AMENDMENT 7

TO THE

REEF FISH FISHERY MANAGEMENT PLAN

FOR THE REEF FISH RESOURCES OF

THE GULF OF MEXICO

Includes Environmental Assessment

Regulatory Impact Review

and

Initial Regulatory Flexibility Analysis

August, 1993

Gulf of Mexico Fishery Management Council
Lincoln Center, Suite 331
5401 West Kennedy Boulevard
Tampa, Florida 33609

813-228-2815

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FOREWORD

The public hearing draft of Amendment 7 (dated April, 1993) has been subdivided with all red snapper effort limitation provisions, including those for limited access, removed for revision and for incorporation into draft Amendment 8. Draft Amendment 8, after review by the Council, will be presented to the public at workshops and hearings for additional input by affected fishermen on the provisions for long-term management of the commercial red snapper fishery. This document contains only those provisions of the public hearing draft of Amendment 7 that pertained to the reef fish fishery, including provisions related to enforcement.

Abbreviations Used in This Document

Council	Gulf of Mexico Fishery Management Council
EEZ	Exclusive Economic Zone
FMP	Fishery Management Plan
GMFMC	Gulf of Mexico Fishery Management Council
IRFA	Initial Regulatory Flexibility Analysis
LEAP	Law Enforcement Advisory Panel
NMFS	National Marine Fisheries Service
NOAA	National Oceanic and Atmospheric Administration
OY	Optimum Yield
RD	Regional Director (NMFS Southeast Region)
RFAP	Reef Fish Advisory Panel
RIR	Regulatory Impact Review
RSAP	Ad Hoc Red Snapper Advisory Panel
SAFMC	South Atlantic Fishery Management Council
SEIS	Supplemental Environmental Impact Statement
SPR	Spawning Potential Ratio
TAC	Total Allowable Catch

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1. PUBLIC REVIEW

A total of twelve public hearings were held to obtain public comments on this plan amendment with an additional hearing to be held during the Gulf Council meeting on July 12-16, 1993, in San Antonio, Texas. The public comment period for this amendment ended on June 28, 1993.

Public hearings were scheduled during June 7-18 at the following locations and times:

Boothville, Louisiana
Monday, June 7, 1993
7:00 p.m. - 11:00 p.m.
Boothville Community Center
Highway 23
Boothville, Louisiana

Key West, Florida
Tuesday, June 8, 1993
7:00 p.m. - 11:00 p.m.
American Legion Hall
5610 College Road
Key West, Florida

Biloxi, Mississippi
Tuesday, June 8, 1993
7:00 p.m. - 11:00 p.m.
Gulf Coast Research Laboratory
J. L. Scott Marine Education Center and
Aquarium Auditorium
1650 East Beach Boulevard
Biloxi, Mississippi

Sarasota, Florida
Wednesday, June 9, 1993
7:00 p.m. - 11:00 p.m.
Mote Marine Laboratory
1600 Thompson Parkway
Sarasota, Florida

Mobile, Alabama
Wednesday, June 9, 1993
7:00 p.m. - 11:00 p.m.
Stouffer Riverview Plaza Hotel
64 Water Street
Mobile, Alabama

Pensacola, Florida
Thursday, June 10, 1993
7:00 p.m. - 11:00 p.m.
Pensacola Civic Center
201 East Gregory Street
Pensacola, Florida

Panama City, Florida
Thursday, June 10, 1993
7:00 p.m. - 11:00 p.m.
National Marine Fisheries Service
Panama City Laboratory
3500 Delwood Beach Road
Panama City, Florida

Port Isabel, Texas
Monday, June 14, 1993
7:00 p.m. - 11:00 p.m.
Port Isabel Community Center
Corner of Yturria and Maxan
Port Isabel, Texas

Port Aransas, Texas
Tuesday, June 15, 1993
7:00 p.m. - 11:00 p.m.
University of Texas
Visitor's Center Auditorium
Marine Science Institute
750 Channel View Drive
Port Aransas, Texas

Galveston, Texas
Wednesday, June 16, 1993
7:00 p.m. - 11:00 p.m.
Holiday Inn on the Beach
5002 Seawall Boulevard
Galveston, Texas

Cameron, Louisiana
Thursday, June 17, 1993
7:00 p.m. - 11:00 p.m.
Police Jury Annex
Courthouse Square
Cameron, Louisiana

Grand Isle, Louisiana
Friday, June 18, 1993
7:00 p.m. - 11:00 p.m.
Grand Isle Community Center
Highway 1
Grand Isle, Louisiana

2. LIST OF AGENCIES AND PERSONS CONSULTED

Gulf of Mexico Fishery Management Council:	Standing and Special Reef Fish Scientific and Statistical Committee Reef Fish Advisory Panel Law Enforcement Advisory Panel Ad Hoc Red Snapper Advisory Panel
Coastal Zone Management Programs:	Louisiana Mississippi Alabama Florida
National Marine Fisheries Service:	Southeast Fisheries Science Center Southeast Regional Office

3. LIST OF PREPARERS

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

4. HISTORY OF MANAGEMENT

The Reef Fish Fishery Management Plan was implemented in November 1984. The implementing regulations 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 exception that for-hire boats were exempted until 1987 and each angler could keep five undersize fish; and, (3) data reporting requirements.

The National Marine Fisheries Service (NMFS) has collected annual commercial landings data since the early 1950s, 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 a 7 fish recreational bag limit and a 3.1 million pound commercial quota for red snapper that together were to reduce fishing mortality by 20 percent and begin rebuilding the population toward the target SPR. However, analyses available to the Council during development of Amendment 1 indicated that additional red snapper harvest restrictions would be necessary in the future to rebuild to 20 percent SPR by the target year of 2000. This amendment also established a 5 fish recreational bag limit and 11.0 million pound commercial quota for groupers, with the commercial quota subdivided into a 9.2 million pound shallow-water quota and a 1.8 million pound deep-water quota. This amendment also implemented a framework procedure to allow for annual management changes.

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

Amendment 3, implemented in July 1991, provided additional flexibility in the annual framework procedure 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. The amendment also transferred speckled hind from the shallow-water grouper quota category to the deep-water grouper quota category and established a new red snapper target year of 2007 for achieving the 20 percent SPR goal established in Amendment 1.

A 1991 Regulatory Amendment set the red snapper TAC at 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 pounds) 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 fishery was closed on February 22, 1992.

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.

A 1993 Regulatory Amendment set the red snapper TAC at 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) beginning in 1993. The amendment also changed the target year to achieve a 20 percent 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 1992b).

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, permittees with red snapper endorsements are allowed a 2,000 pound possession limit of red snapper, and permittees without the endorsement are allowed 200 pounds. The emergency rule permits transfer of the red snapper endorsement to another vessel owned by the qualifying permittee but not to another

permittee. Furthermore, all federal reef fish permittees must agree to abide by the red snapper trip limits regardless of where the fish are caught. 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. *Note: A legal challenge to the red snapper endorsement emergency rule was filed in U.S. District Court, Corpus Christi, Texas on January 21, 1993. The challenge was subsequently changed to include Amendment 6.*

Amendment 5/SEIS proposes measures to regulate the fish trap fishery by requiring traps be returned to shore following each trip and places a moratorium on the issuance of additional permits to fish traps. It includes a proposal to establish special management zones (SMZs) off Alabama where gear is limited to three hooks per line and a framework measure to establish SMZs in other areas under specific criteria. Other proposed measures would require that all finfish (excepting oceanic pelagics) be landed with heads and fins intact, the minimum size limit for red snapper be increased an inch biennially reaching 16 inches (TL) by 1998, and Riley's Hump off southwest Florida be closed to fishing in May and June to protect aggregations of spawning mutton snapper. The SEIS examines the environmental effects of both Amendment 5 and the reef fish fishery.

Amendment 6 extended the provisions of the emergency rule for the remainder of 1993 and 1994. In addition, it allowed the trip limits for qualifying and non-qualifying permittees to be changed under the framework procedure for specification of TAC.

5. PROBLEMS REQUIRING A PLAN AMENDMENT

The Council's Law Enforcement Advisory Panel (LEAP) reviews FMP rules and recommends revisions that they feel would enhance enforcement at-sea or dockside. Enforceability of fishing regulations has been an ongoing concern. NMFS and the Coast Guard have limited personnel and equipment with which to monitor the fishery for violators, making the effectiveness of at-sea enforcement of some rules questionable. Dockside enforcement is also difficult because of non-uniformity between state and federal reporting regulations and insufficient record keeping, including a lack of dealer identification of landings by vessel, that may be contributing to a lack of compliance. The Council included a number of management options recommended by the LEAP in the public hearing draft for public comment on potential impacts and utility of the management options. Following the hearings the Council reviewed public comment and approved those options that related to dealer permitting and record keeping.

Amendment 5 will place a three year moratorium on vessels that can fish traps by establishing a fish trap endorsement to the vessel permit and limiting such endorsement to permittees who turned in logbooks indicating landings from fish traps in 1991 and/or 1992 through November 19, 1992. This action will prevent an expansion of the fish trap fishery while more information on the impact of fish traps on the resource is collected. It is not intended to prevent currently active fish trap fishermen from continuing to fish during the moratorium. However, some trap fishermen operate as a family business, and this moratorium could prevent family fishing operations from continuing if the family member who holds the trap permit endorsement became incapacitated or died or if they decided to retire.

The 1992 emergency rule established a red snapper endorsement to the commercial vessel permit and trip limits for endorsement holders and other vessels for 1993. Amendment 6 continues this system through 1994. Under these rules the red snapper endorsement cannot be transferred to other persons. This has created hardship as the result of death of an endorsement holder, since the vessel cannot be

fished by other persons, severely impacting the family of the deceased. Incapacitating disability of permit or endorsement holders will have similar severe impacts.

6. PROPOSED ACTIONS

Listed below are the proposed actions and the alternatives considered and rejected:

A. GENERAL REEF FISH PERMITTING OPTIONS

Proposed Action: Require reef fish dealer permitting and record keeping;

a. Permitted dealers can only buy reef fish from permitted vessels and permitted vessels shall sell only to permitted dealers;
b. Dealers must make landing and first purchase records available to law enforcement agents;
c. Dealer records must include how much of each species of reef fish was purchased from each vessel;
d. Dealers must keep their records at the principal place of business for at least one year;
e. Dealers must have a permanent facility at a fixed location.
f. A copy of the dealer permit and record of which vessels fish were purchased from must be kept on fish delivery trucks.

Rejected Alternative (a): Require weighing of fish on trucks immediately on off-loading and immediate completion of trip tickets listing all fish by species.

Rejected Alternative (b): Status quo - no change in current rules.

B. TRANSFER OF FISH TRAP PERMIT ENDORSEMENTS

Proposed Action: During the fish trap permit moratorium (to be implemented through amendment 5) permit the transfer of a fish trap endorsement and permits to occur only between members of the immediate family; husbands, wives, sons, daughters, brothers, sisters, mothers and fathers.

Rejected Alternative: Status quo - No transferability of fish trap endorsements and permits.

C. TRANSFER OF REEF FISH PERMITS AND ENDORSEMENTS

Proposed Action: In the event of the death or disability of a permit and/or endorsement holder, the Regional Director shall have the authority to transfer, either permanently or temporarily, the permit and/or endorsement to a person specified by the permit/endorsement holder, their legal guardian, or the estate.

Rejected Alternative: Status quo - no change.

7. MANAGEMENT OBJECTIVES OF THE FMP

The original management objectives of the FMP are as follows:

Overall Goal: To manage the reef fish fishery of the United States within the waters of the Gulf of Mexico Fishery Management Council jurisdiction to attain the greatest overall benefit to the nation with particular reference to food production and recreational opportunities on the basis of the maximum sustainable yield as modified by relevant ecological, economic or social factors.

FMP Objectives:

FMP-1. To rebuild the declining fish stocks wherever they occur within the fishery.

FMP-2. To establish a fishery reporting system for monitoring the reef fish fishery.

FMP-3. To conserve and increase reef fish habitats in appropriate areas and to provide protection for juveniles while protecting existing and new habitats.

FMP-4. To minimize conflicts between user groups of the resource and conflicts for space.

Amendment 1 added the following objectives:

A1-1. The primary objective of the FMP shall be 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 stock biomass per recruit.[1]

A1-2. To reduce user conflicts and nearshore fishing mortality.

A1-3. To respecify the reporting requirements necessary to establish a database for monitoring the reef fish fishery and evaluating management actions.

A1-4. To revise the definitions of the fishery management unit and fishery to reflect the current species composition of the reef fish fishery.

A1-5. To revise the definition of optimum yield to allow specification at the species level.

A1-6. To encourage research on the effects of artificial reefs.

A1-7. To maximize net economic benefits from the reef fish fishery.

8. MANAGEMENT OPTIONS AND IMPACTS

A. General Reef Fish Permitting Options

Enforcement is essential to the success of any effort management program, or for that matter, any fisheries management program. Enforcement agencies are well aware of the limitations in their capabilities due to manpower and equipment constraints and the impracticality of field enforcement of some regulations. However, the public and fishing community must perceive that enforcement measures are fair, serve some useful purpose, and are not unnecessarily burdensome if they are to be accepted and complied with. This section addresses enforcement options recommended by the LEAP.

Proposed Action: Require annual reef fish dealer permitting and record keeping;

a. Permitted dealers can only buy reef fish from permitted vessels and permitted vessels shall sell only to permitted dealers;

b. Dealers must make landing and first purchase records available to law enforcement agents;

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[1] Subsequently changed to 20 percent SPR.

c. **Dealer records must include how much of each species of reef fish was purchased from each vessel;**
d. **Dealers must keep their records at the principal place of business for at least one year;**
e. **Dealers must have a permanent facility at a fixed location.**
f. **A copy of the dealer permit and record of which vessels the fish were purchased from must be kept on fish delivery trucks;**

Rejected Alternative(a): Require weighing of fish on trucks immediately on off-loading and immediate completion of trip tickets listing all fish by species.

Rejected Alternative(b): Status quo - no change in current rules.

Discussion:

The Council approved the proposed action after reviewing all recommendations on the issue, and principally because of persistent allegations that a large portion of landings were not being accounted for under the present quota management systems. The measure was supported by the Scientific and Statistical Committee (SSC) and the Reef Fish Advisory Panel (RFAP), but opposed by the Ad Hoc Red Snapper Advisory Panel (RAP). Dealers would be required to obtain annual permits under the proposed measure.

As used in this proposed action, dealer refers to any first purchaser of reef fish who purchases directly from fishermen fishing in the Gulf of Mexico, including restaurants. It affects only purchases from fishermen and not purchases of imports or from other dealers. This places accountability for transactions involving illegally harvested fish on dealers as well as fishermen. It increases the paperwork requirements for purchasers who must retain landings records by vessel for each trip, but allows enforcement officials to make paper cases, rather than having to observe a fishing violation in progress. For reef fish species where federally permitted fishermen agree to abide by federal rules regardless of where caught, requiring permitted dealers to purchase reef fish only from permitted fishermen eliminates the problem of whether fish were caught from state or federal waters after the federal season is closed. Similarly requiring permitted vessels to sell to only permitted dealers enhances enforcement ability to track and account for landings. The dealer record keeping and availability requirements can provide enforcement officials with a cross check against fishermen's records. The additional requirements for delivery trucks to possess a copy of the dealer permit and a record of vessels that fish were purchased from allows purchases and vessel landings to be tracked to the dealer and his records. NMFS enforcement officials cannot stop a truck on the road for examination, but can while it is parked and transacting business, i.e., purchasing or off-loading fish. However, a truck can be opened for inspection by state agents, most of whom can enforce rules under the Magnuson Act.

Federal dealer permits will enhance enforcement of fishery rules, especially under an effort management system, by creating a disincentive to accept illegally caught fish or to misreport landings. Such disincentive will enable fuller realization of the benefits of fishery management. However, dealer permitting imposes costs on dealers in terms of securing permits and in some cases of performing additional record keeping activities. Relative to the benefits of better accounting of landings and improved enforcement, such costs may be considered minimal. Record keeping is most likely already done by various dealers although in varying ways depending on the size of the business operation. As long as this requirement does not reduce the number of dealers handling reef fish to a very few entities, markets will not be unreasonably constrained.

Impacts:

a. Fishery Resources: A better accounting of landings of reef fish will benefit the fishery resources by allowing all catches to be included in assessments of stock condition. This is very important, especially when virtual population analyses (VPA) are used in assessing the stock and spawning potential ratios (SPR).

b. Human Environment: Currently, the number of state-licensed primary dealers purchasing reef fish in the Gulf of Mexico (Gulf) is estimated to be 479. These are distributed by state as follows:

Alabama	15
Florida	371
Louisiana	47
Mississippi	11
Texas	35

These numbers include dealers that from state records are known to purchase reef fish from fishermen, but may not include restaurants or other entities that purchase (sometimes illegally) or occasionally purchase reef fish. Each dealer would be required to obtain an annual permit from NMFS at a cost of $53. Total estimated cost for all dealers would be $25,387 annually. The annual burden hours for initially obtaining and annual renewal of permits is estimated at 5 minutes per dealer or a total of about 40 hours for the industry.

The requirement that permitted dealers purchase only from federally permitted vessels may impact some dealers that also purchased reef fish from state licensed vessels fishing state waters without a federal vessel permit required for fishing in the EEZ. Likely, most fishermen targeting reef fish would have a federal vessel permit even if some of their catch was from state waters. However, some fishermen taking reef fish as incidental catch while targeting other species may fish only in state waters without a federal reef fish vessel permit. This is more likely to occur off Florida, and to a more limited extent off Texas since these state fishery jurisdictions extend seaward to 9 nautical miles. Texas prohibits use of nets within its jurisdiction reducing the likelihood of such incidental catch. Florida currently has classified all snapper, grouper and amberjack as restricted species and requires a federal reef fish vessel permit to sell these species. Table 1 indicates catch levels of red snapper from state jurisdictions averaged 2.2 percent for the 1981-1989 period. Such catches may have been partially harvested by fishermen also fishing the EEZ and likely declined in years after 1989, since most states prohibited red snapper landings from their waters when the commercial season was closed in the EEZ. Therefore, the poundage of reef fish caught in state jurisdiction by state licensed fishermen without federal vessel permits is apt to be relatively small. These fishermen and dealers purchasing their catch would be adversely impacted by the preferred option.

The requirement that permitted vessels sell only to permitted dealers would adversely impact the fishermen if the dealer permitting requirement were to exclude entities (restaurants, etc.) that paid higher prices to the fishermen than the primary dealers. However, considering the nominal annual fee (about $53) for a dealer permit no person or entity should be excluded on basis of cost. These entities who may not have been reporting such purchases previously would be identified for reporting purposes.

The current FMP regulations [50 CFR 641.5(d)] requires primary dealers to report reef fish landings monthly to NMFS or to a state (as the NMFS Center Director's designee). The

preferred option would require permitted dealers to keep records of landings of each species of reef fish by vessel for each trip, and to retain them for one year. However, as indicated in Table 2, Florida requires such records for each trip to be submitted by the dealer to the state. Louisiana, Texas, and Mississippi require such records to be maintained by the dealer for one or more years and made available for inspection by state agents. The preferred option would broaden access to such records to include federal agents. The dealer monthly reporting requirement to NMFS under the FMP would remain unchanged, except field agents may inspect the individual trip records for each vessel.

Under the preferred option, dealers failing to report or falsifying reports would be subject to federal civil penalties which would be higher than under state statutes where they are subject to misdemeanors (Table 2).

Alternative 1(a) was rejected by the Council because it is impractical to require fish on trucks be immediately weighed by species and vessel trip tickets completed, even though this may enhance enforcement. Usually fish unloaded from vessels into trucks are not separated by species, but are loaded as they were stored aboard the vessel, i.e., as mixed species iced into vessel compartments as they were caught. In order to maintain quality of the catch, it is important that the fish be removed from the truck to the dealers cold storage facility as rapidly as possible, day or night. The re-iced catch is subsequently separated as time permits not only into species, but frequently into market categories by size before weighing in order to compute the value owed the vessel by the dealer. On some occasions the fish on the truck is processed immediately on arrival but more frequently that is not the case.

c. Natural Environment: There are no impacts associated with the proposed action on the natural environment.

B. Transfer of Fish Trap Endorsements

Amendment 5 contains a proposal to implement a three year moratorium on vessels that can fish traps by establishing a fish trap endorsement to the commercial reef fish vessel permit and limiting such endorsement to permittees who turned in logbooks indicating landings from fish traps in 1991 and/or 1992 through November 19, 1992. Permits with endorsements would be nontransferable for the duration of the moratorium.

As stated in the Supplemental Environmental Impact Statement for Amendment 5 (GMFMC 1993), the moratorium would limit the fishery to current participants until the Council has better information on the ecological impacts of the trap fishery in the Gulf of Mexico. By including the current participants, this moratorium was expected to have minimal social and economic impacts on the fishermen.

Since that decision was made, the Council has learned that there are cases where fish trapping is conducted as a family business and some persons holding permits would like to retire and transfer the operation to other family members. Because of the non-transferability feature of the moratorium, an illness or death of the family member in whose name the reef fish permit has been issued would stop the entire family from fishing. In view of the familial nature of some fishing operations, allowing transfer of the endorsement among family members may be desirable to prevent negative economic impacts on current participants in the fishery.

Proposed Action: During the fish trap permit moratorium (to be implemented through amendment 5) permit the transfer of a fish trap endorsement and permits to occur only between members of the immediate family; husbands, wives, sons, daughters, brothers, sisters, mothers and fathers.

Rejected Alternative: Status quo - No transferability of fish trap endorsements.

Discussion:

The number of vessels reporting landings from fish traps was 87 in 1991 and 96 in 1992 (on or before November 19, 1992). The total number of fish trap endorsements to the vessel permits issued will therefore likely be slightly in excess of 100 (GMFMC 1993). The number of family fish trap operations that would be affected by this option is therefore expected to be small. This option will not result in any increase in fish trap effort during the moratorium. It will prevent potential economic hardships for fishing families so long as any one member of the family is involved in fish trapping either directly or by way of managing family assets connected with fish trapping. Families left with no one able to fish traps or manage fish trapping operations would be forced to sell their vessels or change to other fisheries or gear.

An exemption to the no transfer rule for one group of fishermen, as provided in this option, may be considered inequitable by others, i.e., corporations, partners who are not related, etc.. Once the qualified individual leaves the corporation or partnership, these entities stand to lose the endorsement, except possibly if they can get a replacement who is an immediate family member of the person who left the company. In this situation, it may have been preferable to allow transfers among any qualified fishermen or continue the no transferability conditions for everyone to maintain equitable treatment. However, the Council considered in Amendment 5 whether to allow general transferability of vessel permits with the fish trap endorsement to other persons as allowed under the general provision for vessel permit transfer implemented under Amendment 4 (GMFMC 1991), which allows such permit transfer only through sale of the vessel. The Council concluded for the duration of the three-year moratorium on the issuance of additional fish trap endorsements to the vessel permit that no transfers would be allowed (GMFMC 1993).

The RFAP recommended and the Council proposes to allow such transfers between immediate family members with the transfer recorded and approved by NMFS for the duration of the moratorium.

Impacts:

a. Fishery Resources: The Council proposed the moratorium to provide time to more fully assess the ecological effects of the trap fishery without continued expansion of that segment of the fishery. The proposed action would not result in further expansion of the fishery while these studies are being completed. The rejected alternative may have resulted in some reduction in participants in the fishery, but at the expense of the families involved. It has not been conclusively determined if such a reduction would have any effect (adverse or beneficial) on fishery resources, although information presented in Amendment 5 suggests there is little to no adverse effect from the trap fishery (GMFMC 1993).

b. Human Environment: The proposed action should have a beneficial effect on families in the fishery, but this would not necessarily extend to persons without family participation in their operations.

c. Natural Environment: The alternatives considered are not anticipated to have any effect on the natural environment.

C. Transfer of Reef Fish Permits and Endorsements

Proposed Action: In the event of the death or disability of a permit and/or endorsement holder, the Regional Director shall have the authority to transfer, either permanently or temporarily, the permit and/or endorsement to a person specified by the permit/endorsement holder, their legal guardian, or the estate.

Rejected Alternative: Status quo - no change.

Discussion:

The Magnuson Act allows requiring a permit to fish. In order to distinguish between such permits which may confer a specific privilege to fish for certain species or with certain gear or under certain conditions, the Councils and NMFS have developed specific names for such permits such as vessel permit, endorsement to a permit, certificates to harvest a specific amount, licenses for limiting vessels, etc. Under the Act all of these are permits and the Councils intent in the proposed action is that all such permits under the Reef Fish FMP be allowed to be transferred under the conditions of the proposed action, during periods when transfer is prohibited.

The issue of the affect of death of a vessel permit holder with a red snapper endorsement was brought before the Council by the daughter of a deceased captain who qualified for the endorsement under the provisions of Amendment 6 (GMFMC 1993a). Because of the qualifications for the endorsement, the widow of the captain was unable to have the vessel operated and derive the income from the vessel or to sell the vessel to operate in the red snapper fishery. The proposed action would alleviate such hardship, by allowing transfer in the event of either death or disability of the permit holder of record. Under the proposed action the NMFS Regional Director (RD) could transfer the vessel permit and/or endorsement, either permanently or temporarily to a person specified by the permit holder (by will if deceased or if disabled) or by that person's legal guardian or the estate (e.g., by executor of estate). The permit could be transferred on a temporary basis while the RD established that the circumstances that warranted a permanent transfer. Because of the short duration of the red snapper fishing season (See Section 4), the Council's intent was for the RD to have the authority to instantly make such temporary transfers based on telephone conversations with attending physicians certifying death or disability and to obtain and examine records and affidavits later to establish a case for determination of permanent transfer.

Impacts:

a. Fishery Resources: The alternatives considered are anticipated to have no effects on fishery resources.

b. Human Environment: The effects of the proposed action will be beneficial and should alleviate the adverse effects of the rejected alternative on surviving family members of deceased permit holders and disabled permit holders.

   When vessel permits or endorsements are issued to an owner/operator, that person does have the opportunity, if disabled, to hire another operator for the vessel under current rule. However, if that person dies a red snapper endorsement could not be transferred under current rules. When the permit and endorsement is issued to an operator based on his qualifications, rather than those of the owner, that operator must be aboard the vessel when fishing. If the operator dies or is disabled, the owner could fish the vessel for reef fish by hiring another

qualified operator (with greater than 50 percent earned income from commercial or charter fishing) but not necessarily for red snapper. The proposed action would rectify these problems.

c. Natural Environment: The alternative considered would have no effect on the natural environment.

9. REGULATORY IMPACT REVIEW

9.1 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 regulations are major under the criteria provided in Executive Order 12291 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 proposed alternatives for Amendment 7 to the Reef Fish FMP would have on the reef fish industry.

9.2 Problems and Issues in the Fishery

The general problems in the reef fish fishery are enumerated in the section Problems in the Fishery of the Reef Fish Fishery Management Plan, as amended. The specific problems addressed by the proposed plan amendment are described and discussed in Section 5 of this amendment document. There are three issues identified for plan amendment: 1) dealer permitting; 2) transfer of fish trap permit endorsements; and, 3) transfer of reef fish permit and endorsements.

9.3 Objectives

The general management objectives are enumerated in Section 7 of this amendment document. This particular amendment is intended to address the major problems and issues identified for the reef fish fishery.

9.4 Management Measures

The proposed management measures under this amendment are enumerated in Section 6 and their full discussions are set down in Section 8 of this amendment document. There are three sets of management actions considered corresponding to the three problems identified. These are re-stated below where their impacts are analyzed.

9.5 Analysis of Impacts of All Measures

Dealer Permits

Proposed Action: Require annual reef fish dealer permitting and record keeping;

a. **Permitted dealers can only buy reef fish from permitted vessels and permitted vessels shall sell only to permitted dealers;**
b. **Dealers must make landing and first purchase records available to law enforcement agents;**
c. **Dealer records must include how much of each species of reef fish was purchased from each vessel;**
d. **Dealers must keep their records at the principal place of business for at least one year;**
e. **Dealers must have a permanent facility at a fixed location.**
f. **A copy of the dealer permit and record of which vessels the fish were purchased from must be kept on fish delivery trucks;**

Rejected Alternative(a): Require weighing of fish on trucks immediately on off-loading and immediate completion of trip tickets listing all fish by species.

Rejected Alternative(b): Status quo - no change in current rules.

As mentioned in the amendment text, there are about 479 primary dealers purchasing reef fish in the Gulf of Mexico based on state licenses bought. Undoubtedly, the number easily multiplies when potential buyers around the Gulf, including retail establishments and restaurants, are included. 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 (see Table 2). 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. All these establishments, which must also possess a license from the states, would be directly or indirectly affected in varying degrees by the proposed measures considered.

While enactment of reef fish (and other fishery) regulations presupposes a direct control on either fishing effort or fishing mortality, in actuality fisheries agencies have direct control only on the governing instruments (e.g., quotas, area closures, ITQ, etc.), the monitoring procedure (e.g., dockside, sea surface, or aerial observation, reviewing of financial records, etc.), and in some cases, the type of penalty (Anderson, 1987). Fishermen's behavior regarding net benefits maximization remains the same regardless of the presence of any regulations. Regulations merely pose as constraints to such maximizing behavior. In this context, the full benefits from enactment of "governing instruments" would not be realized if not complemented by adequate monitoring procedures (and penalty structure). In terms of costs and benefits determination, accounting for monitoring procedures does not only mean inclusion of initial and on-going enforcement costs but also determination of the benefit reduction when certain rules become highly susceptible to being evaded or avoided. To date, monitoring procedures for reef fish regulations are generally directed at observing fishermen's actual fishing activities, including the nature and level of their catches, at sea or at the dockside. One possible exception is

the determination of total catches for estimating quotas, a determination made by also collecting information from dealers. The proposed dealer permits would extend the monitoring process beyond the fishermen and onto the dealers (first buyers). While fishermen's activities are still the prime target for observation purposes, dealer permitting also extends the penalty for deviant behavior to the dealers themselves.

In general, permitting of dealers provides certain benefits the most important of which is the improved enforceability of many fishery regulations, but it does also impose certain costs directly on dealers and indirectly on persons that transact business with them. At the state level, (marine) seafood dealer permits or licenses are also one source of revenues; at the federal level, especially under the Magnuson Act, dealer permits provide revenues that merely offset administrative issuance costs. While relative to the entire federal government, costs of administering dealer permits are offset by permit fees, relative to the administering agency, NMFS, such administration costs mean a reallocation of existing funds from one budget item to another. The relatively small amount involved in such reallocation does not warrant further discussion here.

The major benefits from the **Proposed Action** come in the form of enhancing enforcement of several fishery regulations and improving the accuracy of commercial harvest estimation. Dealer permitting also provides a better enumeration of businesses potentially affected by fishery regulations as well as a more complete and accurate list of persons that the Council and NMFS can utilize for more widespread information dissemination regarding proposed and approved regulatory changes of federal reef fish rules. This latter set of benefits are actually mainly byproducts of dealer permitting and may be obtained through other less costly or less intrusive means.

Items (a), (e), and to some extent (f) of the Proposed Action would provide a clear identification of dealers buying reef fish directly from Gulf fishermen. Item (a) would also allow identification of fishermen selling reef fish to a particular dealer, and it would also ensure that reef fish caught in the Gulf of Mexico pass through known markets, at least up through the first buyers of reef fish. Items (b), (c), and (d) would ensure that a record of every transaction (which includes, among others, the actual amount of each species of reef fish sold) between the Gulf reef fishermen and dealers is kept in some known sites and available to federal law enforcement agents when a need arises. 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, especially now that all vessels with federal reef fish permits are required to file logbooks for every trip made.

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 stand to lose eventually their permit to participate in reef fish business when buying "illegally caught" fish. Currently dealers are already subject to some penalties at the federal and state level for buying "illegally caught" fish; the presence of federal permits would stiffen the penalty structure on 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 which 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 may be noted, however, 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. In addition to the above, permitting of dealer becomes very vital in realizing the benefits from an of effort

limitation program, particularly ITQ, that may be instituted for the reef fish fishery or a segment thereof, like the red snapper fishery.

Closely related to an enhanced enforcement of regulations expected from dealer permitting 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 proposed dealer permitting, 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 proposed 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 a numerical quota 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 (see Table 2). The proposed dealer permitting 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. Sales of reef fish outside of the system may not be counted towards the commercial quota or harvest.

From an economic efficiency standpoint, dealer permitting may be seen as a 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 depend on the level at which dealer permitting is enforced and on the level of avoidance activities exercised in relation to the dealer permitting requirement. Moreover, there are costs attendant to the imposition and enforcement of dealer permitting as will be discussed shortly.

The major cost items of the Proposed Action are compliance costs to dealers, threat to dealers of losing reef fish and other seafood business, decrease in dealer competition, and possible conflict with state licensing or other regulations. These costs may vary from dealer to dealer within a state or among the five Gulf states.

Compliance costs to dealers consist of permit fees, burden time of obtaining and renewing permits, cost of record keeping including the hiring of new personnel to maintain the records, and, perhaps for some, the cost establishing a permanent facility at a fixed location. As mentioned in the amendment text, the annual permit fee is currently estimated to be $53 per applicant, or a total of $25,387 for the 479 establishments known to be buying reef fish from Gulf fishermen. Considering the earlier

estimated number of potential dealers, the permit fee, and the relatively lax requirement to secure a permit, the total number of dealers and total permit costs to the industry may be larger than the mentioned figures. The annual burden time for obtaining and renewing permits has been estimated to be about 5 minutes per application or a total of about 40 hours for the 479 dealers. Again the total burden time may be larger considering the number of potential permit applicants. Record keeping cost could be a potential major cost item, but mainly to very small businesses. It may be expected that most of the major dealers of reef fish throughout the Gulf are now maintaining records of sale of reef fish and other species. The Florida trip ticket system, for example, already requires numerous information that dealers have to submit to the state agency. Louisiana has also established, though not yet operational, a trip ticket system for fishermen landing fish in the state. It is not known what the level of record keeping cost could be to smaller business establishments relative to their size of operation, although the major requirements under the Proposed Action are for them to record the amount of each species of reef fish purchased from each vessel and to keep such record in their principal place of business for at least one year. Again it may be expected that most dealers of reef fish throughout the Gulf already have some kind of permanent facilities at fixed locations. For smaller dealers or those that only occasionally buy reef fish, like restaurants, any permanent structure like houses or restaurant buildings could most likely qualify as permanent facilities at fixed locations for permit purposes. Although delivery vehicles may not qualify as permanent facilities at fixed locations, these businesses can still secure permits by specifying another place that could qualify as permanent facilities. To a large extent then, this last cost item may be viewed as very minimal.

In addition to the direct costs to dealers identified above, the proposed permitting system also imposes on them implicit costs that arise from complying with the regulations. These are implicit costs since no actual cost outlay is incurred but instead an additional activity demanding extra labor is performed. These costs are related more to tasks performed by 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 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 to the proposed dealer permitting 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 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, and fishermen would go by this route to the extent that additional revenues offset additional costs, including expected penalty costs. While this particular cost item is a possibility, the proposed requirements to obtain dealer permits do not appear to be too restrictive so that, on balance, this cost item is likely to be relatively small.

Another potential cost from the Proposed Action 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, regardless of where caught, if they can justify that the reef fish they buy come from state waters. 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 (see Table 2). 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 (see Table 1 for some rough indications of percentages of red snapper caught in state and EEZ waters from 1981 through 1989).

Considering both benefits and costs, the Proposed Action may be adjudged to result in net benefits to the fishery as a whole. Such net benefits tend to increase as an effort limitation for the reef fishery or any segment thereof is adopted.

Rejected Alternative(a) is mainly an additional requirement to those enumerated under the Proposed Action, with particular reference to delivery trucks. This specific requirement would tend to increase the cost of handling fish both from the standpoint of additional tasks to perform while fish are loaded onto the trucks and the loss in quality while fish are weighed and sorted by species. It may be noted that a more accurate recording of landings can be achieved by this requirement, but the extent of such benefit depends largely on the amount of reef fish handled via truck deliveries. If a large portion of reef fish caught in the Gulf are handled this way, there could more gains than costs to be derived from such requirement. Of course, the costs would be mostly borne by dealers or truckers in this way. Conversely, if only a relatively small portion of reef fish are handled via trucking deliveries to dealer establishments, costs are more likely to outweigh the benefits from more accurate accounting of reef fish catches.

Rejected Alternative(b) is the status quo, and by definition does not have impacts on fishery participants. Relative to the Proposed Action, however, maintaining the status quo would mean forgoing some net benefits from dealer permitting. These benefits especially tend to be large when an effort limitation system is later adopted for the reef fish fishery or any segment thereof.

<u>Transfer of Fish Trap Endorsement</u>

> <u>Proposed Action</u>: **During the fish trap permit moratorium (to be implemented through amendment 5) permit the transfer of a fish trap endorsement and permits to occur only between members of the immediate family; husbands, wives, sons, daughters, brothers, sisters, mothers and fathers.**
>
> <u>Rejected Alternative</u>: **Status quo - No transferability of fish trap endorsements.**

Amendment 5 to the reef fish FMP, which is currently under Secretarial review, contains a provision that requires an endorsement on commercial permits to fish for traps and imposes a moratorium on the issuance of such endorsement for a period of three years. During the period of the moratorium, fish trap endorsements are not transferable. The Proposed Action would change the non-transferability feature of the fish trap endorsement, but allow only a limited form of transfer.

The **Proposed Action** is mainly intended to 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. 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, as mentioned in the amendment text, may avail of such transfer provision.

It was discussed in the RIR accompanying Amendment 5 that, in terms of economic efficiency, net benefits to be gained from the proposed fish trap endorsement and moratorium is about nil. A similar conclusion may be made here about the Proposed Action. This is the case since the transfer of fish

trap endorsement would not increase nor decrease the number of participants in the fish trap fishery, and thus would not affect the efficiency of this segment of the reef fish industry.

The **Rejected Alternative** is the status quo, and thus by definition does not have impacts on fishery participants in the short run. Over the long-run, maintaining the status quo would mean forgoing the social benefits that would accrue to the Proposed Action.

Transfer of Reef Fish Permits and Endorsements

> Proposed Action: **In the event of the death or disability of a permit and/or endorsement holder, the Regional Director shall have the authority to transfer, either permanently or temporarily, the permit and/or endorsement to a person specified by the permit/endorsement holder, their legal guardian, or the estate.**
>
> Rejected Alternative: **Status quo - no change.**

Currently under the reef fish FMP, as amended, a moratorium is in effect on the issuance of additional commercial reef fish vessel permit. Unless otherwise extended, this moratorium ends on May 1995. In addition, red snapper endorsements attached to qualified reef fish permits are required to harvest red snapper at a relatively higher limit than those without the endorsements. The endorsement system took effect in 1993 under an emergency action and extended to the 1994 season through a plan amendment. In general under the current plan, no transfer of either vessel permit or endorsement is allowed. The only exceptions to the rule on transfer of permits are: a) a reef fish permit holder may transfer the permit from one vessel to another vessel which he also owns; and, b) permits are sold to another person together with the permitted vessel. Transfer of red snapper endorsement is allowed only under the first exception on the transfer of permits. We may note, however, that the red snapper endorsement is attached to the vessel permit and so may not be used for fishing red snapper even by qualified persons without the corresponding vessel permit.

The **Proposed Action** would add another exception to the rule on the transfer of vessel permits and/or endorsements. The proposed measure essentially 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 upon authorization by the Regional Director. This measure has mainly positive social impacts that may be considered larger than a corresponding transfer provision for fish trap permit/endorsement. Such positive effects may be considered to outweigh the costs of implementing this proposed regulation. Considering the very few instances under which transfer can occur under the specified circumstances of the proposed measure, only a small net social benefit, in absolute terms, may be effected by this measure. In terms of economic efficiency however, the proposed measure may be considered to have no direct positive or negative effects.

The **Rejected Alternative**, which is the status quo, has no short-run impacts on fishery participants by definition. However, considering the fact that a hardship situation addressed by the proposed measure has already occurred (refer to the amendment text), maintaining the status quo would mean foregoing the net social benefits that could be derived from the Proposed Action.

9.6 Private and Public Costs

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 specific action include:

Council costs of document preparation, meetings, public hearings, and information dissemination.	$18,200
NMFS administrative costs of document preparation, meetings and review.	$ 5,000
Law enforcement costs.	$20,000
Public burden associated with permits.	$25,400
NMFS costs associated with permits.	$25,400
TOTAL	$94,000

Notice that both the public burden and NMFS costs associated with the permitting requirement are the same. Although the estimated NMFS costs are shifted to the public as permit fees, such fees will revert to the national treasury and not to NMFS. It may also be noted that the above cost estimates do not include the burden time of about 5 minutes per dealer associated with the permitting requirement.

9.7 Summary of Regulatory Impacts

There are three sets of management measures considered in this plan amendment. The only alternatives to the proposed measures are the status quo, except in the case of the dealer permitting requirement where the other (than status quo) alternative merely adds one more item to those specified under the Proposed Action. Given the above case, this summary focuses on the net impacts of the proposed actions relative to the status quo.

The Proposed Action requiring dealers to have permits and keep records of their purchases of reef fish has been adjudged to result in net economic benefits. These net benefits are likely to increase in the event that an effort limitation program is instituted for the Gulf reef fishery or any segment thereof. The Proposed Action on the transfer of fish trap endorsements is expected to generate net social impacts although in terms of economic efficiency no impacts may be associated with the measure. A similar conclusion may be said of the Proposed Action on the transfer of reef fish permits and endorsement; that is, it is expected to result in net social benefits but essentially has no effects in terms of economic efficiency.

9.8 Determination of a Major Rule

Pursuant to E.O. 12291, a regulation is considered a "major rule" 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.

The three Proposed Actions, whether taken individually or collectively, are not expected to have a $100 million effect per year on the economy, considering the nature of the measures, namely, dealer permitting, transfer of fish trap endorsement, and transfer of reef fish permits and endorsements. Moreover, the commercial reef fish fishery as a whole had an ex-vessel value of only about $34.6 million in 1991. None of the Proposed Actions is expected to cause an increase in the price of red snapper or reef fish to consumers even under the very unlikely case that the dealers market becomes less competitive. The Proposed Action on dealer permits is bound to increase the costs of dealer operations in terms of direct expenses for securing permits and keeping records and of implicit costs in complying with the regulations; however, such cost increases are not expected to be substantial.

There are no industry cost increases associated with the Proposed Actions on the transfer of fish trap endorsement and transfer of reef fish permit and red snapper endorsement. The federal government will incur an increase in the cost of enforcing the dealer permitting requirement estimated at about $4,000 annually. On the other hand, some enhancement in the enforcement of fishing rules may be brought about by the proposed dealer permits. Employment, investment, productivity, innovation, or the comparative advantage of the domestic fishing industry are unlikely to be adversely impacted by any of the Proposed Actions. In fact, employment and productivity may improve under the proposed measures to allow transfer of fish trap endorsement and reef fish permit/endorsement. There is a possibility that competition in the dealers market may be impaired, but the relative size of potential dealers and the relative ease of securing dealer permits pose as major factors that could render such possibility very remote.

On balance, the proposed measures are deemed to not constitute a "major rule" under any of the mentioned criteria.

9.8 Initial Regulatory Flexibility Analysis

9.8.1 Introduction

The purpose of the Regulatory Flexibility Act (RFA) is to relieve small businesses, small organizations, and small governmental entities from burdensome regulations and record keeping requirements. The category of small entities likely to be affected by the proposed plan amendment is that of commercial businesses currently engaged 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." 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.

9.8.2 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). In 1992, a total of 2,214 permits were issued to qualifying individuals and attached to vessels, and are deemed to comprise the commercial harvest sector of the reef fishery in the U.S. Gulf of Mexico. In addition, 131 permittees were granted the red snapper endorsement. About 100 vessels are expected to be issued fish trap endorsements under Amendment 5 to the reef fish FMP. Based on state licensing records about 479 primary dealers have purchased reef fish in the Gulf of Mexico. 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. Practically all current participants of the reef fish fishery fall within such definition of small business. The dealer permitting requirements will affect all primary dealers known to have purchased reef fish in the Gulf of Mexico. The proposed measure on the transfer of reef fish permits and endorsement is expected to affect only a very small fraction of the vessels with reef fish permits and of those with red snapper endorsement. Similarly the proposed measure on the transfer of fish trap endorsement is expected to affect a very small fraction of the 100 or so vessels that would qualify for the endorsement. Primarily because of the dealer permitting requirement, 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).

Both the Proposed Action on the transfer of fish trap endorsements and the Proposed Action on the transfer of reef fish permit and red snapper endorsement are not expected to have impacts that would qualify under any of the criteria for "significant" impacts, since such measures would not entail any cost increase in fishing operation for the affected entities nor would they force any small business entity to cease operations. In fact, both the transfer measures would allow affected entities to continue their fishing operations when otherwise they would be forced to cease operation under he status quo .

Dealers, due to the permitting requirement, will incur additional cost equivalent to the cost of permits and of additional record keeping activities. The permit cost is most likely minimal; the record keeping cost cannot be presently determined but are expected to likely incurred in the normal course of business of these entities. The implicit costs of complying with the regulations cannot be estimated. None of the current reef fish dealers would be forced to cease operation since there are no restrictive requirements to be met in securing dealer permits.

From the foregoing discussion it is determined that the proposed measures would not effect "significant economic impacts" on the affected small entities.

Conclusion

Mainly due to the proposed dealer permitting requirement, the "substantial number" criterion would be met; however, the "significant economic impacts" on the affected small entities would not be met. It is therefore concluded that the proposed regulations, if enacted, would not result in significant economic impacts on a substantial number of small entities. Hence, an IRFA is not required.

10. ENVIRONMENTAL ASSESSMENT (EA)

10.1 Introduction

This EA addresses the environment effects of the proposed actions and alternatives of Amendment 7. The environment effects of the reef fish fishery have been previously addressed by the SEIS for Amendment 5 (GMFMC, 1993) and are incorporated by reference.

10.2 Purpose and Need for Action

The purpose of Amendment 7 is to improve the accounting of reef fish landed by permitted vessels and enhance the enforceability of this accounting process by permitting dealers. A number of other alternatives that may have enhanced enforcement were considered and rejected for biological or socioeconomic reasons. Transfer of permits and endorsements to permits for specific activities would be provided to immediate family members or estates during periods when moratoriums prevent general transferability of permits and endorsements. Such transfer would alleviate hardship on families and fishermen, particularly in the case of death or disability. Section 5, Problems Requiring a Plan Amendment, contains additional information relevant to the need for these proposed actions.

10.3 Alternatives Including Proposed Action

A summary of the proposed actions and alternatives considered and rejected are listed under Section 6 of Amendment 7. A detailed discussion of the impacts (and rationale for selection) of proposed actions and alternatives considered and rejected is presented in Section 8 of Amendment 7 and is incorporated here by reference.

The consequence of taking no action to implement the proposed actions would be to allow continuation of the current system of collection of landings data for reef fish which likely does not account for a portion of such landings and is difficult to enforce. This decreases the reliability of stock assessments on the condition of the stocks. Taking no action would not alleviate the socioeconomic hardship to fishermen and their families related to prohibitions on transfer of permits or endorsements.

10.4 Affected Environment

The SEIS for Amendment 5 (GMFMC 1993) discusses the effects of the reef fish fishery on the environment (Sections 3 and 4) and updated the description of the affected habitat (Section 3.1.1). Those discussions are incorporated here by reference.

10.5 Environmental Consequences

Issue: Improve the enforceability of reef fish rules (Section 8A)

A number of alternatives for improving enforcement were suggested by the Law Enforcement Advisory Panel (LEAP) and included in the Public Hearing Draft of Amendment 7 (GMFMC 1993b) without any preference for alternatives (proposed actions) being stated by the Council. The public hearing draft was submitted for review by the public, advisory panels (RFAP and RAP) and scientific committee (SSC). As a result of this review and of discussion by the Council, most of the alternatives suggested by the LEAP, other than dealer permitting requirements were considered inappropriate based on scientific, biological and socioeconomic reasons (see Section 8 of this amendment). The Council does propose actions to require permitting of dealers purchasing reef fish from permitted vessels. The effect of the permitting requirement is largely socioeconomic in nature with no impacts anticipated on the natural environment but should benefit management of the reef fish resources. The socioeconomic impacts would affect at least 479 dealers that state records indicate are currently purchasing and handling reef fish species, as well as an undetermined number for which the states have no records, some of which may be purchasing such fish in violation of state laws. Each of the dealers permitted would be required annually to obtain a dealer permit at a cost of about $53 and be subject to annual burden hours to obtain the permit estimated to be 5 minutes per dealer. The dealers would be required to keep and make available for inspection records of catches by vessel for each trip. However, this type of record keeping is currently required by four of the five states (Table 2). Permitted vessels would be required to sell only to permitted dealers, creating the potential for limiting their markets and possibly the price received. However, as any person with a permanent facility may obtain a permit for the nominal annual fee of $53, this impact should be minimal. Overall the beneficial impact of improving the data collection system through the proposed action (Section 8A) which will allow tracking and comparison of vessel landings to dealer records should significantly outweigh the impact on the dealers.

Issue: Transfer of Fish Trap Endorsements (Section 8B)

Amendment 5 (GMFMC 1993), when implemented in the fall of 1993, will institute a three-year moratorium on issuance of additional fish trap endorsements (eligible permit holders are those turning in logbooks demonstrating catches by traps in 1991 and 1992 through November 19). The

moratorium will extend through the fall of 1996 or about 18 months longer than the moratorium on reef fish vessel permits (Amendment 4, GMFMC 1991). The proposed action would allow such endorsements to be transferred to the immediate family for the duration of the fish trap endorsement moratorium to alleviate socioeconomic hardship. It would maintain the limit on participation in that fishery during the period studies on the ecological effects of traps are completed. The proposed action has no effect on the natural environment or fishery resources. The overall cumulative effect is beneficial.

Issue: Transfer of Reef Fish Permits and Endorsements (Section 8C)

The proposed action of allowing the transfer of any permits under the Reef Fish FMP, including endorsements in the event of death or disability has no effect on the natural environment or fishery resources. The socioeconomic effect is beneficial by eliminating the hardship to fishermen and families should such events occur.

Issue: No Action

The beneficial effects cited in the sections above, which are primarily socioeconomic in nature, would be foregone. The value to management and the fishery resources (through better stock assessments) from better accounting of landings, achieved in part through enhanced enforcement, would also be foregone.

Effect on Endangered Species and Marine Mammals

A Section 7 consultation, under the authority of the Endangered Species Act, was held on this proposed amendment. The conclusion was that neither the fishery nor the proposed actions is likely to jeopardize the continued existence of threatened or endangered sea turtles or marine mammals.

Irreversible and Irretrievable Commitments of Resources

Other than the costs of administering and enforcing these rules, there are no irreversible or irretrievable commitments of resources involved in this decision.

Relationship between Short-term Uses and Long-term Productivity

In the short-term certain fish dealers may be required to alter the method they keep records on purchases from individual vessels. In the long-term better accounting of landings should provide benefits to productivity of reef fish resources. Proposed actions to allow permit transfers under the stated conditions should benefit both short-term uses of the resource by fishermen and be consistent with their enhanced long-term productivity from the resource.

10.6 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 create a greater degree of cost efficiency in enforcement of regulations of the fishery and alleviate problems related to accounting for landings of the fishery resources and problems related to social and economic hardship associated with restrictions on permit transfer. The proposed actions should not result in impacts significantly different in context of intensity from those described in the Environmental Impact Statement of the FMP the Supplemental Environmental Impact Statement for Amendment 5 and for the fishery and Environmental Assessments published with the regulations implementing Amendments 1, 2, 3, 4 and 6.

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

11. OTHER APPLICABLE LAW

11.1 Impact on Other Fisheries

The proposed actions and the alternatives considered and rejected are anticipated to have no effect on other fisheries.

11.2 Habitat Concerns

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

11.3 Vessel Safety Considerations

The proposed actions and alternatives considered and rejected are anticipated to have no effect on vessel safety.

11.4 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.

11.5 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 permit requirements and alter some data collection practices utilized in the industry. The public reporting burdens for these collections of information are estimated to average 5 minutes per response annually including the time for reviewing instructions and submitting permit applications.

11.6 Federalism

No federalism issues have been identified relative to the actions proposed in this amendment.

12. REFERENCES

Anderson, L. G. 1987. A management agency perspective of the economics of fisheries regulation. *Marine Resource Economics*, 4(2): 123-131.

GMFMC. 1993. Supplemental environmental impact statement for the reef fish fishery of the Gulf of Mexico and Amendment 5 to the Reef Fish Fishery Management Plan (FMP). Gulf of Mexico Fishery Management Council, Tampa, Florida. 79 p + figs. + app.

GMFMC. 1993a. Amendment 6/EA/RIR to the Reef Fish FMP. Gulf of Mexico Fishery Management Council, Tampa, Florida. 21 p.

GMFMC. 1993b. Public Hearing Draft of Amendment 7 to the Reef Fish FMP. Gulf of Mexico Fishery Management Council, Tampa, Florida. 114 p.

GMFMC. 1991. Amendment 4/EA/RIR to the Reef Fish FMP. Gulf of Mexico Fishery Management Council, Tampa, Florida. 48 p.

GMFMC. 1989. Amendment number 1 to the Reef Fish FMP. Gulf of Mexico Fishery Management Council, Tampa, Florida. 356 p.

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GSMFC. 1992. Licenses/fees required by Alabama, Florida, Louisiana, Mississippi and Texas in their marine waters. Gulf States Marine Fisheries Commission, Ocean Springs, Mississippi 39564,12 p.

NMFS. 1993. Seafood brokers. National Marine Fisheries Service, Miami, Florida 33149, 4 p.

NMFS. 1993. Seafood processors. National Marine Fisheries Service, Miami, Florida 33149, 10 p.

NMFS. 1991. List of primary receivers of imported fishery products at Miami, Florida. National Marine Fisheries Service, Miami, Florida 33149, 20 p.

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Table 1. Estimates of Red Snapper Landings Caught From State Waters

Year	Percent of Landings Caught From: State Waters[2]	EEZ	Unknown[3]	Total[1] Landings (1,000 x lbs.)
1981	2.5%	89.1%	8.4%	4,994
1982	2.1%	93.1%	4.8%	5,524
1983	2.1%	91.5%	6.4%	6,497
1984	1.3%	98.1%	0.6%	5,427
1985	6.9%	93.1%		4,009
1986	1.4%	98.6%		3,933
1987	1.6%	98.4%		3,069
1988	0.7%	99.3%		3,941
1989[4]	1.2%	98.8%		3,067
Average	2.2%			

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[1] Landings from U.S. waters plus unknown.

[2] Principally from Florida offshore waters.

[3] Unknown portion could have come from catches in state or EEZ or foreign waters.

[4] Catch by distance from shore not currently available on computer file for years after 1989.

TABLE 2

COMPARISON OF STATE DEALER AND REPORTING LAWS

Person buying or acquiring fish for resale to consumers must have:					
1. Wholesale and/or retail dealer license, or	LA	FL	AL	TX	MS
2. County grocery or meat market license, or					MS
3. Commercial (charter) vessel license, or					MS
4. Commercial fisherman's license	LA			TX	
Wholesale/Retail dealers must purchase fish from:					
1. Licensed commercial fishermen, and	LA	FL	AL	TX	
2. Federal reef fish vessel permittee	LA	FL			
3. Other dealers					
Commercial fishermen must sell to:					
1. Wholesale dealer		FL			
Dealer must record species and weight for each sale and:					
1. Provide such reports to state		FL	*		*
2. Maintain such reports for inspections or provide upon request	LA			TX	MS
3. Include fisherman license number	LA	FL	*		MS
4. Report summary of monthly purchases	LA		AL	TX	
Commercial fishermen must report if not selling through dealer:		LA			
Failure to report results in:					
1. Misdemeanor	LA	FL	AL	TX	MS
2. Possible revocation or suspension of license		FL	AL	TX	
Falsifying reports results in:					
1. Misdemeanor	LA	FL	AL	TX	MS
2. Possible revocation or suspension of license		FL	AL	TX	

*Alabama and Mississippi can change rules by regulation.

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