moratorium appears more appropriate. The shorter period accommodates the possibility that, after considering a broad range of alternatives, the Council may opt for a simple license limitation system. One such system would be the conversion of the current moratorium into a permanent license limitation, with all features remaining intact and the only possible exception being the transferability of the permits. However, it should be recognized that even if a 5-year period is approved, the Council may develop a simple system for some portions of the reef fish fishery in less than 5 years, while the more complex systems for other portions of the fishery may take longer. As currently worded, the various alternatives allow the possibility that a controlled access system, no matter how simple, may replace the moratorium prior to its expiration.

Biological Impacts: All the alternatives that will extend the moratorium are expected to result in minimal biological impacts on practically all reef fish species. Any increase in fishing mortality from harvest or release of fish can be attributed mainly to the increase in effort expended by existing fishery participants. If, on the other hand, the moratorium is allowed to expire without being replaced by some form of a controlled access program, fishing mortality of many reef fish species is bound to increase. While the logical target species by new entrants are those species that are not subject to a TAC or commercial quota, such for example as amberjacks and vermilion snapper; reef fish species whose TAC or quota has not been fully taken, such as shallow and deepwater groupers, also pose as prime targets. The markets for these species are already well established such that new entrants would not face a serious marketing problem. Although in principle, the TAC or quota reflects the maximum that could be harvested without impinging on the long-term sustainability of the subject species, a TAC or quota underrun serves as a buffer that enhances the chances of the species not becoming overfished. This buffer would disappear with an increase in fishing pressure. Moreover, an increase in fishing pressure would likely increase the release mortality of even those species that are severely restricted, such as red snapper. The intent of the Council during the extended moratorium is to develop systems that reduce fishing pressure.

Economic Impacts: If the moratorium were allowed to expire without being replaced by some form of controlled access program, the commercial reef fish fishery, except red snapper and fish trap fisheries, would practically revert to an open access system. The entry barrier (income criterion which requires demonstration that more than 50 percent on income was from commercial or charter fishing) to any commercial reef fish fishery, other than red snapper and fish trap fisheries, would be relatively low. As a result, many new entrants into the various reef fish fisheries can be expected. Highly susceptible to this situation are the grouper and vermilion snapper fisheries. To some extent, the greater amberjack fishery would also experience an increase in new entrants. Some of these new entrants would be those who did not qualify for a permit at the start of the moratorium, or who did not renew or qualify to renew their permits during the moratorium.

While the termination of the moratorium would partly alleviate the plight of those left out of the reef fish fishery, but otherwise face increasing restrictions in the fisheries they participate in (such as the king mackerel and shark fisheries), their entry into the reef fish fishery would tend to negate some of the conservation measures adopted or planned to be adopted for the fishery. Equally important is the high likelihood that such entry would dampen the financial performance of current participants in the various reef fish fisheries. It is true that in the grouper fishery, for example, both the shallow-water and deepwater grouper quotas have not been met since the quotas were put in place in 1990, but the likelihood of reaching these quotas increases with the entry of additional vessels. It is also possible that

the new standards for overfishing will result in some quotas being reduced. Once the quotas are met, the derby effect and its known concomitant adverse effects on participants would materialize. In addition, some new restrictive measures, such as a restrictive quota on gag or vermilion snapper, may be required. In and by themselves, these restrictive measures could trigger a derby situation. New entrants into the fishery could only worsen the situation. One other effect that new entrants are likely to bring about is the competition they exert on the recreational sector by fishing for the same species or in the same area as the anglers. Such competition could tend to reduce the value of the fishing experience that could prompt them to take fewer fishing trips. This reduction in fishing trips would adversely affect the financial status of the for-hire vessels.

As noted earlier, Council consideration of controlled access programs could lead to intensified fishing operations, but with the moratorium in place, added fishing effort could only come from current participants. Both their past and current fishing participation in the fishery would be captured by existing data collection programs, and thus can be examined for purposes of designing a controlled access program. Needless to say, such information is very crucial in the initial allocation of fishing privileges, especially in an IFQ or IFE type of controlled access system. Section 303 (b) (6) of the Magnuson-Stevens Fishery and Conservation Act provides that in establishing a controlled access system, the Council and the Secretary should take into account, among other things, the present participation in the fishery and the historical fishing practices in, and dependence on, the fishery. Consideration of past and present participation in the reef fish fishery would not be as complicated under a moratorium as without it.

Allocation of initial fishing privileges, especially if those privileges are priced well below their economic value, is probably the most controversial feature of any controlled access program. This was demonstrated by the red snapper experience wherein the Council placed more weight on historical than on present participation in assigning initial fishing privileges. If the Council carries over this predilection to the consideration of controlled access system for the entire reef fish fishery, the presence or absence of a moratorium would have important significance. Without the moratorium, new entrants would make investments to participate in the fishery, but the value of their investments would be greatly diminished because they would likely not be granted as much fishing privileges as their historical counterparts. Adverse public reaction experienced in the management of fish traps could arise here in a more intense fashion.

### **Private and Public Costs**

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

Council costs of document preparation, meetings, public hearings, and information dissemination.....	\$15,000
NMFS administrative costs of document preparation, meetings, and review.....	\$ 7,000
Law enforcement costs.....	\$ none

Public burden associated with permits.....	\$ none
NMFS costs associated with permits.....	\$ none
TOTAL.....	\$22,000

The Council and Federal costs of document preparation are based on staff time, travel, printing, and any other relevant items where funds were expended directly for this specific action. The proposed measures are not expected to result in any additional enforcement and permit costs.

**Summary of Economic Impacts**

Developing a controlled access program for the entire commercial reef fish fishery is expected to be complex and lengthy such that its completion would likely extend beyond the expiration date of the current moratorium. Without the benefit of the moratorium, development of a controlled access program would only invite more new entrants to the fishery. While opening up the fishery may partly alleviate the plight of those excluded from the fishery because of the moratorium, their presence would adversely impact the economic performance of current participants, including the recreational sector. In addition, investments by the new entrants could lose some of their value if the chosen controlled access program assign initial fishing privileges that are weighted more toward historical than current participation. Any of the moratorium extension alternatives is expected to maintain a certain level of stability in the commercial reef fish fishery as the Council proceeds with the development of a more permanent controlled access program for the fishery.

Government costs are estimated at \$22,000, and all cost items are one-time costs and pertain to the Council and NMFS costs in preparing this document.

**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; (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; or, (d) raise novel legal or policy issues arising out of legal mandates, the President’s priorities, or the principles set forth in this Executive Order.

The entire commercial reef fish fishery had an ex-vessel value of about \$40 million in 1997 (Waters 1997). To exceed the \$100 million benchmark, a more than 150 percent increase in ex-vessel revenues would be required. Considering that this amendment merely extends the moratorium, the concomitant results are not expected to materially affect the industry’s revenues. Hence, any revenue impacts on the fishery from the proposal to extend the moratorium would be significantly less than \$100 million annually.

Any of the alternatives considered in this amendment is not expected to result in a major cost increase to the industry. In the event the moratorium is extended, the cost of entering the fishery would remain practically the same. If the moratorium is not extended and participation in the fishery increases, the cost of such participation would be relatively less than that under a moratorium. Prices to the

consumers would not be materially affected by an extension of the moratorium. If the moratorium is not extended, any increase in landings would tend to lower consumer prices. All alternatives considered in this amendment are not expected to affect State or local government costs or create differential increases in cost by geographical areas. Federal costs are estimated to be relatively small.

The decreasing number of commercial permits over time, as shown in Table 1, partly indicates the presence of sufficient competition in the commercial reef fish fishery. In fact, the presence of several vessels not fishing may suggest the existence of excess capacity in the fishery. This level of competition is unlikely to be affected by the extension of the moratorium. However, an extension of the moratorium would limit the amount of investments and resulting employment that the fishery would attract. The magnitude of this effect cannot be estimated. To some unknown extent, innovation will not be promoted by the moratorium. The presence or absence of a moratorium is deemed not to affect the competitive status of domestic enterprises vis-a-vis foreign enterprises.

Because the moratorium has been in effect for about 7 years now, extending the moratorium is deemed not to raise novel legal or policy issues.

The foregoing discussions lead to the conclusion that this regulation if enacted would not constitute a "significant regulatory action" under any of the criteria enumerated above.

### **Determination of the Need for an Initial Regulatory Flexibility Analysis**

#### Introduction

An Initial Regulatory Flexibility Analysis (IRFA) is conducted primarily to determine whether the proposed action would have a "significant economic impact on a substantial number of small entities." 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.

The Regulatory Flexibility Act requires a determination as to whether or not a proposed rule has a significant impact on a substantial number of small entities. If the rule does have this impact then an Initial Regulatory Flexibility Analysis (IRFA) has to be completed for public comment. The IRFA becomes final after the public comments have been addressed. If the proposed rule does not meet the criteria for "substantial number" and "significant impact," then a certification to this effect must be prepared.

#### Determination of Significant Economic Impact on a Substantial Number of 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). As of December 31, 1992, a total of 2,020 permits was issued to qualifying individuals and attached to vessels, and is deemed to comprise the reef fish fishery in the U.S. Gulf of Mexico. There are currently 1,204 active permits, while others are in the process of being renewed (Slagle, pers. comm. 1999). There are currently 1,063 permits issued to charterboats and party boats to fish in the Gulf, although based on population of for-hire vessels used for survey purposes, there could be as many as 2,557 for-hire vessels operating in the Gulf, including guide boats fishing in flats and estuaries. The Small Business Administration (SBA) defines a small business in the

commercial fishing activity as a firm with receipts of up to \$3.0 million annually. SBA also defines a small business in the charterboat activity as a firm with receipts up to \$5 million per year.

All of the commercial reef fish harvesting entities affected by the rule will qualify as small business entities because their individual gross revenues are less than \$3 million annually. In addition, for-hire vessels in the Gulf affected by the proposed rule generally earn less than \$5 million in annual revenues and are thus considered to be small business entities. Hence, it is clear that the criterion of a substantial number of the small business entities comprising the commercial reef fish harvesting industry and the for-hire sector being affected by the proposed rule will be met. The outcome of "significant impact" is less clear but can be triggered by any of the five conditions or criteria discussed below.

The regulations are likely to result in a change in annual gross revenues by more than 5 percent. An extension of the moratorium is not expected to change industry revenues. Any possible revenue changes cannot be directly attributed to the extension of the moratorium. If the moratorium is not extended, industry revenues could change, but the magnitude of this change is unknown.

Annual compliance costs (annualized capital, operating, reporting, etc.) increase total costs of production for small entities by more than 5 percent. No production cost increases are deemed to be directly attributable to an extension of the moratorium. If the moratorium is extended, any production cost increase may be considered as part of normal business operations.

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. All the firms expected to be impacted by the rule are small entities and hence there are no differential impacts to contend with.

Capital costs of compliance represent a significant portion of capital available to small entities, considering internal cash flow and external financing capabilities. There are no expected changes in capital costs of complying with any of the alternatives in this amendment.

The requirements of the regulation are likely to result in a number of the small entities affected being forced to cease business operations. This number is not precisely defined by SBA but a "rule of thumb" to trigger this criterion would be 2 percent of the small entities affected. An extension of the moratorium may be expected to preserve the financial status of current participants. This status will be adversely affected by new entrants in the event the moratorium is not extended. On the other hand, there exists some possibility that a further extension of the moratorium would adversely affect the financial viability of those vessels currently excluded from the reef fish fishery, but the number and status of these vessels are not known.

### Conclusion

It is inferred from the foregoing discussion that an extension of the moratorium does not effect a significant economic impact on small business entities that currently participate in the commercial reef fish fishery. Hence, an IRFA is not needed.

## **6.0 ENVIRONMENTAL ASSESSMENT**

### **Environmental Consequences**

Physical and Human Environment: The alternatives to extend the moratorium considered in this amendment will have no impact on the physical environment. Under a moratorium, Council development of a controlled access program for the commercial reef fish fishery can proceed under a more stable fishing environment.

Fishery Resource: Council consideration of controlled access for the commercial reef fish fishery may be expected to intensify fishing participation, and thus increase fishing mortality of many reef fish species. Such fishing mortalities from both harvest and discards are more susceptible to being contained under a moratorium than without it.

Effect on Endangered Species and Marine Mammals: As a matter of routine, it is requested that NOAA conduct a consultation under Section 7 of the Endangered Species Act. It is anticipated that the actions considered in this amendment will not jeopardize the recovery of endangered or threatened species or their critical habitat.

Effects on Essential Fish Habitat (EFH): The continuation of the moratorium is expected to have no material effects on EFH, whereas the lapse of the moratorium may have a slight negative effect.

Effect on Wetlands: The alternatives in this amendment will have no effect on flood plains, wetlands, or rivers.

Mitigating Measures: No mitigating measures related to the actions considered in this amendment are necessary because there are no harmful impacts to the environment.

Unavoidable Adverse Effects: No unavoidable adverse effects arise from the proposed alternatives.

Irreversible and Irretrievable Commitments of Resources: There are no irreversible commitments of resources expected from the implementation of this plan amendment.

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

The proposed amendment is not a major action having significant impact on the quality of the marine or human environment of the Gulf of Mexico. The proposed actions deal with extension of the moratorium that is currently set to expire on December 31, 2000. The proposed actions should not result in impacts significantly different in context or intensity from those described in the environmental impact statement and environmental assessment published with the regulations implementing the FMP and Amendment 1.

Having reviewed the environmental assessment and available information relative to the proposed actions, I have determined that there will be no significant environmental impact resulting from the proposed actions. Accordingly, the preparation of a formal environmental impact statement on these issues is not required for this amendment by Section 102(2)(c) of the National Environmental Policy Act or its implementing regulations.

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

\_\_\_\_\_  
Date

## **7.0 OTHER APPLICABLE LAW**

### **Habitat Concerns**

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

### **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 plan amendment are not expected to affect vessel safety.

### **Coastal Zone Consistency**

Section 307(c)(1) of the Coastal Zone Management Act of 1972, as amended, requires that all federal activities that 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 the commercial reef fish fishery in the EEZ of the Gulf of Mexico will make no changes in federal regulations that are inconsistent with existing or proposed state programs. This determination has been submitted for review by the affected states.

### **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. This authority encompasses establishment of guidelines and policies, approval of information collection requests, and reduction of paperwork burdens and duplications.

The Council does not propose, through this plan amendment, to establish any additional reporting requirements or burdens.

### **Federalism**

No federalism issues have been identified relative to the alternatives considered in this plan amendment. Therefore, preparation of a federalism assessment under Executive Order 12612 is not necessary.

## **8.0 PUBLIC REVIEW**



In addition to the final public hearing which was held on July 14, 1999 at the Council meeting in Key West, Florida, public hearings were also held at the following locations:

Monday, June 14, 1999

City Hall Auditorium  
300 Municipal Drive  
Madeira Beach, FL 33708

Wednesday, June 16, 1999

Orange Beach Community Center  
27235 Canal Road  
Orange Beach, AL 36561

Tuesday, June 15, 1999

National Marine Fisheries Service  
Panama City Laboratory  
3500 Delwood Beach Road  
Panama City, FL 32408

Thursday, June 17, 1999

Port Aransas Library  
700 West Avenue A  
Port Aransas, TX 78373

LIST OF AGENCIES CONSULTED

Gulf of Mexico Fishery Management Council's

- Standing and Special Reef Fish Scientific and Statistical Committee
- Reef Fish Advisory Panel

National Marine Fisheries Service

- Southeast Regional Office
- Southeast Fisheries Science Center

RESPONSIBLE AGENCY:

Gulf of Mexico Fishery Management Council  
The Commons at Rivergate  
3018 U.S. Highway 301 North, Suite 1000  
Tampa, Florida 33619-2266  
(813)228-2815

LIST OF PREPARERS

Gulf of Mexico Fishery Management Council

- Steven Atran, Population Dynamics Statistician
- Antonio Lamberte, Economist

**9.0 REFERENCES**

NMFS. 1992. Appendix 2.d: Guidelines on regulatory analysis of fishery management actions. Operational guidelines for fishery management plan process. NMFS, Silver Spring, Maryland.

Slagle, R. 1999. Personal communication on the number of commercial reef fish permits.

Waters, J.R. 1997. An economic summary of commercial reef fish vessels in the U.S. Gulf of Mexico. NOAA. NMFS. Beaufort Laboratory. Beaufort, North Carolina 28516. Memo Rpt. 63 p. With Appendices A through H.

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