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Final – REEF FISH AMENDMENT 34
Commercial Reef Fish Permit Requirements and Crew Size on Dual-Permitted Vessels in the Gulf of Mexico

April 2012

(INCLUDING DRAFT ENVIRONMENTAL ASSESSMENT, REGULATORY IMPACT REVIEW, AND REGULATORY FLEXIBILITY ACT ANALYSIS)

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ABBREVIATIONS USED IN THIS DOCUMENT

APA	Administrative Procedure Act
COI	Certificate of inspection
Council	Gulf of Mexico Fishery Management Council
DQA	Data Quality Act
EA	Environmental assessment
EEZ	Exclusive economic zone
EFH	Essential fish habitat
EIS	Environmental impact statement
EJ	Environmental justice
E.O.	Executive Order
ESA	Endangered Species Act
FEIS	Final environmental impact statement
FMP	Fishery management plan
GMFMC	Gulf of Mexico Fishery Management Council
Gulf	Gulf of Mexico
gw	Gutted weight
HAPC	Habitat area of particular concern
IFQ	Individual fishing quota
IRFA	Initial regulatory flexibility analysis
lbs	pounds
LOF	List of fisheries that may interact with mammals under the MMPA
MMPA	Marine Mammal Protection Act
Magnuson-Stevens Act	Magnuson-Stevens Fishery Conservation and Management Act
MRFSS	Marine Recreational Fishery Statistics Survey
MRIP	Marine Recreational Information Program
NMFS	National Marine Fisheries Service
NOAA Fisheries Service	NOAA's National Marine Fisheries Service
NOAA	National Oceanic and Atmospheric Administration
NOS	National Ocean Service
OSHA	Occupational Safety and Health Administration
PRA	Paperwork Reduction Act
RFA	Regulatory Flexibility Act
RIR	Regulatory impact review
Secretary	Secretary of Commerce
SEDAR	Southeast Data, Assessment, and Review
SEFSC	Southeast Fisheries Science Center
SEIS	Supplemental environmental impact statement
SERO	Southeast Regional Office
VMS	Vessel monitoring system

ENVIRONMENTAL ASSESSMENT COVER SHEET

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Name of Action
Reef Fish Amendment 34: Commercial Reef Fish Permit Requirements and Crew Size on Dual-Permitted Vessels

TYPE OF ACTION

(X) Administrative	( ) Legislative
(X) Draft	( ) Final

ABSTRACT

Reef Fish Amendment 34 considers modifications to income qualification requirements for the renewal of Gulf of Mexico commercial reef fish permits and to crew size regulations for dual-permitted vessels while fishing commercially. To obtain or renew a commercial vessel permit for reef fish, more than 50% of the applicant's earned income must have been derived from commercial fishing or from charter fishing during either of the two calendar years preceding the application. Due to recent regulatory changes implemented in the commercial sector, e.g., establishment of individual fishing quotas in several fisheries, and to the relative ease of fulfilling or circumventing income requirement provisions, existing income qualification requirements may no longer be relevant. Maximum crew size regulations stipulate that a dual-permitted vessel without a certificate of inspection is limited to a three person maximum crew size when fishing commercially. For commercial spear fishermen, a four crew member maximum would allow two persons to remain aboard while there are two divers in the water, thereby increasing the safety of commercial diving operations.

EXECUTIVE SUMMARY

This amendment addresses several administrative issues relative to earned income requirements for commercial reef fish permit renewal and to the maximum crew size for dual-permitted vessels while fishing commercially. Due to recent changes in the reef fish commercial fishery the income requirement and crew size limit regulations may no longer effectively serve their original purposes. The Gulf of Mexico Fishery Management Council considered several alternatives for modifying the income requirement for permit renewal and the maximum crew size of dual-permitted vessels. These alternatives are summarized below.

To renew a commercial vessel permit for reef fish, more than 50% of the applicant's earned income must have been derived from commercial fishing or from charter fishing during either of the two calendar years preceding the application. Applicants must complete the Income Qualification Affidavit section on the Federal Permit Application as proof of meeting permit income qualification requirements for reef fish vessel permits. This requirement is relatively easy to meet or circumvent. In addition, the requirement does not address regulatory changes such as the implementation of individual fishing quota programs for the red snapper and grouper/tilefish species which make up the majority of all reef fish landings. Regardless of the proportion of a fisherman's income that has been derived from commercial or charter fishing, participation in these individual fishing quota fisheries is restricted to those who possess quota shares or who sell annual allocation. Eliminating the income requirement would afford more flexibility to fishermen and allow them to earn income in other occupations. This added flexibility would allow some fishermen to renew their permits even if they did not have the opportunity to earn enough income from fishing. The elimination of income requirements would also decrease the administrative burden by simplifying the permit renewal process.

The Gulf of Mexico Fishery Management Council considered expanding the income sources used to determine the applicant's income earned from fishing to include income earned from the sale of individual fishing quota shares and allocation. However, this alternative is not expected to affect the relative ease with which income qualification requirements can be circumvented. Another alternative would have replaced the income requirement with a landings requirement where an applicant would be required to prove that a predetermined amount of reef fish has been landed in the preceding year. The Gulf of Mexico Fishery Management Council considered minimum annual landings thresholds ranging from 500 pounds to 2,000 pounds of reef fish. This alternative could increase the administrative burden and be difficult to monitor and enforce. A landings requirement may raise the potential of increased fishing effort to achieve the required threshold. Finally, the Gulf of Mexico Fishery Management Council considered implementation of a protocol to temporarily suspend income requirements in response to events and conditions (such as oil spills or hurricanes) that affect fishing effort regionally or Gulf-wide. However, the election to eliminate the income requirements completely renders this option redundant.

Currently, 154 vessels possess a charter/headboat reef fish permit and a commercial permit, referred to as dual-permitted vessels. Unless the vessel has a certificate of inspection, dual-permitted vessels are limited to a three person maximum crew size as established under Amendment 1 (GMFMC 1990). Historically, limiting the crew size on a dual-permitted vessel when fishing commercially may have served to prevent double-dipping, i.e., a vessel might take out a number of passengers under the pretense of making a charter trip, but subsequently sell the catch. In addition to the implementation of the individual fishing quota programs, all

commercial reef fish vessels are required to be equipped with vessel monitoring systems. The strict reporting requirements of these management measures make it clear when a vessel is operating as a commercial vessel. This raises the question of whether the maximum crew size is still relevant.

Dual-permitted commercial spear fishermen requested an increase in crew size to allow two divers in the water, diving as a buddy pair, while two crew members remain aboard the vessel. This conforms to safe operating procedures for commercial diving and directly promotes the safety of human life at sea. The Gulf of Mexico Fishery Management Council considered eliminating the crew size completely or increasing the maximum size from three to four persons. It is possible that eliminating the crew size completely could lead to an increase in effort or other unintended consequences. Therefore, the Gulf of Mexico Fishery Management Council selected the more prudent alternative, a controlled increase in crew size from three to four persons. By limiting the crew size increase to one additional crew member rather than eliminating the maximum crew size completely, any potential increase in efficiency and unintended impacts are minimized.

FISHERY IMPACT STATEMENT

Given recent changes in the commercial sector of the reef fish fishery, such as the implementation of individual fishing quota (IFQ) programs for the main reef fish species, the income requirement and crew size limit regulations may no longer serve the purposes for which they were designed. The preferred alternatives of the actions of this amendment would eliminate the income requirement for renewal of commercial reef fish permits and increase the maximum crew size of dual-permitted vessels (possessing both a charter/headboat and commercial permit) from three to four crew members when fishing commercially. Neither of these actions is controversial and the net impacts are expected to be positive. Detailed discussion of the expected effects for all alternatives considered is provided in Section 4. The following paragraphs provide a summary of these effects.

Social benefits are expected from the removal of the income requirement as permit renewal is facilitated and reef fish permit holders may engage in other income generating activities due to economic needs or livelihood diversification. While a permit holder's harvest of main reef fish species is primarily determined by his IFQ share and allocation holdings, indirect economic benefits are expected to result from allowing permit applicants to freely select the income generating activities they might pursue. Although economic benefits are not expected, social benefits are anticipated from the increase in crew size to four persons by promoting the safety at sea for commercial spearfish operations. The increase would allow two divers to be in the water, diving as a buddy pair, while two crew members remain aboard and conforms to safe operating procedures for commercial diving.

Impacts to the physical environment generally result from fishing effort and gear types interacting with marine habitats whereas impacts to the biological environment arise from how changes to fishing effort affect fishing mortality including discarded species. Eliminating the income requirements for commercial reef fish permits is expected to have minimal if any impacts to the physical and biological environments. It is possible that removing the income requirement may have indirect positive effects on the physical and biological environments if fishers no longer feel the need to catch a percentage of their income. This could potentially reduce interactions with the physical and biological environments. The effects to the physical and biological environments would likely be minimal for increasing the crew size for dual-permitted vessels. Eliminating the crew size could potentially incur impacts should fishing effort increase; however, restricting the crew size increase from three to four is not likely to incur additional impacts to the physical or biological environment.

Eliminating the income requirement for permit renewal and increasing the maximum crew size of dual-permitted vessels are not expected to affect other participants in the reef fish fishery, nor fishing communities generally. Managed separately, the reef fish complex of the Gulf of Mexico is the counterpart of the snapper grouper complex of the South Atlantic. Because there is no income requirement for renewal of snapper grouper permits, no impacts are expected to accrue to fishery participants in the adjacent jurisdiction of the South Atlantic. The increase in crew size from three to four provides an increase in safety for dual-permitted vessels in the reef fish fishery and is not expected to impact other fishery participants in the Gulf of Mexico or adjacent jurisdictions.

1. INTRODUCTION

The Gulf of Mexico Fishery Management Council (Council) and NOAA Fisheries Service intend to address several administrative issues in this regulatory action. Management measures relative to earned income requirements for commercial reef fish permit renewal and to the maximum crew size for dual-permitted vessels (possessing both a commercial and charter/headboat permit) while fishing commercially are included in this amendment.

1.1 Background

The renewal of commercial reef fish permits is currently subject to income qualification requirements. To obtain or renew a commercial vessel permit for reef fish, more than 50% of the applicant's earned income must have been derived from commercial fishing (i.e., harvest and first sale of fish) or from charter fishing during either of the two calendar years preceding the application. An applicant must complete the Income Qualification Affidavit section on the Federal Permit Application for Vessels Fishing in the Exclusive Economic Zone (EEZ) as proof of meeting permit income qualification requirements for the commercial reef fish vessel permits. Due to regulatory changes implemented in the commercial sector since the establishment of income qualification requirements for the renewal of commercial permits, e.g., establishment of individual fishing quotas in several fisheries, and to the relative ease of fulfilling or circumventing income requirement provisions, existing income qualification requirements may no longer be applicable to the current commercial fishing environment.

In response to the expanding area of the Gulf of Mexico (Gulf) affected by the April 20, 2010 Deepwater Horizon MC252 oil spill, NOAA Fisheries Service issued an emergency rule to temporarily close a portion of the Gulf EEZ to all fishing [75 FR 24822]. At the largest size on June 2, 2010, the closed area covered 88,522 square miles, or approximately 37% of the Gulf of EEZ. For many commercial fishermen operating in the Gulf, the temporary closure of a portion of the EEZ significantly curtailed or eliminated their ability to earn their income from commercial fishing. To generate income, some fishermen accepted employment in other occupations, e.g., participation in clean-up efforts. The temporary inability to generate income through commercial fishing as well as income earned in activities other than commercial fishing may limit some permit holders' ability to renew their permits within the prescribed timeframe.

As of September 20, 2011, 154 vessels possess a charter/headboat reef fish permit and a valid commercial reef fish permit, referred to as dual-permitted vessels (J. Dudley, SERO Permits Office, pers. comm.). Unless the vessel has a certificate of inspection (COI), dual-permitted vessels are limited to a three person maximum crew size when fishing commercially. Originally established under Amendment 1 (GMFMC 1990), the three person crew size for dual-permitted vessels when fishing commercially was part of the rule creating a commercial reef fish permit. Commercial fishing was defined in terms of possessing landings in excess of the recreational bag limit. The crew size limit served the purpose of preventing a dual-permitted vessel from engaging in a charter/headboat trip while landing fish in excess of the recreational bag limits. However, a safety concern may arise under the current crew size regulations when dual-permitted vessels are spearfishing commercially. The maximum crew size of three persons prohibits fishermen from fishing in pairs using the buddy system while having a standby diver and captain at the surface as recommended by the U.S. Coast Guard diving operations manual (2009).

Due to changes in the regulatory framework for the commercial sector of the reef fish fishery (e.g., individual fishing quota (IFQ) programs for red snapper, grouper, and tilefish), existing limitations on crew size for dual-permitted vessels may no longer be relevant. The Council has also received requests from dual-permitted vessel operators to allow a crew size of at least four persons when commercially spearfishing. The increase in crew size would allow two persons to remain on the vessel while there are two divers in the water, thereby contributing to increased safety at sea. Increasing the maximum crew size to four crew members would allow two persons to remain aboard while there are two divers in the water, thereby increasing the safety of commercial diving operations.

1.2 Purpose and Need

The purpose for this amendment is to address the income qualification requirements for the renewal of commercial permits and the maximum crew size regulations for dual-permitted vessels when fishing commercially in order to consider the safety issues associated with spearfishing under the maximum crew size rule. The need for this amendment is derived from National Standards 8 and 10. Standard 8 states that, "Conservation and management measures shall, consistent with the conservation requirements of the Magnuson-Stevens Act (including the prevention of overfishing and rebuilding of overfished stocks), take into account the importance of fishery resources to fishing communities in order to: (1) Provide for the sustained participation of such communities." Standard 10 states that, "Conservation and management measures shall, to the extent practicable, promote the safety of human life at sea. Fishing is an inherently dangerous occupation where not all hazardous situations can be foreseen or avoided. The standard directs Councils to reduce that risk in crafting their management measures, so long as they can meet the other national standards and the legal and practical requirements of conservation and management."

1.3 History of Management

The following summary describes management actions that affect commercial and for-hire permits of the reef fish fishery in the Gulf. The Reef Fish Fishery Management Plan (FMP) (implemented in November 1984) established the species under federal management and regulations for fishing those species in the EEZ.

Amendment 1 [with its associated environmental assessment (EA), regulatory impact review (RIR), and initial regulatory flexibility analysis (IRFA)] to the Reef Fish FMP, implemented in 1990, required an annual commercial fishing permit for fishing under the commercial quota (exceeding a bag limit) and for the sale of reef fish, with the qualifying condition that more than 50% of an individual's (owner or operator) earned income must be derived from commercial or charter (for-hire) fishing. Charter and headboat applicants must submit their Coast Guard Masters license number and commercial applicants must submit their documented vessel number on the permit application. Only those fish caught by a permitted vessel can be sold. Charter and headboats with permits to fish under the commercial quota are required to fish under the bag limit when under charter or when there are more than three persons aboard, including captain and crew. Other fishermen on unpermitted vessels are limited to the established bag limits.

Amendment 4 [EA, RIR, IRFA], 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 permit holder or between individuals when the permitted vessel is transferred.

Amendment 7 [EA, RIR, IRFA], implemented in February 1994, established reef fish dealer permitting and record keeping requirements, and allowed transfer of 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.

Amendment 11 [EA, RIR, IRFA], was partially approved by NOAA Fisheries Service and implemented in January 1996. The approved provisions include: (1) limit sale of 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 five years or until December 31, 2000, while the Council considers limited access for the reef fish fishery; and (5) allow permit transfers to other persons with vessels by vessel owners (not operators) who qualified for their reef fish permit.

Amendment 14 [EA, RIR, IRFA], implemented in March and April 1997, modified the provisions for transfer of commercial reef fish vessel permits.

Amendment 17 [EA, RIR, IRFA], was implemented on August 2, 2000. This amendment extended the commercial reef fish permit moratorium for another five years, from its previous expiration date of December 31, 2000 to December 31, 2005, unless replaced sooner by a comprehensive controlled access system. The purpose of the moratorium is to provide a stable environment in the fishery necessary for evaluation and development of a more comprehensive controlled access system for the entire commercial reef fish fishery.

Amendment 18A [EA, RIR, IRFA], implemented in August 2006, addresses enforcement and monitoring issues. Actions include the requirement of vessel monitoring systems onboard vessels with federal commercial permits for reef fish, including charter vessels and headboats that have a commercial reef fish permit. In addition, the amendment prohibits vessels from retaining reef fish caught under the recreational size and bag/possession limits when commercial quantities of reef fish are onboard; and adjusts the maximum crew size onboard a vessel issued a COI when the vessel has both commercial reef fish and charter/headboat permits to the minimum crew size under the COI when the vessel is fishing commercially for more than 12 hours.

Amendment 20 [EA, RIR, IRFA], also known as the Corrected Charter/Headboat Moratorium Amendment, was initially implemented in July 2002. It is designated both as Reef Fish Amendment 20 and Coastal Pelagic FMP Amendment 14. This amendment established a 3-year moratorium on the issuance of new charter/headboat vessel permits in the recreational for-hire fisheries in the Gulf EEZ. The amendment was approved by NOAA Fisheries Service and the provisions to determine eligibility and distribute moratorium permits were implemented on July 29, 2002, with the moratorium originally scheduled to become effective on December 26, 2002. However, on December 17, 2002, NOAA Fisheries Service published an emergency action that deferred the date when "moratorium" charter/headboat permits are required from December 26,

2002 until June 16, 2003. This action was required because the final rule implementing the for-hire permit moratorium contained an error regarding eligibility that needed to be resolved before the moratorium could take effect. The purpose of this moratorium is to limit future expansion in the recreational for-hire fishery while the Council monitors the impact of the moratorium and considers the need for a more comprehensive effort management system in the for-hire recreational fishery. The Council set a qualifying cutoff date of March 29, 2001 to include all currently permitted vessels and vessels which have applied for a permit as of that date. The qualifying provisions also included persons who had a recreational for-hire vessel under construction prior to March 29, 2001 and who could show expenditures of at least five thousand dollars. In addition, persons who met the eligibility requirements to qualify as a historical captain (U.S. Coast Guard licensed and operating as a captain of a for-hire vessel prior to March 29, 2001, will qualify for a permit within 90 days of the final rule, and at least 25% of earned income was from recreational for-hire fishing in one of the last four years ending March 29, 2001) were issued a letter of eligibility, which can be replaced by a permit/endorsement valid only on the vessel that is operated by the historical captain.

Amendment 24 [EA, RIR, IRFA], implemented on August 17, 2005, replaced the commercial reef fish permit moratorium that was set to expire on December 31, 2005 with a permanent limited access system. Permits issued under the limited access system are renewable and transferable. This amendment was developed concurrently with the Coastal Pelagics Amendment 15, which creates a permanent limited access system for the mackerel fishery.

Amendment 25 [supplemental environmental impact statement (SEIS), RIR, IRFA], implemented on June 15, 2006, replaced the reef fish for-hire permit moratorium that expired in June 2006 with a permanent limited access system. Permits are renewable and transferable in the same manner as currently prescribed for such permits.

Amendment 26 [SEIS, RIR, IRFA], implemented on January 1, 2007, established an IFQ system for the commercial red snapper fishery. The program requires red snapper to be landed at a registered and permitted dealer.

Amendment 29 [EA, RIR, IRFA], implemented January 1, 2010, established an IFQ system for the commercial grouper and tilefish fisheries. The program requires grouper and tilefish to be landed at a registered and permitted dealer.

Amendment 30B [final environmental impact statement (FEIS), RIR, IRFA], implemented May 2009, primarily addresses grouper management measures. The amendment also requires that vessels with federal commercial or charter/headboat reef fish permits comply with the more restrictive of state or federal reef fish regulations when fishing in state waters (implemented by interim rule on January 1, 2009).

2. MANAGEMENT ALTERNATIVES

2.1 Action 1: Modify or Eliminate Income Requirements for Commercial Reef Fish Permits

*Note: **Alternative 5** may be selected alone or in conjunction with either **Alternatives 3** or **4**.

Alternative 1: No Action – Maintain existing income requirements for commercial reef fish permits.

Preferred Alternative 2: Eliminate income requirements for commercial reef fish permits.

Alternative 3: Amend the definition for income earned from fishing to include proceeds from the sale of individual fishing quota (IFQ) shares and the sale of IFQ allocation.

Alternative 4: Replace the current income requirements with a reef fish landings requirement, such that in one of the two years preceding the application, landings must be greater than (in gutted weight):

Option a: 500 lbs of reef fish
Option b: 1,000 lbs of reef fish
Option c: 5,000 lbs of reef fish
Option d: 10,000 lbs of reef fish

Alternative 5: Modify the current income requirements to allow the Gulf of Mexico Fishery Management Council (Council) to suspend the renewal requirements by passage of a motion specifying: (a) the event or condition triggering the suspension; (b) the duration of the suspension; and (c) the criteria establishing who is eligible for the suspension. The Council then requests that the Regional Administrator suspend income requirements according to the terms outlined in the motion.

Discussion:

Alternative 1 would maintain current income requirements for permit renewal. To renew a commercial vessel permit for reef fish, more than 50% of the applicant's earned income must have been derived from commercial fishing, i.e., harvest and first sale of fish, or from charter fishing during either of the two calendar years preceding the application. Under **Alternative 1**, applicants would continue to complete the Income Qualification Affidavit section on the Federal Permit Application for Vessels Fishing in the Exclusive Economic Zone as proof of meeting permit income qualification requirements for the reef fish vessel permits. **Alternative 1** would not account for the fact that these requirements are relatively easy to meet and to circumvent. In addition, **Alternative 1** does not address regulatory changes such as the implementation of IFQ programs for the red snapper and grouper/tilefish fisheries. These species make up the majority of all reef fish landings. Regardless of the proportion of a fisherman's income that has been derived from commercial or charter fishing, participation in these fisheries is restricted to those who possess IFQ shares or who sell annual allocation.

Preferred Alternative 2 would eliminate income requirements and thus would no longer require applicants to earn more than 50% of their income from commercial or charter fishing. **Preferred**

Alternative 2 would afford more flexibility to fishermen and allow them to earn income in other occupations. This added flexibility would allow some fishermen to renew their permits even if they did not have the opportunity to earn enough income from fishing. The ability to earn income from fishing could be restricted by several factors, including limited ownership of IFQ shares, illness, environmental, natural or man-made disasters, and, unforeseen personal circumstances. The elimination of income requirements would also decrease the administrative burden.

Eliminating the existing income qualification requirements (**Preferred Alternative 2**) would necessarily eliminate other restrictions associated with the income qualification. The existing income qualification for commercial reef fish permits may be satisfied by a vessel operator rather than a vessel owner. However, satisfying the income qualification based on an operator's income places an additional restriction on the use of the permit. Such permits are only valid for use when the qualifying individual is actually operating the vessel. Despite this restriction on the use of the permit to authorize fishing activities, the vessel owner is still considered the owner of the permit, and may transfer the permit independently from the vessel operator, by having the operator removed from the permit, subject to being required to meet the income qualification by the end of the first full tax year after transfer. Removing the income qualification entirely eliminates the need for the additional restriction based on the vessel operator, because the vessel owner would be free to remove the operator from the permit without having to satisfy an income qualification at some point in the future. The operator qualified permit would then be freely transferable by the vessel owner. Consequently, **Preferred Alternative 2**, would automatically notify the owners of operator-qualified permits that the operator qualification would be removed from the permit.

Alternative 3 would expand the income sources used to determine the applicant's income earned from fishing. In addition to income earned from commercial and charter fishing, **Alternative 3** would include income earned from the sale of IFQ shares and allocation. Therefore, **Alternative 3** would allow fishermen who elected to sell a portion or the totality of their IFQ shares or allocation to renew their permits. However, while IFQ shares and allocation transfers have to be reported to NOAA Fisheries Service, reporting sale prices of shares and allocation from these private transactions is optional. The inclusion of proceeds from IFQ share and allocation sales is not expected to affect the relative ease with which income qualification requirements can be circumvented.

Alternative 4 would replace current income qualification requirements with a minimum landings requirement. To renew a commercial vessel permit for reef fish, an applicant would be required to prove that a predetermined amount of reef fish has been landed during one of the two preceding years. Minimum annual landings thresholds considered in **Alternative 4** range from 500 lbs of reef fish (**Option a**) to 10,000 lbs of reef fish (**Option d**). Landings from different vessels could conceivably be verified using IFQ transactions and logbook records. However, IFQ participants with several vessel accounts would have to make sure that each vessel, and thus each permit, meets the minimum landings requirement, possibly reducing the flexibility of the programs. **Alternative 4** may also preclude some of the fishermen who elect to sell or lease a portion or the totality of their shares or allocation from renewing their permits.

Alternative 5 would provide the Council with a protocol for a temporary suspension of income requirements. **Alternative 5** would be redundant should the Council decide to eliminate income

requirement qualifications for commercial reef fish permit renewal (**Preferred Alternative 2**). **Alternative 5** requires the Council to determine the events or condition that would trigger the suspension of income requirements, the length of the suspension, and, the permit holders eligible for a temporary suspension of income requirements for commercial reef fish permit renewal. Events and conditions that could warrant a temporary suspension of income requirements include oil spills and other man-made disasters, hurricanes and other natural disasters, and economic hardship. Determination of the length of a potential suspension of income requirements could consider issues such as the magnitude and duration of the adverse economic impacts that have already or could result from the disaster or conditions warranting the suspension. Geographical areas and or categories of permit holders affected would constitute some of the considerations in the determination of eligibility criteria for a temporary suspension of income qualification requirements. It is important to note that **Alternative 5** is intended to apply to regional or Gulf-wide events that may impair the ability of commercial reef fish fishermen as a group from being able to meet the earned income requirements. **Alternative 5** is not designed to apply to individual fishermen who are unable to meet the requirement due to personal circumstances.

2.2 Action 2: Modify Crew Size Regulations for Dual-Permitted Vessels While Fishing Commercially

Alternative 1: No action. The maximum crew size would remain at three for dual-permitted vessels.

Alternative 2: Eliminate the crew size requirement for dual-permitted vessels.

Preferred Alternative 3: Increase the maximum crew size to four for dual-permitted vessels.

Discussion:

The three person crew size for dual-permitted vessels when fishing commercially was originally established in 1990 in Amendment 1 as part of the rule creating a commercial reef fish permit. However, several commercial vessels carry a larger crew, e.g., some buoy boats in Louisiana may carry 3-5 crew members.

In 2006 Amendment 18A the Council modified the crew size rule to add the Coast Guard certificate of inspection (COI) provision that allowed vessels with a COI to carry the minimum crew size specified by the COI if it was greater than three. This action was intended to resolve a conflict between the Council's maximum crew size rule and the Coast Guard's minimum crew size requirements for vessels with a COI, which was at least four. In addition, the Council considered a non-preferred alternative which would have created an exemption to the three person maximum for commercial spearfishing vessels to allow an additional crewmember on the surface for safety reasons.

Currently, 154 vessels possess a charter/headboat reef fish permit and a commercial permit, referred to as dual-permitted vessels (Jeanette Dudley, SERO Permits Office, pers. comm.). Dual-permitted vessels are limited to the three person maximum crew size established in Amendment 1 (unless the vessel has a COI). When conducting commercial diving operations, the Occupational Safety and Health Administration (OSHA) regulations also apply. The OSHA

regulations for SCUBA diving operations (29 CFR 1910.424 (c)) require that 1) "A standby diver is available while the SCUBA diver is in the water" and 2) "The SCUBA diver must be either line-tended or accompanied by another diver with continuous visual contact." The OSHA regulations aim to establish safe operating procedures for conducting commercial SCUBA diving; however, the three person crew limit for dual-permitted vessels impair the crew's ability to comply with OSHA and decrease the safety at sea. Based on the OSHA regulations, if two divers are underwater spearfishing, the third crewmember at the surface would need to handle the vessel and be the standby diver. If it is necessary to have two crew members at the surface, only one diver could be underwater and would need to be line-tended. Spearfishing while being line-tended could cause additional safety issues.

Based on the Coast Guard Diving Policies and Procedures Manual (2009), "A minimum of four personnel consisting of a diving supervisor, diver, diver tender and a standby diver are required to conduct SCUBA operations." While this is not a regulation applicable to the commercial spearfishing vessels, it provides guidance to increase the safety of the diving personnel.

Alternative 1, no action, would maintain the current regulations of a maximum crew size. Currently the maximum crew size for dual-permitted vessels when fishing commercially is three unless the vessel has a U.S. Coast Guard COI. Vessels with a COI may carry a greater crew size to the extent necessary to comply with the COI requirements, which is typically a crew of four or more. This alternative would not allow the dual-permitted vessels to comply with the U.S. Coast Guard COI regulations while commercial spearfishing.

Alternative 2 would eliminate the crew size requirement for dual-permitted vessels. Currently, vessels that carry six or fewer charter passengers are not required to obtain a COI and are subject to the three person maximum when fishing commercially. Given the size of these vessels, it is unclear how many would carry more than three crew members, even if allowed. Vessels that carry more than six passengers for-hire are required to have a COI. For these vessels, the maximum crew size when fishing commercially is the minimum crew size specified in the COI, typically four. Historically, one possible reason for limiting the crew size on a dual-permitted vessel when fishing commercially may have been to prevent double-dipping where a vessel might take out a number of passengers under the pretense of making a charter trip, but subsequently sell the catch. The commercial red snapper, grouper, and tilefish species, which constitute the majority of the commercial reef fish complex, are now under IFQ programs, and all commercial reef fish vessels are required to be equipped with vessel monitoring systems. The IFQ programs have strict reporting requirements that make it clear when a vessel is operating as a commercial vessel. In addition, the amount of fish that can be caught on a vessel is limited by the amount of IFQ shares regardless of the crew size. Due to the costs involved with carrying extra crew, there would be little incentive to exceed the necessary crew size.

Preferred Alternative 3 would increase the maximum crew size to four for dual-permitted vessels. Increasing the maximum crew size to four would improve the safety at sea issues while commercially spearfishing. In addition, it allows the commercial spearfishing vessels to comply with the OSHA diving regulations and the U.S. Coast Guard guidance for conducting diving operations. Increasing the crew size could allow a slight increase in fishing effort for the dual-permitted vessels; however, it would not be reasonably expected to cause significant impacts to the physical, biological, social, or economic environments.

3. AFFECTED ENVIRONMENT

The actions considered in this environmental assessment would affect fishing in the Gulf of Mexico (Gulf) region. Descriptions of the physical, biological, economic, social, and administrative environments were completed in the recent environmental assessment for the 2010 red grouper regulatory amendment (GMFMC 2010b) and are incorporated herein by reference. In cases of new information, this information is provided below.

3.1 Physical Environment

The physical environment for reef fish has been described in detail in the environmental impact statement (EIS) for the Generic Essential Fish Habitat Amendment and is incorporated here by reference (GMFMC 2004a).

The Deepwater Horizon MC252 oil spill has affected at least one-third of the Gulf area from western Louisiana east to the panhandle of Florida and south to the Campeche Bank in Mexico. The impacts of the Deepwater Horizon MC252 oil spill on the physical environment are expected to be significant and may be long-term. Oil was dispersed on the surface, and because of the heavy use of dispersants (both at the surface and at the wellhead), oil was also documented as being suspended within the water column, some even deeper than the location of the broken well head. Floating and suspended oil washed onto shore in several areas of the Gulf as were non-floating tar balls. Whereas suspended and floating oil degrades over time, tar balls are persistent in the environment and can be transported hundreds of miles. In addition, oil may have exacerbated development of the hypoxic "dead" zone in the Gulf along with a greater than normal input of water from the Mississippi River drainage. For example, oil on the surface of the water may have restricted the normal process of atmospheric oxygen mixing into and replenishing oxygen concentrations in the water column. In addition, microbes in the water that break down oil and dispersant also may have consumed oxygen leading to further oxygen depletion.

Environmental Sites of Special Interest (Figure 3.1.1)

Longline/Buoy Gear Area Closure - Permanent closure to use of these gears for reef fish harvest. The closure applies to inshore of 20 fathoms off the Florida shelf from September through May, inshore of 35 fathoms off the Florida shelf from June through August, and inshore of 50 fathoms year round for the remainder of the Gulf (72,300 square nautical miles).

Madison/Swanson and Steamboat Lumps Marine Reserves - No-take marine reserves sited on gag spawning aggregation areas where all fishing except for surface trolling during May through October is prohibited (219 square nautical miles).

The Edges – No-take area closure from January 1 to April 30. All commercial and recreational fishing or possession of fish managed by the Gulf of Mexico Fishery Management Council (Council) is prohibited. The intent of the closure is to protect gag and other groupers during their respective spawning seasons. Possession is allowed when transiting the area if gear is stowed in accordance with federal regulations. The boundaries of the closed area are: Northwest corner = 28º 51'N, 85º 16'W; Northeast corner = 28º 51'N, 85º 04'W; Southwest corner = 28º 14'N, 84º 54'W; Southeast corner = 28º 14'N, 84º 42'W.

Tortugas North and South Marine Reserves - No-take marine reserves cooperatively implemented by the state of Florida, National Ocean Service (NOS), the Council, and the National Park Service (see jurisdiction on chart) (185 square nautical miles). In addition, Generic Amendment 3 for addressing Essential Fish Habitat requirements, Habitat Areas of Particular Concern (HAPC), and adverse effects of fishing prohibited the use of anchors in these HAPCs in the following Fishery Management Plans (FMPs) of the Gulf: Shrimp, Red Drum, Reef Fish, Stone Crab, Coral and Coral Reefs in the Gulf; and Spiny Lobster and the Coastal Migratory Pelagic resources of the Gulf and South Atlantic.

Additionally, Generic Amendment 3 for addressing Essential Fish Habitat requirements establishes an educational program on the protection of coral reefs when using various fishing gears in coral reef areas for recreational and commercial fishermen.

Individual reef areas and bank HAPCs of the northwestern Gulf include: East and West Flower Garden Banks, Stetson Bank, Sonnier Bank, MacNeil Bank, 29 Fathom, Rankin Bright Bank, Geyer Bank, McGrail Bank, Bouma Bank, Rezak Sidner Bank, Alderice Bank, and Jakkula Bank - Pristine coral areas, totaling 263.2 square nautical miles, protected by preventing use of some fishing gear that interacts with the bottom. Subsequently, some of these areas were made a marine sanctuary by NOS and this marine sanctuary is currently being revised. Bottom anchoring and the use of trawling gear, bottom longlines, buoy gear, and all traps/pots on coral reefs are prohibited in the East and West Flower Garden Banks, McGrail Bank, and on the significant coral resources on Stetson Bank.

Florida Middle Grounds HAPC - Pristine soft coral area protected from use of any fishing gear interfacing with bottom (348 square nautical miles).

Pulley Ridge HAPC - A portion of the HAPC where deep-water hermatypic coral reefs are found is closed to anchoring and the use of trawling gear, bottom longlines, buoy gear, and all traps/pots (2,300 square nautical miles).

Stressed Areas for Reef Fish - Permanent closure Gulf-wide of the near shore waters to use of fish traps, power heads, and roller trawls (i.e., “rock hopper trawls”) (48,400 square nautical miles).

Alabama Special Management Zone - In the Alabama special management zone, fishing by a vessel operating as a charter vessel or headboat, a vessel that does not have a commercial permit for Gulf reef fish, or a vessel with such a permit fishing for Gulf reef fish, is limited to hook-and-line gear with no more than three hooks. Nonconforming gear is restricted to bag limits, or for reef fish without a bag limit, to 5% by weight of all fish aboard.

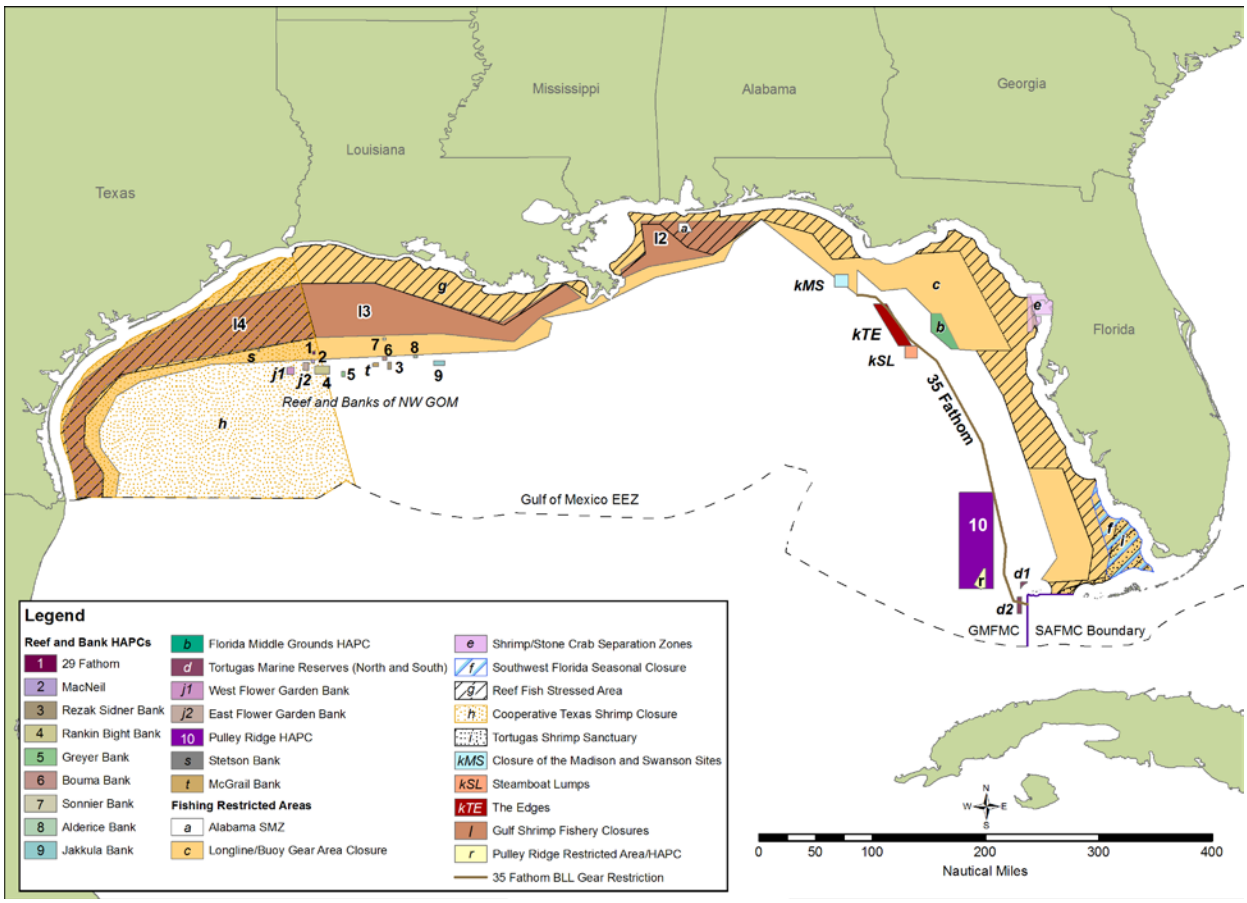

Figure 3.1.1. Map of fishery management closed or gear restricted areas in the Gulf of Mexico.

3.2 Biological Environment

The Reef Fish FMP until recently encompassed 42 species. The Generic ACL/AM Amendment (GMFMC 2011b), approved and implemented in January 2012, removed 11 species from the FMP. Stock assessments have been conducted on 12 species: red snapper (SEDAR 7 2005; SEDAR 7 Update 2009), vermilion snapper (Porch and Cass-Calay 2001; SEDAR 9 2006a; SEDAR 9 Update 2011a, b, and c), yellowtail snapper (Muller et al. 2003; SEDAR 3 2003), gray triggerfish (Valle et al. 2001; SEDAR 9 2006b), greater amberjack (Turner et al. 2000; SEDAR 9 2006c; SEDAR 9 Update 2011c), hogfish (Ault et al. 2003; SEDAR 6 2004a), red grouper (NMFS 2002a; SEDAR 12 2007; SEDAR 12 Update 2009), gag (Turner et al. 2001; SEDAR 10 2006; SEDAR 10 Update 2009), yellowedge grouper (Cass-Calay and Bahnick 2002; SEDAR 22 2011a), tilefish (SEDAR 22 2011b), black grouper (SEDAR 19 2010), and goliath grouper (Porch et al. 2003; SEDAR 6 2004b; SEDAR 23 2011). A review of the Nassau grouper's stock status was conducted by Eklund (1994), and updated estimates of generation times were developed by Legault and Eklund (1998).

Of the 12 species for which stock assessments have been conducted, the first quarter report of the 2011 Status of U.S. Fisheries (http://www.nmfs.noaa.gov/sfa/statusoffisheries/SOSmain.htm) classifies four as overfished (greater amberjack, gray triggerfish, gag, and red snapper), and the same four as undergoing overfishing. It should be noted that greater amberjack, gray triggerfish,

and red snapper are under rebuilding plans, and a rebuilding plan for gag, developed in Amendment 32, is presently awaiting implementation. In the most recent red snapper stock assessment update, red snapper overfishing was projected to have ended in 2009. Many of the stock assessments and stock assessment reviews can be found on the Council (www.gulfcouncil.org) and the Southeast Data, Assessment, and Review (SEDAR) (www.sefsc.noaa.gov/sedar) websites.

Protected Species

There are 28 different species of marine mammals that may occur in the Gulf. All 28 species are protected under the Marine Mammals Protection Act and six are also listed as endangered under the Endangered Species Act (ESA) (i.e., sperm, sei, fin, blue, humpback and North Atlantic right whales). Other species protected under the ESA occurring in the Gulf include five sea turtle species (Kemp's Ridley, loggerhead, green, leatherback, and hawksbill); two fish species (Gulf sturgeon and smalltooth sawfish), and two *Acropora* coral species (elkhorn [*Acropora palmata*] and staghorn [*A. cervicornis*]). Information on the distribution, biology, and abundance of these protected species in the Gulf is included in final EIS to the Council's Generic Essential Fish Habitat amendment (GMFMC 2004a) and the October 2009 and September 2011 ESA biological opinions on the reef fish fishery (NMFS 2009, 2011). Marine Mammal Stock Assessment Reports and additional information are also available on the NOAA Fisheries Service Office of Protected Species website: http://www.nmfs.noaa.gov/pr/species/.

The reef fish fishery is classified in the 2011 Marine Mammal Protection Act List of Fisheries as Category III fishery (November 8, 2010; 75 FR 68468). This classification indicates the annual mortality and serious injury of a marine mammal stock resulting from the fishery is less than or equal to 1% of the potential biological removal[1]. Dolphins are the only species documented as interacting with this fishery. Bottlenose dolphins may predate and depredate on the bait, catch, and/or released discards of the reef fish fishery.

All five species of sea turtles may be adversely affected by the reef fish fishery via incidental capture in hook-and-line gear (NMFS 2009). Incidental captures of sea turtle species occur in all commercial and recreational hook-and-line components of the reef fishery, but recent observer data indicate they are most frequent in the bottom longline component of the reef fish fishery. On an individual set basis, incidental captures may be relatively infrequent, but collectively, these captures sum to a substantial level of bycatch. Observer data indicate loggerhead sea turtles are the species most impacted by the bottom longline component of the reef fish fishery and that is why a more detailed description of this species is included below. Mortality of sea turtles caught is particularly problematic in this fishery component, because many are dead or in poor condition upon retrieval of the gear as a result of forced submergence (i.e., drowning). Rulemaking from Amendment 31 constrains the bottom longline component of the fishery to limit sea turtle take. All sea turtles caught on hook-and-line and released alive may later succumb to injuries sustained at the time of capture or from exacerbated trauma from fishing hooks or lines that were ingested, entangled, or otherwise still attached when they were released. Sea turtle release gear and handling protocols are required to reduce the amount of gear on

[1]The potential biological removal is the maximum number of animals, not including natural mortalities, that may be removed from a marine mammal stock while allowing that stock to reach or maintain its optimum sustainable population.

released animals and minimize post-release mortality.

Smalltooth sawfish are also impacted by the reef fish fishery, but to a much lesser extent than hardshell sea turtles. Smalltooth sawfish primarily occur in the Gulf off peninsular Florida. Although the long, toothed rostrum of the smalltooth sawfish causes this species to be particularly vulnerable to entanglement in fishing gear, incidental captures in the commercial and recreational hook-and-line components of the reef fish fishery are rare events. Only eight smalltooth sawfish are estimated to be incidentally caught annually, and none are expected to result in mortality (NMFS 2009). Fishermen in this fishery are required to follow smalltooth sawfish safe handling guidelines.

The Deepwater Horizon MC252 oil spill may have adversely affected protected species populations. Cetaceans and sea turtles were exposed to oil and/or dispersants. These toxic chemicals can affect them externally by swimming in oil or dispersants, or internally from eating or swallowing oil, consuming prey that has also come into contact with oil, or breathing volatile compounds that the oil emits. Sea turtles could be at additional risk from oil washing ashore on nesting beaches where nesting females and/or their nests may be exposed to chemicals, which may result in decreased survival of eggs and/or developmental defects in hatchlings.

3.3 Economic Environment

A description of the economic environment associated with the red snapper component of the reef fish fishery is provided in GMFMC (2010a). This document is available at: http://sero.nmfs.noaa.gov/sf/pdfs/Final Red Snapper Regulatory Amendment_041510.pdf). A description of the economic environment associated with the reef fish fishery in general, with emphasis on grouper, is provided in GMFMC (2010b). This document is available at: http://sero.nmfs.noaa.gov/sf/pdfs/2010_Red_Grouper_Regulatory_Amendment_91710_final.pdf. The red snapper and grouper components of the reef fish fishery are the dominant components of the reef fish fishery. Both descriptions are incorporated herein by reference.

On September 20, 2011, there were 833 valid and 87 renewable commercial reef fish permits, for a total of 920 commercial reef fish permits. A valid permit is a non-expired permit. Renewable permits are expired permits which may not be actively fished, but are renewable for up to one year after expiration. As discussed in Section 1.2, 154 for-hire vessels are dual-permitted, possessing both a commercial reef fish permit and a charter/headboat reef fish permit.

3.4 Social Environment

A description of the social environment included in the Generic Annual Catch Limits/Accountability Measures Amendment (GMFMC 2011a) is incorporated herein by reference. The description focuses on available geographic and demographic data to identify communities with a strong relationship to species in the reef fish complex. A strong relationship is defined as having significant landings and revenue for managed species. Thus, impacts from regulatory change are more likely to occur in places with greater landings of these species.

The proposed actions in this amendment are expected to affect commercial reef fish permit

holders who plan to renew their permits and permit holders who possess both a charter/headboat reef fish permit and a commercial reef fish permit. There are 920 valid and renewable commercial reef fish permits (Figure 3.4.1). As of September 20, 2011, 833 were currently valid, with the remainder classified as renewable (eligible for renewal within one year).

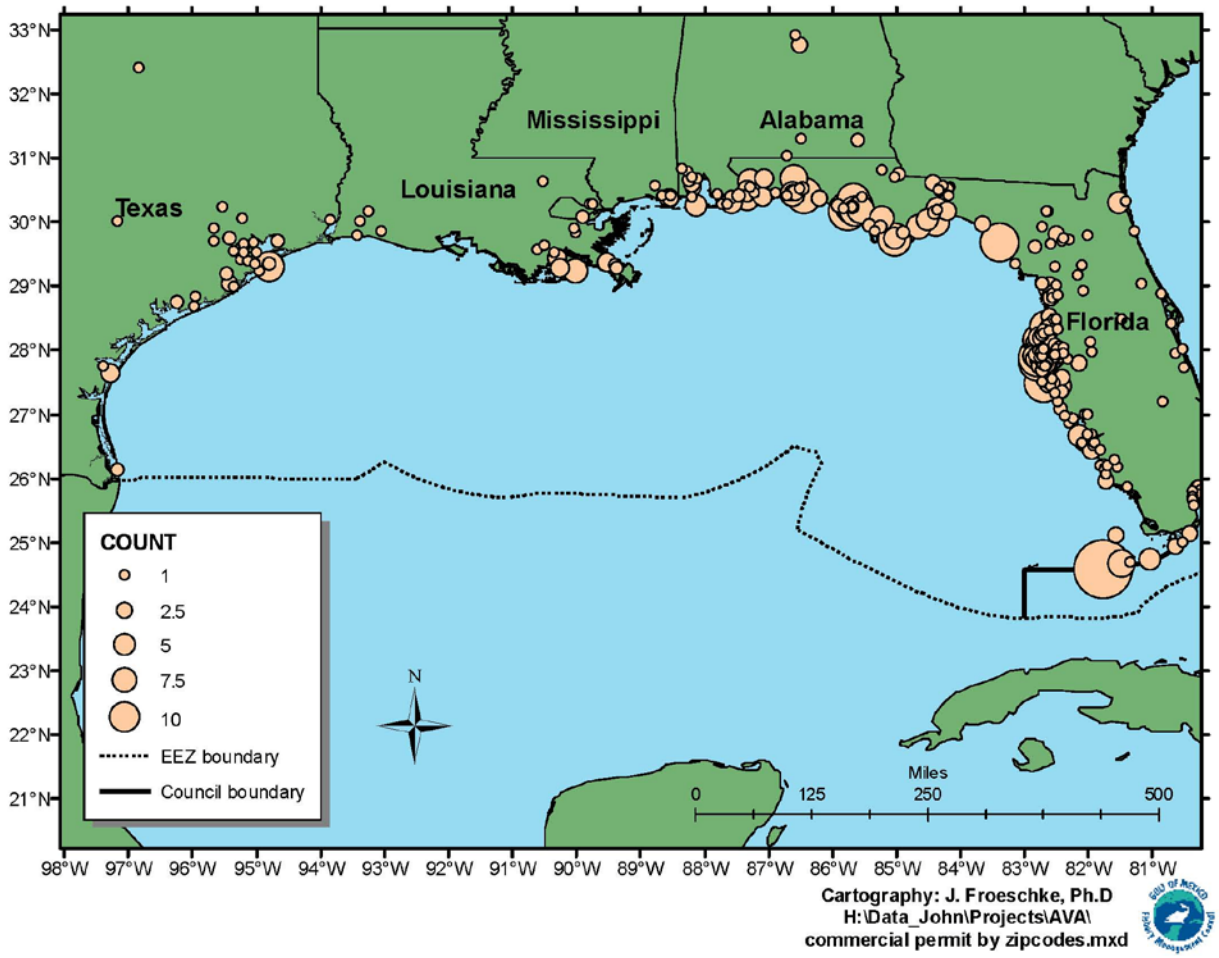

Figure 3.4.1. Regional distribution of commercial reef fish permit holders according to permit holder's zip code, as of September 29, 2011. (Data source: http://sero.nmfs.noaa.gov/foia/HTML/RR.htm)

Of the 1,297 charter/headboat reef fish permits (including historical captains permits), 154 of these also hold a valid commercial reef fish permit as of September 20, 2011. Geographically, the majority of these dual-permit holders are located in the state of Florida (Table 3.4.1).

Table 3.4.1. Dual-permitted vessels by state as of September 20, 2011. Homeport state of vessel possessing both a valid commercial reef fish permit and a charter/headboat reef fish permit.

	No. Vessels	Proportion of Total
Florida	118	76.6%
Alabama	15	9.7%
Mississippi	1	.006%

Louisiana	5	3.2%
Texas	15	9.7%

Source: SERO Permits office.

3.4.1 Environmental Justice Considerations

Executive Order 12898 requires federal agencies conduct their programs, policies, and activities in a manner to ensure individuals or populations are not excluded from participation in, or denied the benefits of, or subjected to discrimination because of their race, color, or national origin. In addition, and specifically with respect to subsistence consumption of fish and wildlife, federal agencies are required to collect, maintain, and analyze information on the consumption patterns of populations who principally rely on fish and/or wildlife for subsistence. The main focus of Executive Order 12898 is to consider "the disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority populations and low-income populations in the United States and its territories…" This executive order is generally referred to as environmental justice (EJ).

The actions of this amendment are not expected to negatively impact populations with EJ concerns (e.g., minorities and the poor), nor would the proposed actions discriminate against any group through application of these regulations based on their race, ethnicity, or national origin. Thus, this regulatory action is not expected to trigger any EJ concerns. The first action proposes to modify or eliminate the requirement that at least 50% of a commercial reef fish permit holder's income be derived from fishing to renew the permit. This action is expected to affect only current permit holders and would provide a measure of economic flexibility for permit holders to maintain their permit while engaging in non-fishing activities. It is generally recognized that the current income requirement is easily circumvented, such as through the creation of a business entity. For example, a permit remains valid if put in the name of a corporation created for the sole purpose of commercial fishing; the total income of such a business would come from commercial fishing but the owner(s) of the business are not restricted to earning half of their income from commercial fishing. On the other hand, a permit owned by an individual who may sometimes need the flexibility to engage in non-fishing based livelihood activities is penalized under the status quo renewal requirement. Although the number of permit holders who can be classified as part of an EJ population is unknown, relaxing the requirement for permit renewal could only provide benefits to permit holders who maintain permits in their name by providing flexibility in their livelihood strategies.

The second action proposes modifications to the maximum crew size allowed on dual-permitted vessels fishing commercial and also possessing a charter/headboat permit. The purpose of this action is to increase the maximum crew size allowed aboard vessels that commercially spearfish and also engage in the charter for-hire business. An increased crew size would enable a spearfishing crew to have two divers in the water while two crew members remain aboard, a safer practice for commercial dive operations. Thus, this action directly addresses a measure to increase the safety at sea of commercial spearfishing vessels that also engage in charter fishing. Although the number of crew on such dual-permitted vessels who could be classified as part of an EJ population is unknown, the increased safety at sea is expected to provide benefits to all commercial spearfishing crews on dual-permitted vessels.

3.5 Administrative Environment

Of the eight regional fishery management councils, only the Gulf and South Atlantic Councils have an income requirement for renewal of some commercial fishing permits. Both Councils require the same form (with varying income requirements) for the following FMPs which are jointly managed: spiny lobster (10% of income from commercial fishing in previous calendar year); king mackerel and Spanish mackerel (25% of applicant's earned income or at least $10,000 derived from commercial fishing or from charter fishing during one of the two preceding calendar years). While the Gulf Council requires the income affidavit for renewal of a commercial reef fish permit, the South Atlantic Council does not have such a requirement for renewal of a commercial snapper grouper permit.

Federal Fishery Management

Federal fishery management is conducted under the authority of the Magnuson-Stevens Act (16 U.S.C. 1801 et seq.), originally enacted in 1976 as the Fishery Conservation and Management Act. The Magnuson-Stevens Act claims sovereign rights and exclusive fishery management authority over most fishery resources within the exclusive economic zone (EEZ). The EEZ is defined as an area extending 200 nautical miles from the seaward boundary of each of the coastal states. The Magnuson-Stevens Act also claims authority over U.S. anadromous species and continental shelf resources that occur beyond the EEZ.

Responsibility for federal fishery management decision-making is divided between the Secretary of Commerce (Secretary) and eight regional fishery management councils that represent the expertise and interests of constituent states. Regional councils are responsible for preparing, monitoring, and revising management plans for fisheries needing management within their jurisdiction. The Secretary is responsible for promulgating regulations to implement proposed plans and amendments after ensuring management measures are consistent with the Magnuson-Stevens Act and with other applicable laws summarized in Section 10. In most cases, the Secretary has delegated this authority to NOAA Fisheries Service.

The Council is responsible for fishery resources in federal waters of the Gulf. These waters extend to 200 nautical miles offshore from the nine-mile seaward boundary of the states of Florida and Texas, and the three-mile seaward boundary of the states of Alabama, Mississippi, and Louisiana. The length of the Gulf coastline is approximately 1,631 miles. Florida has the longest coastline of 770 miles along its Gulf coast, followed by Louisiana (397 miles), Texas (361 miles), Alabama (53 miles), and Mississippi (44 miles).

The Council consists of 17 voting members: 11 public members appointed by the Secretary; one each from the fishery agencies of Texas, Louisiana, Mississippi, Alabama, and Florida; and one from NOAA Fisheries Service. The public is also involved in the fishery management process through participation on advisory panels and through publically open Council meetings, with some exceptions for discussing internal administrative matters. The regulatory process is also in accordance with the Administrative Procedures Act, in the form of "notice and comment" rulemaking, which provides extensive opportunity for public scrutiny and comment, and requires consideration of and response to those comments.

Regulations contained within FMPs are enforced through actions of the NOAA's Office of Law Enforcement, the U.S. Coast Guard, and various state authorities. To better coordinate

enforcement activities, federal and state enforcement agencies have developed cooperative agreements to enforce the Magnuson-Stevens Act. These activities are being coordinated by the Council's Law Enforcement Advisory Panel and the Gulf States Marine Fisheries Commission's Law Enforcement Committee have developed a five year "Gulf Cooperative Law Enforcement Strategic Plan - 2006-2011."

State Fishery Management

The purpose of state representation at the Council level is to ensure state participation in federal fishery management decision-making and to promote the development of compatible regulations in state and federal waters. The state governments of Texas, Louisiana, Mississippi, Alabama, and Florida have the authority to manage their respective state fisheries. Each of the five Gulf states exercises legislative and regulatory authority over their states' natural resources through discrete administrative units. Although each agency is the primary administrative body with respect to the states' natural resources, all states cooperate with numerous state and federal regulatory agencies when managing marine resources. A more detailed description of each state's primary regulatory agency for marine resources is provided in Amendment 22 (GMFMC 2004b).

4. ENVIRONMENTAL CONSEQUENCES

4.1 Action 1: Modify or Eliminate Income Requirements for Commercial Reef Fish Permits

4.1.1 Direct and Indirect Effects on the Physical Environment

Impacts of these alternatives on the physical environment would depend on the resulting reduction or increases in the level of fishing effort in the commercial sector of the reef fish fishery or the number of for-hire trips needed to meet the applicant's 50% earned income requirement. The commercial bottom longline component of the reef fish fishery targets bottom-dwelling reef fish species and occasionally catches mid-water species while setting and retrieving the gear. Specifics on the biology and habitat utilization of reef fish are detailed in Section 3. Bottom longline gear is used to target shallow-water grouper and deepwater grouper, as well as red snapper and other reef fish. Consequently, the close proximity of the deployed longline gear to the substrate adds to interactions with the habitat.

Amendment 31 required an endorsement to use bottom longline gear (GMFMC 2009). To obtain an endorsement annual average reef fish landings from 1999-2007 had to be a minimum of 40,000 lbs gutted weight (gw) from both fish traps and longline gear. In addition to requiring an endorsement to use the gear, during the months of June, July, and August the gear must be used seaward of 35 fathoms east of Cape San Blas, Florida. Prior to 2007, bottom longline gear accounted for 36% of the commercial gag landings and 59% of the commercial red grouper landings. In the commercial sector, most red snapper are harvested with hook-and-line and bandit gear, with bandit gear being more prevalent. Vertical line gear accounted for 27% of the commercial red grouper landings. Commercial longlines landed 11% of the greater amberjack and vertical lines landed 89% of the greater amberjack using landings history from 2002-2009 (Cummings personal communication; 2011 SEDAR Greater Amberjack Update Assessment). However, other gear types besides hand and electric lines were included in the vertical line landings for greater amberjack (i.e., trolling, diving with a spear, and all unreported gear). Landings by trolling and diving with a spear were low and infrequent compared to hand and electric vertical lines in the commercial sector. Refer to Amendment 32 for a description of the gear types used and a comparison of the potential impacts on the physical environment (GMFMC 2011b).

Alternative 1, no action, would maintain the existing income requirements for commercial reef fish permits. **Preferred Alternative 2** would eliminate the income requirements for renewal of the commercial reef fish permits and is therefore the least restrictive. **Alternative 3** would amend the definition of earned income from fishing to include proceeds from the sale of individual fishing quota (IFQ) shares and allocation. **Alternative 3** is less restrictive compared to **Alternative 4** which specifics a poundage requirement that would more greatly impact the commercial sector, because income from for-hire trips could not be included under this alternative compared to **Alternative 1. Alternative 4** would replace the current income requirements with a reef fish landings requirement such that in one of the two preceding years, landings must be greater than a predefined quantity (**Option a**: 500 lbs gw; **Option b**: 1,000 lbs gw; **Option c**: 5,000 lbs gw; or **Option d**: 10,000 lbs gw). **Alternative 5** would modify the current income requirements to allow the Gulf of Mexico Fishery Management Council (Council) to suspend the income requirements by a motion with the following specified criteria:

the event or condition triggering the suspension, the duration of the suspension, and who is eligible for the suspension. **Alternative 4, Options a and b** would not likely have negative effects on the physical environment as these are relatively small quantities harvested. **Alternative 4 Options c** or **d** may have indirect negative impacts on the physical environment compared to **Alternative 1** if the 5,000 lbs or 10,000 lbs gw, landings requirement exceeds the majority of commercial landings counted under the applicant's 50% earned income, particularly because income from for-hire trips would not be included under this alternative. The permit transfers and permit terminations complicate the analysis of the potential effects since 2007 which makes a comparison to **Alternative 1** difficult. It is unlikely these alternatives would have a negative effect on the physical environment based on the current prosecution of the fishery.

Preferred Alternative 2 and **Alternative 3** are not expected to cause any additional indirect impacts on the physical environment compared to no action (**Alternative 1**). **Preferred Alternative 2** is expected to create minimal, if any, indirect effects on the physical environment because the income requirement would be eliminated. By not requiring fishing effort for the renewal of permits, through either an income or landings requirement, fishermen are not encouraged to increase effort to renew their permits. Unused permits would mean less interaction with the physical environment. If **Alternative 5** was implemented, it would probably be in the rare event or condition a man-made or natural catastrophe occurred, which could potentially be similar to the events that took place after the Deepwater Horizon MC252 oil spill. In the event the Council selected **Alternative 5** as preferred no additional effects on the physical environment are expected to occur compared to **Alternative 1**, no action.

4.1.2 Direct and Indirect Effects on the Biological Environment

Management actions that affect the biological environment mostly relate to the impacts of fishing on a species' population size, life history, and the role of the species within its habitat. Removal of fish from the population through fishing reduces the overall population size. Fishing gears have different selectivity patterns which refer to a fishing method's ability to target and capture organisms by size and species. Impacts of these alternatives on the biological environment would depend on the resulting reduction or increases in the level of fishing effort to meet the renewal requirement specified under each alternative.

Similar to the effects described under the physical environment, **Alternative 4 Options c** or **d** may have indirect negative impacts on the biological environment compared to **Alternative 1** if the 5,000 lbs or 10,000 lbs gw, landings requirement exceeds current landings by permit for a majority of permit holders; to renew their permits, fishermen would be encouraged to land the required minimum poundage. Under **Alternative 4**, income from for-hire trips would not be counted toward permit renewal. If applicants increase fishing mortality or shift effort from one species to another, the respective options under **Alternative 4** may have indirect negative biological effects. However, until an analysis is completed on permit transfers and permit terminations since 2007, these effects remain unknown compared to **Alternative 1.**

Preferred Alternative 2 and **Alternative 3** are not expected to cause any additional indirect impacts on the biological environment compared to no action (**Alternative 1**). In fact, **Preferred Alternative 2** is expected to incur minimal if any indirect effects on the biological environment because the income requirement would be eliminated. **Alternative 4 Options a**

and b would not likely cause additional impacts to the biological environment. If **Alternative 5** was selected as preferred, no changes in the current impacts on the biological environment are expected.

4.1.3 Direct and Indirect Effects on the Economic Environment

Alternative 1 would not modify income qualification requirements currently in effect for the renewal of commercial reef fish permits. Therefore, economic effects are not expected to result from **Alternative 1**.

Preferred Alternative 2 would eliminate existing income qualification requirements from the commercial reef fish permit process. Under **Preferred Alternative 2**, applicants would get their commercial permits renewed provided that the applications were submitted within the prescribed application period. Although it makes the application process easier for permit applicants, **Alternative 2** cannot lead to an increase in the number of permits due to the existing moratorium on the issuance of new commercial reef fish permits. Furthermore, an applicant's harvest of primary reef fish species is dictated by his IFQ shares and allocation holdings. Primary reef fish species and species complexes managed under an IFQ program include red snapper, red grouper, gag, black grouper, other shallow water grouper, tilefish, and, deep water grouper. Thus, **Preferred Alternative 2** is not expected to affect the harvest or other customary uses of reef fish resources. Therefore, economic effects are not anticipated to directly result from the implementation of **Preferred Alternative 2**. However, the elimination of income qualification requirements is expected to result in indirect economic benefits by affording permit applicants more flexibility in determining the income generating activities they might pursue. **Preferred Alternative 2** would allow commercial reef fish permit applicants to elect to increase their participation in activities not related to commercial fishing or limit their involvement in commercial fishing without fearing the loss of their permit.

Alternative 3 would expand the definition for income earned from fishing to include proceeds from the sale of IFQ shares or allocation. In effect, **Alternative 3** would grant additional flexibility to applicants for permit renewal. **Alternative 3** allows an applicant for permit renewal to sell his IFQ shares or annual allocation instead of harvesting the corresponding poundage and maintain the similar income levels for the purposes of his permit renewal. **Alternative 3** would make it easier for fishermen who elect to sell a portion or the totality of their IFQ shares or allocation holdings to meet income qualification requirements for the renewal of their reef fish permits. However, **Alternative 3** is not anticipated to affect the harvest or other customary uses of reef fish resources. As such, economic effects are not expected to result from the implementation of **Alternative 3**.

Alternative 4 would replace existing income qualification requirements with landings requirements. Applicants for permit renewal would have to meet minimum annual reef fish landings requirements ranging from 500 lbs under **Option a** to 10,000 lbs under **Option d**. The verification of poundage landed under each permit may add to the enforcement burden. With **Alternative 4**, some applicants who would have met income requirements under the no action alternative or under **Alternative 3** may be precluded from renewing their permits because **Alternative 4** does not account for income derived from charter fishing. However, **Alternative 4** is not anticipated to substantially affect the harvest of major reef fish species. Harvest levels

for major reef fish species are mainly determined by the shares and allocation holdings of the permit owner. Should an application for permit renewal be denied, under the IFQ system, the permit owner would sell his shares or allocation to an eligible permit holder to harvest the resource. **Alternative 4** may result in increased harvest levels of reef fish species outside the commercial IFQ programs as applicants for permit renewal attempt to increase their harvest levels to meet the minimum annual landings requirements. Such effort increases, while possible in theory, are likely to be negligible. However, potential effort adjustments may disturb the typical profit maximizing resource allocation across species and activities that the fishermen would have selected without the additional constraint imposed by landings requirements, thus negatively impacting overall profit levels. On balance, **Alternative 4** is expected to be associated with limited economic effects.

Preferred Alternative 2 and **Alternatives 3-4** can be compared to **Alternative 1** based on the incentives or behaviors they may foster. Compared to **Alternative 1**, **Preferred Alternative 2** would provide applicants incentives to pursue income generating opportunities outside of fisheries without potentially losing their permit. For permit applicants who would want to sell a portion or all of their shares or allocation but are currently harvesting the corresponding poundage to meet the income qualification requirements, **Alternative 3** would provide an opportunity to sell allocation or shares without risking the loss of their permits. However, **Alternative 3** would also provide incentives to inflate declared IFQ allocation and share sale prices. Compared to **Alternative 1**, **Alternative 4** could lead to greater fishing effort because some fishermen may have to increase their fishing effort to meet minimum landings requirements. **Preferred Alternative 2** would afford the greatest level of flexibility to commercial reef fish permit applicants, and, in decreasing order, followed by **Alternative 1**, **Alternative 3**, and, **Alternative 4**.

Alternative 5 would, at the Council's discretion, temporarily suspend income qualification requirements in response to natural disasters, man-made catastrophes, or economic conditions that could limit commercial fishermen's ability to earn income from fishing. **Alternative 5** is not expected to affect the harvest or other customary uses of reef fish resources and thus is not anticipated to be associated with economic effects. However, **Alternative 5** is expected to benefit permit applicants who would have lost their permit due to a failure to meet income qualification requirements resulting from a temporary inability to derive income from commercial fishing.

4.1.4 Direct and Indirect Effects on the Social Environment

This action proposes to modify or eliminate the requirements for renewing a commercial reef fish permit. Commercial reef fish permit holders are not a homogenous group and fishermen may be impacted by this action differently depending on whether a permit is in the name of an individual or a business entity set up for the purpose of commercial fishing. For example, a permit under the name of an individual who is both owner and operator of his vessel may find it difficult to renew his permit should he need to engage in non-fishing economic activities alongside fishing. The need to participate in alternate income activities, such as occurred among commercial fishermen who engaged in clean-up efforts following the Deep Horizon MC252 oil spill, is part of the rationale for this action. On the other hand, a permit put in the name of a business entity created for a commercial fishing enterprise would only have income derived from commercial fishing. The personal income of the individual(s) associated with such a business

entity could be derived entirely from non-fishing activities. This example shows one way in which the income qualification requirement may be easily circumvented.

It is difficult to predict potential social impacts because permit holders may adjust their behavior in response to a change in renewal requirements in unanticipated ways. Whether changes in behavior would incur positive or negative social impacts to the individual or broader social group of permit holders and fishery participants is also difficult to predict. It should be noted that no other Council, except for the South Atlantic, has an income requirement for commercial permit renewal. The requirements for the South Atlantic permits are limited to species jointly managed with the South Atlantic Fishery Management Council (spiny lobster, king and Spanish mackerels).

Alternative 1 is not expected to have additional impacts. However, the intent of this action is to address the fact that, under the current management regime, some fishermen may have difficulty renewing their permits. For example, it is likely that permit holders who engaged in non-fishing income activities, such as the clean-up efforts during and following the Deep Horizon MC252 oil spill, obtained more than 50% of their personal income from non-fishing activities in 2010. It should be noted that the income qualification affidavit requires that 50% of the applicant's earned income come from fishing during one of the two preceding years, meaning that permit holders that engaged in clean-up efforts only during 2010 would still qualify for permit renewal. Should a permit holder not been able to engage primarily in fishing the previous year, owing to health or other factors, the individual may not be able to legally renew his permit. This is not likely to be a problem for permits held in the name of a business entity, rather than an individual.

Eliminating the income requirement (**Preferred Alternative 2**) is not expected to incur impacts for those who have permits in the name of commercial fishing business entities. Positive social impacts may be expected from **Preferred Alternative 2** for those engaged in commercial fishing who need to diversify their livelihood strategies due to economic needs, for example. An important positive social effect of **Preferred Alternative 2** would be to provide commercial fishermen with a measure of flexibility to earn income from other means, yet still retain their permit. There is potential for negative social impacts from the elimination of the income requirement should an increase occur in the demand to purchase commercial reef fish permits resulting from the elimination of the income requirement. Negative social impacts could result should the cost of permits increase or become scarcer due to demand, further restricting new entrants to the fishery. On the other hand, a reef fish permit is not the only requirement for commercial reef fish fishing. Thus, given other economic investments required to begin fishing, this may not be a concern. Currently, a commercial reef fish permit costs approximately $5,000[2], although a permit's value varies according to its associated landing history (K. Bell, personal communication). In addition to the reef fish permit, a permit holder would have to purchase shares or allocation to land species managed under IFQ programs.

It should be noted that a few permits are held by permit owners whose vessel operator serves as the income qualifier for the permit. In these cases, the permit owner may not transfer the permit independent of the qualifying vessel operator. It is possible that a modification to the renewal

[2] This figure is an approximation as there is no fixed price for permits and a seller and buyer are free to negotiate the price. There are additional expenses for new vessel entry, including requirements for compliance with U.S. Coast Guard regulations.

requirement could impact this group of vessel operators as under the **Preferred Alternative 2**, the operator based limits on permit renewal would be removed. However, the permit owner may currently transfer the permit if he qualifies the permit in some other way, such as with a business entity or another qualifying operator. Thus, this action is not expected to affect the arrangements between permit owners and their vessel operators.

Expanding the definition of earned income derived from fishing to include the proceeds from the sale of IFQ shares and allocation (**Alternative 3**) would facilitate permit renewal for IFQ shareowners who earn more income from selling IFQ shares and allocation than fishing activity. **Alternative 3** may affect the social environment of fishing participation under the IFQ programs. Although this alternative is not likely to provide social benefits to commercial fishermen who primarily engage in fishing activity, it could encourage the practice of selling one's allocation rather than participating in fishing activity directly. It should be noted that as of January 1, 2012, IFQ program shareowners no longer need a reef fish permit to buy and sell shares and allocation,[3] meaning that those who choose to deal in the sale of IFQ shares and allocation are not required to possess a reef fish permit. On the other hand, **Alternative 3** could provide flexibility to shareowners by allowing them to keep their reef fish permits while selling their shares and allocation on a temporary basis, but retain the ability to return to fishing. It is unknown how many fishermen would be affected under this scenario.

Replacing the income requirement with a reef fish landing requirement for permit renewal (**Alternative 4**) would promote permit ownership among those primarily engaged in commercial fishing. The renewal of commercial reef fish permits would require a pre-determined quantity of reef fish landings (**Options a, b, c,** or **d**), thereby ensuring that valid permits remain in the possession of an entity whose vessel is actively fishing. Depending on the option selected, however, **Alternative 4** could make it more difficult for diversified fishermen who engage in other permitted fisheries, such as coastal migratory pelagics and lobster, to meet the landings requirement. A landing requirement might restrict the flexibility of such fishermen, while facilitating permit renewal for large-scale vessels only. For example, at present, a fisherman who possesses other federal permits and targets multiple species may earn his entire income from commercial fishing, but shifts effort among permits according to factors such as abundance, season, crew availability, etc. Furthermore, this option could affect fishing behavior by increasing effort toward reef fish species that may not otherwise be targeted, just to achieve the landings requirement. Such a shift could lead to indirect biological impacts. Finally, the selection of a landings requirement (**Alternative 4**, **Options a, b, c,** or **d**) should consider historical or recent landings by permit. However, the frequency distribution of landings by permit is not available at this time.

Alternative 5 would provide the Council with a framework for modifying the renewal requirement for commercial reef fish permits. **Alternative 5** is designed to give the Council flexibility in considering events which may impact commercial fishing activity and allow an appropriate modification to the renewal requirement on a temporary basis. Positive social benefits are expected to accrue to permit holders from **Alternative 5** by facilitating permit renewal in the event of an environmental event that affects commercial fishing effort. Such positive benefits, however, would depend on the Council's employment of this alternative in the

[3] Modification of this provision is currently under consideration by the Council in a separate amendment.

event of an episode that affects respective fishermen. The selection of **Preferred Alternative 2**, however, renders **Alternative 5** unnecessary.

4.1.5 Direct and Indirect Effects on the Administrative Environment

Modifying the income requirement for permit renewal would affect the administrative environment as the permits office of the Southeast Regional Office would need to adjust the application process. **Alternative 1** would maintain the current management regime and therefore not incur impacts. Positive impacts are likely to accrue with the removal of the income requirement (**Preferred Alternative 2**) as permit renewal is simplified and the permits office is not required to process the income qualifying affidavit. Effects from **Alternative 3** would be similar to **Alternative 1**, as it is incumbent upon the permit holder to determine and attest to meeting the requirement; the permits office is not charged with verifying submitted affidavits.

There are two possible scenarios under **Alternative 4,** and impacts would differ. Should the current affidavit be replaced by a landings requirement affidavit, **Alternative 4** would be similar to **Alternatives 1** and **3**, by placing responsibility for calculating landings on the permit holder. On the other hand, **Alternative 4** would incur impacts to the administrative environment if the permits office is charged with determining the quantity of annual landings for each permit's renewal. The permits office would need to incorporate this step into its renewal process, in coordination with the Southeast Fisheries Science Center which maintains vessel logbooks. Whether the permits office is required to calculate landings or simply to accept a different affidavit, impacts would not vary with the quantity of landings required under **Options a, b, c**, or **d**.

Finally, **Alternative 5** would have no impact on the permits office, but would require the Council to meet, address, and agree on the terms of a renewal requirement suspension. The impacts should be similar or positive compared to **Alternative 1**, under which no suspension is currently allowed. If the Council could not agree and pass a motion, the existing permit renewal requirement would remain in place. Should **Alternative 5** be selected alongside **Alternatives 3** or **4**, similar impacts may be expected as the lack of a motion by the Council would leave the respective requirements in place.

4.2 Action 2: Modify Crew Size Regulations for Dual-Permitted Vessels While Fishing Commercially

4.2.1 Direct and Indirect Effects on the Physical Environment

For this action, modifying the crew size requirement for 154 dual-permitted vessels, **Alternative 1** (no action) would maintain the current three-person crew size for dual-permitted vessels fishing commercially. This alternative would not change fishing effort and therefore should have no additional effect on the physical environment. **Preferred Alternative 3** would increase the maximum crew size to four. The additional crew member is unlikely to cause any direct or indirect effect on the physical environment. **Alternative 2** would eliminate the crew size requirement. If the vessel carries more crew while commercially fishing, there may be minimal impacts from the additional people; however, it is unlikely to have any significant effects on the physical environment. Spearfishing is a minor component of the commercial fishery. Barnette (2001) summarizes a previous study that concluded spearfishing on reef habitat may result in some coral breakage, but damage is probably negligible. In addition, there could be some impacts from divers touching coral with hands or from re-suspension of sediment by fins (Barnette 2001). Such impacts should be negligible.

4.2.2 Direct and Indirect Effects on the Biological Environment

For this action, modifying the crew size requirement for 154 dual-permitted vessels, **Alternative 1** (no action) would maintain the current three-person crew size for dual-permitted vessels fishing commercially. This alternative would not change fishing effort and therefore should have no additional effect on the biological environment. **Alternatives 2** and **Preferred Alternative 3** would allow for an increase in number of crew members on dual-permitted vessels. Increasing the number of crew on a vessel could improve the vessel's efficiency and overall fishing effort. **Preferred Alternative 3** would have the least effect on effort because it only allows a crew size increase to four on dual-permitted vessels. **Alternative 2** could have the greatest effect on effort because it does not limit the crew size on a dual-permitted vessel. Historically, one possible reason for limiting the crew size on a dual-permitted vessel when fishing commercially may have been to prevent double-dipping where a vessel might take out a number of passengers under the pretense of making a charter trip, but subsequently selling the catch. The commercial red snapper, grouper, and tilefish fisheries, which constitute the majority of the commercial reef fish fisheries, are now under IFQ programs, and all commercial reef fish vessels are required to be equipped with vessel monitoring systems (VMS). The IFQ programs have strict reporting requirements that make it clear when a vessel is operating as a commercial vessel. In addition, the amount of fish that can be caught on a vessel is limited by the amount of IFQ shares regardless of the crew size. Due to the costs involved with carrying more crew, there would be little incentive to exceed the necessary crew size. Based on the other reef fish regulations, it is unlikely that the increase in crew would have significant effects on the biological environment.

4.2.3 Direct and Indirect Effects on the Economic Environment

Alternative 1, which would maintain the maximum crew size at three for dual-permitted vessels, is not anticipated to result in economic effects. However, **Alternative 1** would not address safety concerns for spear fishermen.

Alternative 2 and **Preferred Alternative 3** would eliminate crew size requirements for dual-permitted vessels while fishing commercially and increase the maximum crew size to four, respectively. Both alternatives would address safety concerns expressed by spear fishermen because under either **Alternative 2** or **Preferred Alternative 3**, they would be allowed to have two divers in the water and two persons on board. **Alternative 2** and **Preferred Alternative 3** are not anticipated to affect the harvest or other customary uses of reef fish resources. Therefore, economic effects are not anticipated to result from the implementation of either alternative. Although economic effects are not expected from **Alternative 2** or **Preferred Alternative 3**, a precautionary approach would suggest that, to preempt future changes in effort and fishing behavior, increasing the crew size to four (**Preferred Alternative 3)** may be preferable to eliminating the crew size requirement (**Alternative 2**).

4.2.4 Direct and Indirect Effects on the Social Environment

Alternative 1 (no action) is not expected to incur social impacts, but it is an obstacle to the safe diving practices recommended by the U.S. Coast Guard (2009). Beneficial social impacts are expected to accrue to the crews of dual-permitted vessels (without a Certificate of Inspection) under the remaining alternatives, as crew size is not restricted (**Alternative 2**) or is increased to four persons (**Preferred Alternative 3**). A crew size of four (**Preferred Alternative 3**) allows two divers in the water while two crew members remain topside. Should a diver experience an emergency situation, the diver would have another diver and topside crew member in addition to the captain, available for assistance. An additional social benefit could manifest through employment of a fourth crew member.

Given the current parameters for regulating commercial reef fish fishing, including the requirement for VMS and existing IFQ programs, the potential for a vessel to sell a charter trip and attempt to fish as a commercial trip, thereby avoiding the recreational bag limits, is unlikely. Thus, this original intent of the provision to limit crew size may no longer be necessary. While there is no specific benefit that has been identified for a crew size of more than four persons (**Alternative 2**), the elimination of regulations deemed unnecessary or irrelevant may be favorable to fishermen.

4.2.5 Direct and Indirect Effects on the Administrative Environment

Modifying the crew size requirement for dual-permitted vessels may affect the administrative environment based on the necessary enforcement efforts. **Alternative 1** would maintain the status quo and therefore not incur any impacts. **Preferred Alternative 3,** increasing the crew size from three to four, would not significantly affect the administrative environment. However, **Preferred Alternative 3,** would increase safety at sea and allow dual-permitted vessels to operate within the prescribed Occupational Safety and Health Administration (OSHA) commercial diving regulations and follow the U.S. Coast Guard Diving Operation Guidelines (2009) while engaged in spearfishing. **Alternative 2,** eliminating the crew size, could cause additional complications for enforcement due to determining if the vessel is conducting the trip as a charter or commercial operation. However, additional regulations through the IFQ programs would minimize the potential for double-dipping by subsequently selling the catch.

4.3 Cumulative Effects Analysis

As directed by the National Environmental Policy Act (NEPA), federal agencies are mandated to assess not only the indirect and direct impacts, but the cumulative impacts of their actions as well. The NEPA defines a cumulative impact as "the impact on the environment which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency (federal or non-federal) or person undertakes such other actions. Cumulative impacts can result from individually minor but collectively significant actions taking place over a period of time" (40 CFR 1508.7). Cumulative effects can either be additive or synergistic. A synergistic effect occurs when the combined effects are greater than the sum of the individual effects.

The geographic scope affected by this action is described in the affected environment (section 3.1). The primary impacts of the actions in this amendment may affect the physical, biological/ecological, and socioeconomic environments of the Gulf of Mexico (Gulf). The proposed actions in this amendment are expected to affect commercial reef fish permit holders who plan to renew their permits and permit holders who possess both a charter/headboat reef fish permit and a commercial reef fish permit. As of September 20, 2011, there were 920 valid and renewable commercial reef fish permits. Of these, 833 were currently valid, with the remainder classified as renewable (eligible for renewal within one year). Of the 1,297 charter/headboat reef fish permits (including historical captains permits), 154 of these also held a valid commercial reef fish permit as of September 20, 2011. Geographically, the majority of these dual-permit holders were located in the state of Florida and further described in section 3.4.

The following are some past, present, and future actions that could impact the reef fish population. However, the proposed action or the alternatives are unlikely to have additional cumulative effects as discussed in Sections 4.1 and 4.2.

<u>Past Actions</u>

The cumulative effects from the Deepwater Horizon MC252 oil spill may not be known for several years. On April 20, 2010, an explosion occurred on the Deepwater Horizon MC252 oil rig, resulting in the release of an estimated 4.9 million barrels of oil into the Gulf. In addition, 1.84 million gallons of Corexit 9500A dispersant were applied as part of the effort to constrain the spill. At its maximum extent, oil from the Deepwater Horizon MC252 incident has affected more than one-third of the Gulf area from western Louisiana east to the panhandle of Florida and south to the Campeche Bank in Mexico. Indirect and inter-related effects on the biological and ecological environment of reef fish in concert with the Deepwater Horizon MC252 oil spill are not well understood. The impacts on the food web from phytoplankton, to zooplankton, to mollusks, to top predators may be significant in the future. Additionally, in 2005, a red tide event on the west-Florida shelf may have impacted reef fish populations. It has only been in the last 10 years that mortalities of higher vertebrates have been indisputably demonstrated to be due to acute red tide blooms and their brevetoxins (Landsberg et al. 2009). The extent of this event and possible effects of fish community structure has been described in Gannon et al. (2009).

Present and Future Actions

The following is a list of reasonably foreseeable future management actions. Should new regulations be needed for the management of these stocks, they will likely not be implemented until 2014 at the earliest, or the end of the timeframe discussed in this analysis.

- On January 1, 2012, red snapper individual fishing quota shares will be available for transfer to all U.S. citizens. Although persons without a commercial reef fish permit will not be able to catch and sell fish, they will be able to buy and sell shares and allocation. Potentially persons could buy and hold onto shares without landing fish. This could reduce fishing effort.
- Amendment 28 to the Reef Fish fishery management plan (FMP) is still under development. This amendment would examine fair and equitable ways to allocate certain grouper resources between recreational and commercial fisheries.
- Amendment 33 to the Reef Fish FMP is being developed to evaluate limited access privilege programs for reef fish species not currently covered under individual fishing quota programs.

Amendment 30B (GMFMC 2008) describes in detail non-FMP actions relating to liquefied natural gas terminals, hurricanes, fuel prices, imports, and global climate change and is incorporated here by reference. There is a large and growing body of literature on past, present, and future impacts of global climate change induced by human activities. Some of the likely effects commonly mentioned are sea level rise, ocean acidification, increased frequency of severe weather events, and change in air and water temperatures. The Environmental Protection Agency's climate change web page provides basic background information on these and other measured or anticipated effects. In addition, the Intergovernmental Panel on Climate Change has numerous reports addressing their assessments of climate change (http://www.ipcc.ch/publications_and_data/publications_and_data.shtml). Global climate changes could have significant effects on Gulf fisheries; however, the extent of these effects is not known at this time. Possible impacts include temperature changes in coastal and marine ecosystems that can influence organism metabolism and alter ecological processes such as productivity and species interactions; changes in precipitation patterns and a rise in sea level which could change the water balance of coastal ecosystems; altering patterns of wind and water circulation in the ocean environment; and influencing the productivity of critical coastal ecosystems such as wetlands, estuaries, and coral reefs (Kennedy et al. 2002). Modeling of climate change in relation to the northern Gulf hypoxic zone may facilitate attempts to reduce the area impacted by these events (Justic et al. 2003). It is unclear how climate change would affect reef fishes, and likely would affect species differently. Climate change can affect factors such as migration, range, larval and juvenile survival, prey availability, and susceptibility to predators. In addition, the distribution of native and exotic species may change with increased water temperature, as may the prevalence of disease in keystone animals such as corals and the occurrence and intensity of toxic algae blooms. Climate change may significantly impact reef fish species in the future, but the level of impacts cannot be quantified at this time, nor is the time frame known in which these impacts would occur. Actions from this amendment are not expected to significantly contribute to climate change through an increase or decrease to the carbon footprint from fishing.

The effects of the proposed action or the alternatives would be monitored through collection of landings data by NOAA Fisheries Service, stock assessments and stock assessment updates, life history studies, economic and social analyses, and other scientific observations. Landings data for the recreational sector in the Gulf are collected through the Marine Recreational Fishery Statistics Survey (MRFSS), NOAA Fisheries Service's Head Boat Survey, and the Texas Marine Recreational Fishing Survey. MRFSS is currently being replaced by the Marine Recreational Information Program (MRIP), a program designed to improve the accuracy of monitoring of recreational fishing. Commercial data are collected through trip ticket programs, port samplers, and logbook programs, as well as dealer reporting through the IFQ program.

5. REGULATORY IMPACT REVIEW

5.1 Introduction

NOAA Fisheries Service requires a Regulatory Impact Review (RIR) for all regulatory actions that are of public interest. The RIR does three things: 1) Provides a comprehensive review of the level and incidence of impacts associated with a proposed or final regulatory action; 2) 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) 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 the proposed regulations are a "significant regulatory action" under the criteria provided in Executive Order (E.O.) 12866 and provides information that may be used in conducting an analysis of impacts on small business entities pursuant to the Regulatory Flexibility Act (RFA). This RIR analyzes the impacts that the proposed management alternatives in this amendment to the Reef Fish Fishery Management Plan would be expected to have on the reef fish fishery.

5.2 Problems and Objectives

The problems and objectives addressed by this proposed amendment are discussed in Section 1.1 of this document.

5.3 Description of the Fishery

Descriptions of the fishery are provided in GMFMC (2010a) and GMFMC (2010b) and are incorporated herein by reference.

5.4 Impacts of Management Measures

5.4.1 Modify or Eliminate Income Requirements for Gulf Commercial Reef Fish Permits

A detailed analysis of the economic effects expected to result from this action is provided in Section 4.1.3 and is incorporated herein by reference. **Preferred Alternative 2** would eliminate existing income qualification requirements. **Alternatives 3**, **4**, and, **5** would expand the definition for income earned from fishing to include proceeds from the sale of individual fishing quota shares or allocation, replace income qualification requirements with landings requirements, and, temporarily suspend income qualification requirements in response to economic conditions that could limit commercial fishermen's ability to earn income from fishing, respectively. Direct economic effects are not likely to result from **Preferred Alternative 2**, and **Alternatives 3-5**. However, **Preferred Alternative 2** is expected to result in indirect economic benefits by allowing permit applicants to freely select the income generating activities they might pursue. Adverse indirect economic effects could result from **Alternative 4** because fishermen may be forced to alter their typical profit maximizing resource allocation to meet landings requirements. **Alternative 5,** which would be redundant following the elimination of income requirements**,** could prevent some permit applicants from losing their permit despite a failure to meet income qualification requirements due to a temporary inability to generate income from fishing-related activities.

5.4.2 Modify Crew Size for Dual-Permitted Vessels While Fishing Commercially

A detailed analysis of the economic effects expected to result from this action is provided in Section 4.2.3 and is incorporated herein by reference. **Alternative 2** and **Preferred Alternative 3** would eliminate crew size requirements for dual-permitted vessels while fishing commercially and increase the maximum crew size to four, respectively. **Preferred Alternative 3** and **Alternatives 1-2** are not anticipated to result in economic effects. **Preferred Alternative 3** and **Alternative 2** would both address safety concerns for spear fishermen but **Preferred Alternative 3** is more precautionary in preempting future changes in effort and fishing behavior.

5.5 Public and Private Costs of Regulations

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

Council costs of document preparation,
meetings, public hearings, and information
dissemination…….…….……....$10,000

NOAA Fisheries Service administrative costs of document
preparation, meetings, and review …….$ 5,000

TOTAL……...$15,000

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 action. No additional enforcement costs are anticipated.

5.6 Determination of Significant Regulatory Action

Pursuant to E.O. 12866, a regulation is considered a “significant regulatory action” if it is likely to result in: 1) An annual effect of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; 2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; 3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights or obligations of recipients thereof; or 4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this executive order. Based on the information provided above this action has been determined not to be economically significant for the purposes of E.O. 12866.

6. REGULATORY FLEXIBILITY ACT ANALYSIS

6.1 Introduction

The purpose of the Regulatory Flexibility Act (RFA) is to establish a principle of regulatory issuance that agencies shall endeavor, consistent with the objectives of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of businesses, organizations, and governmental jurisdictions subject to regulation. To achieve this principle, agencies are required to solicit and consider flexible regulatory proposals and to explain the rationale for their actions to assure such proposals are given serious consideration. The RFA does not contain any decision criteria; instead the purpose of the RFA is to inform the agency, as well as the public, of the expected economic impacts of various alternatives contained in the fishery management plan (FMP) or amendment (including framework management measures and other regulatory actions) and to ensure the agency considers alternatives that minimize the expected impacts while meeting the goals and objectives of the FMP and applicable statutes.

The RFA requires agencies to conduct a Regulatory Flexibility Act Analysis (RFAA) for each proposed rule. The RFAA is designed to assess the impacts various regulatory alternatives would have on small entities, including small businesses, and to determine ways to minimize those impacts. The RFAA is conducted primarily to determine whether the proposed action would have a "significant economic impact on a substantial number of small entities." The RFAA provides: 1) A description of the reasons why the agency is considering the action; 2) a succinct statement of the objectives of, and legal basis for, the proposed rule; 3) a description and, where feasible, an estimate of the number of small entities to which the proposed rule will apply; 4) a description of the projected reporting, record-keeping, and other compliance requirements of the proposed rule, including an estimate of the classes of small entities which will be subject to the requirements of the report or record; 5) an identification, to the extent practicable, of all relevant federal rules, which may duplicate, overlap, or conflict with the proposed rule; 6) a description and estimate of the expected economic impacts on small entities; and 7) an explanation of the criteria used to evaluate whether the rule would impose "significant economic impacts".

6.2 Statement of the need for, objectives of, and legal basis for the rule

The problems and objective of this proposed amendment are provided in Section 1.2. In summary, the objective of this proposed action is to eliminate existing income qualification requirements that may no longer be applicable to the current commercial fishing environment and to improve vessel safety in the reef fish fishery. The Magnuson-Stevens Fishery Conservation and Management Act provides the statutory basis for this proposed rule.

6.3 Description and estimate of the number of small entities to which the proposed rule will apply

This rule, if implemented, would be expected to directly affect 920 vessels that possessed, as of September 11, 2011, a commercial reef fish permit. Among these entities, 154 vessels also possessed a reef fish for-hire permit. These vessels would be affected by both actions in this proposed rule. The average commercial vessel in the reef fish fishery is estimated to earn approximately $48,000 (2010 dollars).

The for-hire fleet is comprised of charterboats, which charge a fee on a vessel basis, and headboats, which charge a fee on an individual angler (head) basis. The average charterboat is estimated to earn approximately $89,000 (2010 dollars) in annual revenue, while the average headboat is estimated to earn approximately $469,000 (2010 dollars). The average revenue profile of dual-permitted vessels is not available.

No other small entities that would be expected to be directly affected by this proposed rule have been identified.

The Small Business Administration has established size criteria for all major industry sectors in the U.S. including fish harvesters. A business involved in fish harvesting is classified as a small business if it is independently owned and operated, is not dominant in its field of operation (including its affiliates), and has combined annual receipts not in excess of $4.0 million (NAICS code 114111, finfish fishing) for all its affiliated operations worldwide. The revenue threshold for a business involved in the for-hire fishing industry is $7.0 million (NAICS code 713990, recreational industries). Based on the average revenue estimates provided above, all commercial and for-hire vessels expected to be directly affected by this proposed rule are determined for the purpose of this analysis to be small business entities.

6.4 Description of the projected reporting, record-keeping and other compliance requirements of the proposed rule, including an estimate of the classes of small entities which will be subject to the requirement and the type of professional skills necessary for the preparation of the report or records

This proposed rule would not establish any new reporting, record-keeping, or other compliance requirements. One of the proposed actions, however, would reduce the reporting requirements for the commercial reef fish permit application.

6.5 Identification of all relevant federal rules, which may duplicate, overlap or conflict with the proposed rule

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

6.6 Significance of economic impacts on small entities

Substantial number criterion

As previously discussed, this proposed rule, if implemented, would be expected to directly affect all 920 vessels that possessed, as of September 11, 2011, a commercial reef fish permit. Because all vessels in the fishery would be affected, this proposed rule is determined to meet the substantial number criterion.

Significant economic impacts

The outcome of “significant economic impact” can be ascertained by examining two factors: disproportionality and profitability.

Disproportionality: Do the regulations place a substantial number of small entities at a significant competitive disadvantage to large entities?

All entities expected to be directly affected by the measures in this proposed action are determined for the purpose of this analysis to be small business entities, so the issue of disproportionality does not arise in the present case.

Profitability: Do the regulations significantly reduce profits for a substantial number of small entities?

A discussion of the expected economic effects of the actions in this proposed rule is provided in Sections 4.1.3 and 4.2.3. Neither action in this proposed rule would be expected to result in any reduction in profits for any small entities. The two proposed actions would either eliminate or lessen a current restriction. The proposed elimination of an income requirement for the Gulf commercial reef fish permit would be expected to increase the opportunity for fishermen to increase income from non-fishing occupations without jeopardizing their ability to renew their commercial reef fish permit, and eliminate the pressure to continue to fish, when personal, economic, or other factors may suggest fishing should not occur, in order to maintain fishing income to satisfy a permit requirement. As a result, although the effects are not quantifiable with available data, this proposed action would be expected to increase the economic benefits to small entities. The proposed increase in the maximum crew size to four persons for dual-permitted vessels would lessen the current restriction of three persons and allow increased flexibility for affected vessels to carry the number of crew best suited to the needs or conditions of the trip. As a result, although the effects are again unquantifiable with available data, increased economic benefits would be expected to accrue to fishermen as a result of this increased flexibility. Therefore, the economic effects of this proposed rule on small entities would be expected to be positive and it is determined that, this rule, if implemented, would not be expected to have a significant economic effect on a substantial number of small entities.

6.7 Description of significant alternatives to the proposed action

This proposed rule, if implemented, would not be expected to have a significant economic effect on a substantial number of small entities. As a result, the issue of significant alternatives is not relevant.

7. OTHER APPLICABLE LAW

The Magnuson-Stevens Act (16 U.S.C. 1801 et seq.) provides the authority for fishery management in federal waters of the exclusive economic zone. However, fishery management decision-making is also affected by a number of other federal statutes designed to protect the biological and human components of U.S. fisheries, as well as the ecosystems that support those fisheries. Major laws affecting federal fishery management decision-making are summarized below.

Administrative Procedures Act

All federal rulemaking is governed under the provisions of the Administrative Procedure Act (APA) (5 U.S.C. Subchapter II), which establishes a "notice and comment" procedure to enable public participation in the rulemaking process. Under the APA, NOAA Fisheries Service is required to publish notification of proposed rules in the Federal Register and to solicit, consider, and respond to public comment on those rules before they are finalized. The APA also establishes a 30-day waiting period from the time a final rule is published until it takes effect.

Coastal Zone Management Act

Section 307(c)(1) of the federal Coastal Zone Management Act of 1972 (CZMA), as amended, requires federal activities that affect any land or water use or natural resource of a state's coastal zone be conducted in a manner consistent, to the maximum extent practicable, with approved state coastal management programs. The requirements for such a consistency determination are set forth in NOAA regulations at 15 C.F.R. part 930, subpart C. According to these regulations and CZMA Section 307(c)(1), when taking an action that affects any land or water use or natural resource of a state's coastal zone, NOAA Fisheries Service is required to provide a consistency determination to the relevant state agency at least 90 days before taking final action.

Upon submission to the Secretary, NOAA Fisheries Service will determine if this plan amendment is consistent with the Coastal Zone Management programs of the states of Alabama, Florida, Louisiana, Mississippi, and Texas to the maximum extent possible. Their determination will then be submitted to the responsible state agencies under Section 307 of the CZMA administering approved Coastal Zone Management programs for these states.

Data Quality Act

The Data Quality Act (DQA) (Public Law 106-443) effective October 1, 2002, requires the government to set standards for the quality of scientific information and statistics used and disseminated by federal agencies. Information includes any communication or representation of knowledge such as facts or data, in any medium or form, including textual, numerical, cartographic, narrative, or audiovisual forms (includes web dissemination, but not hyperlinks to information that others disseminate; does not include clearly stated opinions).

Specifically, the DQA directs the Office of Management and Budget to issue government wide guidelines that "provide policy and procedural guidance to federal agencies for ensuring and maximizing the quality, objectivity, utility, and integrity of information disseminated by federal agencies." Such guidelines have been issued, directing all federal agencies to create and

disseminate agency-specific standards to: (1) ensure information quality and develop a pre-dissemination review process; (2) establish administrative mechanisms allowing affected persons to seek and obtain correction of information; and (3) report periodically to Office of Management and Budget on the number and nature of complaints received.

Scientific information and data are key components of fishery management plans (FMPs) and amendments and the use of best available information is the second national standard under the Magnuson-Stevens Act. To be consistent with the Act, FMPs and amendments must be based on the best information available. They should also properly reference all supporting materials and data, and be reviewed by technically competent individuals. With respect to original data generated for FMPs and amendments, it is important to ensure that the data are collected according to documented procedures or in a manner that reflects standard practices accepted by the relevant scientific and technical communities. Data will also undergo quality control prior to being used by the agency and a pre-dissemination review.

Endangered Species Act

The Endangered Species Act (ESA) of 1973, as amended, (16 U.S.C. Section 1531 et seq.) requires federal agencies use their authorities to conserve endangered and threatened species. The ESA requires NOAA Fisheries Service, when proposing a fishery action that "may affect" critical habitat or endangered or threatened species, to consult with the appropriate administrative agency (itself for most marine species, the U.S. Fish and Wildlife Service for all remaining species) to determine the potential impacts of the proposed action. Consultations are concluded informally when proposed actions may affect but are "not likely to adversely affect" endangered or threatened species or designated critical habitat. Formal consultations, including a biological opinion, are required when proposed actions may affect and are "likely to adversely affect" endangered or threatened species or adversely modify designated critical habitat. If jeopardy or adverse modification is found, the consulting agency is required to suggest reasonable and prudent alternatives. NOAA Fisheries Service, as part of the Secretarial review process, will make a determination regarding the potential impacts of the proposed actions.

Marine Mammal Protection Act

The Marine Mammal Protection Act (MMPA) established a moratorium, with certain exceptions, on the taking of marine mammals in U.S. waters and by U.S. citizens on the high seas, and on the importing of marine mammals and marine mammal products into the United States. Under the MMPA, the Secretary of Commerce (authority delegated to NOAA Fisheries Service) is responsible for the conservation and management of cetaceans and pinnipeds (other than walruses). The Secretary of the Interior is responsible for walruses, sea and marine otters, polar bears, manatees, and dugongs.

Part of the responsibility that NOAA Fisheries Service has under the MMPA involves monitoring populations of marine mammals to make sure that they stay at optimum levels. If a population falls below its optimum level, it is designated as "depleted," and a conservation plan is developed to guide research and management actions to restore the population to healthy levels.

In 1994, Congress amended the MMPA, to govern the taking of marine mammals incidental to commercial fishing operations. This amendment required the preparation of stock assessments for all marine mammal stocks in waters under U.S. jurisdiction, development and implementation of take-reduction plans for stocks that may be reduced or are being maintained below their optimum sustainable population levels due to interactions with commercial fisheries, and studies of pinniped-fishery interactions.

Under section 118 of the MMPA, NOAA Fisheries Service must publish, at least annually, a List of Fisheries (LOF) that places all U.S. commercial fisheries into one of three categories based on the level of incidental serious injury and mortality of marine mammals that occurs in each fishery. The categorization of a fishery in the LOF determines whether participants in that fishery may be required to comply with certain provisions of the MMPA, such as registration, observer coverage, and take reduction plan requirements.

Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501 et seq.) regulates the collection of public information by federal agencies to ensure the public is not overburdened with information requests, the federal government's information collection procedures are efficient, and federal agencies adhere to appropriate rules governing the confidentiality of such information. The PRA requires NOAA Fisheries Service to obtain approval from the Office of Management and Budget before requesting most types of fishery information from the public. Alternatives that might have PRA consequences include Action 1, Alternatives 2, 3, 4, and 5.

Executive Orders

E.O. 12630: Takings

The Executive Order on Government Actions and Interference with Constitutionally Protected Property Rights that became effective March 18, 1988, requires each federal agency prepare a Takings Implication Assessment for any of its administrative, regulatory, and legislative policies and actions that affect, or may affect, the use of any real or personal property. Clearance of a regulatory action must include a takings statement and, if appropriate, a Takings Implication Assessment. The NOAA Office of General Counsel will determine whether a Taking Implication Assessment is necessary for this amendment.

E.O. 12866: Regulatory Planning and Review

Executive Order 12866: Regulatory Planning and Review, signed in 1993, requires federal agencies to assess the costs and benefits of their proposed regulations, including distributional impacts, and to select alternatives that maximize net benefits to society. To comply with E.O. 12866, NOAA Fisheries Service prepares a Regulatory Impact Review (RIR) for all fishery regulatory actions that either implement a new fishery management plan or significantly amend an existing plan. RIRs provide a comprehensive analysis of the costs and benefits to society of proposed regulatory actions, the problems and policy objectives prompting the regulatory proposals, and the major alternatives that could be used to solve the problems. The reviews also serve as the basis for the agency's determinations as to whether proposed regulations are a "significant regulatory action" under the criteria provided in E.O. 12866 and whether proposed

regulations will have a significant economic impact on a substantial number of small entities in compliance with the Regulatory Flexibility Analysis. A regulation is significant if it a) has an annual effect on the economy of $100 million or more or adversely affects in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments and communities; b) creates a serious inconsistency or otherwise interferes with an action taken or planned by another agency; c) materially alters the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or d) raises novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

E.O. 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low Income Populations

This Executive Order mandates that each Federal agency shall make achieving environmental justice part of its mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority populations and low-income populations in the United States and its territories and possessions.

E.O. 12962: Recreational Fisheries

This Executive Order requires federal agencies, in cooperation with states and tribes, to improve the quantity, function, sustainable productivity, and distribution of U.S. aquatic resources for increased recreational fishing opportunities through a variety of methods including, but not limited to, developing joint partnerships; promoting the restoration of recreational fishing areas that are limited by water quality and habitat degradation; fostering sound aquatic conservation and restoration endeavors; and evaluating the effects of federally-funded, permitted, or authorized actions on aquatic systems and recreational fisheries, and documenting those effects. Additionally, it establishes a seven-member National Recreational Fisheries Coordination Council responsible for, among other things, ensuring that social and economic values of healthy aquatic systems that support recreational fisheries are considered by federal agencies in the course of their actions, sharing the latest resource information and management technologies, and reducing duplicative and cost-inefficient programs among federal agencies involved in conserving or managing recreational fisheries. The Council also is responsible for developing, in cooperation with federal agencies, States and Tribes, a Recreational Fishery Resource Conservation Plan - to include a five-year agenda. Finally, the Order requires NOAA Fisheries Service and the U.S. Fish and Wildlife Service to develop a joint agency policy for administering the ESA.

E.O. 13089: Coral Reef Protection

The Executive Order on Coral Reef Protection requires federal agencies whose actions may affect U.S. coral reef ecosystems to identify those actions, utilize their programs and authorities to protect and enhance the conditions of such ecosystems, and, to the extent permitted by law, ensure actions that they authorize, fund, or carry out do not degrade the condition of that ecosystem. By definition, a U.S. coral reef ecosystem means those species, habitats, and other national resources associated with coral reefs in all maritime areas and zones subject to the

jurisdiction or control of the United States (e.g., federal, state, territorial, or commonwealth waters).

Regulations are already in place to limit or reduce habitat impacts within the Flower Garden Banks National Marine Sanctuary. Additionally, NOAA Fisheries Service approved and implemented Generic Amendment 3 for Essential Fish Habitat (EFH) , which established additional Habitat Areas of Particular Concern (HAPCs) and gear restrictions to protect corals throughout the Gulf. There are no implications to coral reefs by the actions proposed in this amendment.

E.O. 13132: Federalism

The Executive Order on Federalism requires agencies in formulating and implementing policies, to be guided by the fundamental Federalism principles. The Order serves to guarantee the division of governmental responsibilities between the national government and the states that was intended by the framers of the Constitution. Federalism is rooted in the belief that issues not national in scope or significance are most appropriately addressed by the level of government closest to the people. This Order is relevant to FMPs and amendments given the overlapping authorities of NOAA Fisheries Service, the states, and local authorities in managing coastal resources, including fisheries, and the need for a clear definition of responsibilities. It is important to recognize those components of the ecosystem over which fishery managers have no direct control and to develop strategies to address them in conjunction with appropriate state, tribes and local entities (international too).

No Federalism issues have been identified relative to the action proposed in this amendment. Therefore, consultation with state officials under Executive Order 12612 is not necessary.

E.O. 13158: Marine Protected Areas

This Executive Order requires federal agencies to consider whether their proposed action(s) will affect any area of the marine environment that has been reserved by federal, state, territorial, tribal, or local laws or regulations to provide lasting protection for part or all of the natural or cultural resource within the protected area. There are several Marine Protected Areas, HAPCs, and gear-restricted areas in the eastern and northwestern Gulf.

Essential Fish Habitat

The amended Magnuson-Stevens Act included a new habitat conservation provision known as EFH that requires each existing and any new FMPs to describe and identify EFH for each federally managed species, minimize to the extent practicable impacts from fishing activities on EFH that are more than minimal and not temporary in nature, and identify other actions to encourage the conservation and enhancement of that EFH. To address these requirements the Council has, under separate action, approved an EIS (GMFMC 2004b) to address the new EFH requirements contained within the Magnuson-Stevens Act. Section 305(b)(2) requires federal agencies to obtain a consultation for any action that may adversely affect EFH. An EFH consultation will be conducted for this action.

8. LIST OF PREPARERS (INTERDISCIPLINARY PLANNING TEAM)

PREPARERS

Name	Discipline/Expertise	Role in Preparation
Cynthia Meyer, NOAA Fisheries Service/SF	Biologist	Co-Team Lead/Physical, Biological Environment and Impacts, Cumulative Effects Analysis
Ava Lasseter, Ph.D. , GMFMC	Anthropologist	Co- Team Lead/Social Environment and Impacts
Assane Diagne, Ph.D., GMFMC	Economist	Economic Impacts/Regulatory Impact Review
Stephen Holiman, Ph.D., NOAA Fisheries Service/SF	Economist	Economic Environment/RFA Analysis
Carrie Simmons, Ph.D., GMFMC	Fishery Biologist	Physical and Biological Impacts

SF = Sustainable Fisheries Division

REVIEWERS

Name	Discipline/Expertise	Role in EA Preparation
Shepherd Grimes, NOAA GC	Attorney	Legal Review
Noah Silverman, SERO	Natural Resource Management Specialist	NEPA Review
David Dale, NOAA Fisheries Service/HC	EFH Specialist	EFH Review
Rich Malinowski, NOAA Fisheries Service	Biologist	Reviewer
Jenny Lee, NOAA Fisheries Service/PR	Biologist	Protected Resources
Janet Miller	Permits	Reviewer
Larry Perruso, Ph.D., SEFSC	Economist	Reviewer
Carolyn Sramek	Permits	Reviewer
Pat O'Shaughnessy, NOAA OLE	Law Enforcement	Reviewer
Tracy Dunn, NOAA OLE	Law Enforcement	Reviewer

GC = General Counsel, HC = Habitat Conservation, NEPA = National Environmental Policy Act, OLE = Office of Law Enforcement, PR = Protected Resources Division, SEFSC = Southeast Fisheries Science Center, SERO = Southeast Regional Office, and SF = Sustainable Fisheries.

9. LIST OF AGENCIES CONSULTED

Federal Agencies

Gulf of Mexico Fishery Management Council's
- Scientific and Statistical Committee
- Socioeconomic Scientific and Statistical Committee
- Reef Fish Advisory Panel

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

NOAA General Counsel
U.S. Coast Guard
Environmental Protection Agency

10. Scoping Meeting Locations and Dates

Scoping meetings were held at the following locations:

March 22, 2011
Hilton St. Petersburg Parkway
950 Lake Carillon Drive
St. Petersburg, FL

March 23, 2011
Harvey Government Center
1200 Truman Avenue
Key West, FL

March 28, 2011
Hilton Garden Inn
4535 Williams Boulevard
Kenner, LA

March 29, 2011
Hilton Garden Inn
14108 Airport Road
Gulfport, MS

March 30, 2011
Renaissance Riverview Plaza
64 S. Water Street
Mobile, AL

March 31, 2011
Royal American Beach Getaways
9400 S. Thomas Drive
Panama City, FL

April 4, 2011
Holiday Inn Emerald Beach
1002 S. Shoreline Boulevard
Corpus Christi, TX

April 5, 2011
Hilton
5400 Seawall Boulevard
Galveston, TX

Public comment was taken at the following Council meetings:

October 27, 2011
Doubletree Hotel
300 Canal Street
New Orleans, LA

February 1, 2012* upcoming meeting
Renaissance Mobile Riverview Plaza Hotel
64 S. Water Street
Mobile, AL

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12. APPENDIX: SCOPING MEETING SUMMARIES AND WRITTEN COMMENTS

Summary of the Scoping Hearing for the Crew Size/Earned Income Amendment
St. Petersburg, FL
March 22, 2011

Council and Staff	Public
Bill Teehan	Maxie Foster
Assane Diagne	Brad Gorst
Ava Lasseter	Brian Lewis
Emily Muehlstein	Ed Walker
Karen Hoak	Patrick Bennett
	Brad Kenyon

The meeting convened at 6:10 p.m. and the opening statement was read by Chairman **Bill Teehan** followed by **Assane Diagne** who gave a brief presentation on the amendment, first the earned income section, then the crew size section, considering whether the current requirements should remain in effect, be suspended temporarily, be modified, or be repealed all together. The meeting was then opened up for questions and public comment.

A request for clarification was made regarding certificates of inspection requirements, particularly when commercially fishing versus recreationally on 6 pack boats. It was noted that there is some confusion about this COI issue when fishing commercially. Conversing began on the specifics and nuances of these different situations and circumstances, so Mr. Teehan began taking comments from the registered speakers.

Brad Kenyon – He began on the subject of crew size. He does not have a charter permit, and that is because the federal regulations for commercial spear fishers require a minimum of 4 crew members on board. He felt that for charter and commercial fishers, with VMS and IFQs, there was already sufficient oversight, and that additional rules would not save any fish. Regarding earned income, he felt that was also additional unnecessary regulation. He was also unaware that the leasing of his shares did not count towards his quota, and believed that others were also under the same misperception.

Patrick Bennett – He concurred with Brad regarding the quota leasing. He stated that the IFQ program was sold to them by allowing them to use income from quota to maintain their permits, even in situations where they were under duress. That information went on his tax return for his business. His income revenue for leasing quota went on his tax return, and that would be the same tax return he would use to prove his income requirements. He agreed with Brad's comments on crew size limits on dual-permitted vessels also. He does not have a charter permit because he runs a commercial spear fishing boat. He did not want any more constraints on his business.

Ed Walker – He is a dual permit holder and he was boarded offshore last year. He was under the impression he could have 3 crew members plus a captain while commercial fishing. The

recreational fishery was closed at the time, and had he been cited, he could have potentially been put out of business and ruined. That scare caused him to get more educated and involved in the process. He felt the VMS declaration should not change based on how many people are on board. If he logged in as a commercial trip, then that is how his trip should be handled. To be considered a charter, fees should have to be paid. The number of crew members on board should not be a consideration because when spear fishing, 4 people are required for safety purposes. There should be some way to allow for commercial spear fishing. The VMS declaration should prevail. There have even been some misconceptions in the past with law enforcement personnel in regards to this subject. He felt that by being a dual permit holder, he was being unjustly penalized and handicapped with this crew size limit. It is already illegal to run charters while commercial fishing and it will remain that way, with or without crew size limits. He emphasized how thoroughly he is scrutinized when he declares he is going out on a commercial trip. Double dipping would be too difficult and the additional rule is unnecessary. Also, there are only 172 individuals in this category, so in his opinion, the rule is overkill for such a small number of people.

Brian Lewis – As a commercial fisher, he spoke on the income requirements. He felt that the IFQ program would adversely affect people who would not be able to maintain the 51% requirement. He was concerned that after the 5 year period, outsiders could take over all the quota. He felt that the income requirements needed to be abandoned, but there would have to be some restrictions to make sure that true fishermen continue to be permitted to fish. He also agreed with doing away with crew size limits too.

Maxie Foster – Stated that if there was no crew size limit, there was the potential for a charter captain to go out with paying passengers on a commercial fishing trip and simply tell them that if they get pulled over, they are to say they are his crew. True commercial captains would not want a lot of crew on board that would be taking their percentages of the catch.

Brad Gorst – Regarding crew size, he agreed that for safety purposes, spear fishers needed 4 crew members. Life rafts typically hold 4 people. So he felt that it was rational that the cut-off should be 4. That provides for safety and still provides some sort of control. Regarding the income requirement, he understood that if you did not get a lot of IFQ shares, you would be forced to do something else. He felt that the Council needed to address those who do nothing but lease shares and never fish. That is not fair to those that do not have the opportunity to get back into the fishery full time. He did not want speculators to be able to run the fishermen out of business. Fishing communities and businesses needed to be considered first.

During the informal discussion that followed the scoping hearing, members of the public raised a variety of issues. Bill Teehan offered additional information and answered questions. Issues discussed included the geographical expansion of the red snapper stock, the apportionment of shares in the red snapper and grouper/tilefish individual quota programs (IFQ), the anticipated IFQ finance program, and, the upcoming 5-year review of the red snapper IFQ program.

The meeting was adjourned at 7:20 p.m.

Summary of the Scoping Hearing for the Crew Size/Earned Income Amendment
Key West, FL
March 23, 2011

Council and staff
Ed Sapp
Ava Lasseter

Edward Little, Jr. NOAA Fisheries Service

No members of the public attended the Scoping Hearing, thus there are no public comments to report.

Summary of the Scoping Hearing for the Crew Size/Earned Income Amendment
Kenner, LA
March 28, 2011

Council and staff

Myron Fisher
Emily Muehlstein

No members of the public attended the Scoping Hearing, thus there are no public comments to report.

Summary of the Scoping Hearing for the Crew Size/Earned Income Amendment
Gulfport, MS
March 29, 2011

Council and staff

Kay Williams
Emily Muehlstein

No members of the public attended the Scoping Hearing, thus there are no public comments to report.

Summary of the Scoping Hearing for the Crew Size/Earned Income Amendment
Mobile, AL
March 30, 2011

Council and Staff	Public
Dr. Bob Shipp	Bobbi M. Walker
Emily Muehlstein	Bob Zales

The meeting was convened at 6:00 p.m. and the two members of the public in attendance opted to skip the opening statement and the presentation because they felt that they were both aware of the issues.

Bobbi M. Walker On triggering the suspension of income requirements, she believes that the exemption should be allowed because commercial and charter boat owners are seeking other income because of hurricanes and oil spills. She is a dual-permitted vessel owners and believes that VMS and mode declarations makes it unnecessary to have a crew size limit.

Bob Zales Income requirements should be suspended because of oil spill and hurricanes. He states that it's hard to make a living even as a full time fisherman and it is easy to get around the current requirements. He also states that he does not believe there is a need for the crew size limit on dual permitted vessels. He suggests that if a dual-permitted vessel is fishing with for-hire clients under a commercial declaration that the penalties should be greater than a simple fine.

The meeting was adjourned at 6:35 p.m.

Summary of the Scoping Hearing for the Crew Size/Earned Income Amendment
Panama City Beach, FL
March 31, 2011

Council and Staff	Public
Bill Teehan	Roger Wilbourn
Emily Muehlstein	Bart (Buster) Niquet
	Jim Clements

The meeting was convened at 6:10 p.m. The chair read the opening statement and staff gave the power point presentation. There were 4 members of the public in attendance.

Roger Wilbourn believes that the income requirement should be done away with. He says it's easy to get around by setting up LLC's or other mechanisms to dodge the system. He has been fishing since the 50's but he still has to prove he is a fisherman each year. He wants the Council to take into consideration that he is a 71 year old man and he wants to slow down a bit. He has a boat and water front property and he is forced to fish when he doesn't want to because he needs to maintain his 51%. Has a bunch of red grouper shares he does not want but he does not want to sell them because if he does he won't qualify. He urges this issue to be resolved before the close

of the year. Believes that the IFQ programs make the income requirement a waste of time. Fears that environmental groups will buy the snapper IFQ shares when they come up for public consumption.

Bart (Buster) Niquet thinks the earned income requirement is a waste of time and should be done away with it. Believes a captain should have at least 4 crew.

Jim Clements thinks that it makes it hard for folks who want to get into the fishery are too regulated. He also thinks everyone that wants to get around it can. He thinks current fishermen are professionals with IFQ's and that it really inhibits young starting fishermen. He wants Council to do away with it. Also believes that a captain should be allowed to have any size crew that he needs.

The meeting adjourned at 7:45 p.m.

Summary of the Scoping Hearing for the Crew Size/Earned Income Amendment
Corpus Christi, TX
April 4, 2011

Council and staff	Public
Mike Ray	Michael Miglini
Ava Lasseter	

The meeting convened at 6:10 p.m. and the opening statement was read by Chairman **Mike Ray. Ava Lasseter** then gave a brief presentation on the amendment. The meeting was then opened up for questions and public comment.

Michael Miglini Concerning the income requirement, in his experience he feels that the purpose of the permits has been ineffective. Sophisticated parties can use corporations to skirt the intent of the law and comply with the income requirements. So, the income requirement does not fulfill its purpose. Rather, it causes an additional burden for honest people, including small operators who have to leave fishing when they must rely on other incomes in bad times. The rules are already cumbersome; there are lots of rules to follow now. He also feels that some people sign the affidavit without meeting the requirement, because income tax documents are no longer required. It is too easy to cheat. He understands the concern about restricting permit renewals, but feels that landings requirements could be better. For example, a permit holder could be required to show over 1,000 lbs of landings within the first two years of purchasing a permit, but non-natural entities would still be able to skirt the rule. Again, the burden falls mostly on small operators.

Concerning the issue of crew size for dual-permitted vessels, at the time, he supported the issue and it seemed logical. He remembers the red snapper derby which could have been an incentive for dual for-hire permit holders to fish commercially with charter passengers. Now, he wants the rule to go away entirely. Things have changed. Commercial trips now have to hail out and use

VMS. He is not sure how enforceable the new rules are, but they could be made so. Basically, there is a record of trip intent before leaving the dock. Also, with the IFQ program, there is not much incentive to fish commercial allocation on a recreational trip. Landings must be validated by a fish house, plus there is the three hour landing notice requirement. These are huge disincentives, and it is more difficult, to violate the law. It is not likely for operators to risk it. Rather, there is the safety issue and if a commercial captain needs more crew to operate safely, it should be up to the captain, whether that is 4, 5, or 6 people. Also, as bag limits decrease, the viability of vessels is decreasing and the mix of dual use charter-commercial vessels allows them to stay viable. This is one adaptation to stricter regulations. In summary, he supports doing away with the crew size limitation completely and prefers that enforcement be improved rather than making charter operations leave port with an undersized crew.

The meeting adjourned at 6:40 p.m.

Summary of the Scoping Hearing for the Crew Size/Earned Income Amendment
Galveston, TX
April 5, 2011

Council and staff	Public
Joe Hendrix	K.P. Burnett
Ava Lasseter	Bill Cochrane
	Scott Hickman

The meeting convened at 6:25 p.m. and the opening statement was read by Chairman **Joe Hendrix** followed by **Ava Lasseter** who gave a brief presentation on the amendment. As there were only three members of the public in attendance, Joe Hendrix invited questions about the amendment, then allowed the public comments to be made informally and through dialogue amongst the attendees. The three speakers generally agreed on all points and the following summarizes the main comments of each individual.

Income Requirement:

K.P. Burnett prefers to do away with the income requirement completely, but if NMFS insists on having one, he would prefer a poundage (landing) requirement, rather than the current income requirement.

Bill (Bubba) Cochrane doesn't want to get completely away from the requirement.

Scott Hickman supports getting rid of the requirement because the less regulations they have, the better.

Crew Size:

Bill (Bubba) Cochrane stated that no limitation on crew size is best.

Scott Hickman said that the only limit should be what the Coast Guard requires for safety and that there should not be a limit on crew size for fishing purposes.

Bill (Bubba) Cochrane added that a charter vessel would need VMS and a reef fish permit to fish commercially, so would not be able to skirt the law and have charter passengers fishing under commercial harvest limits. It would help his charter business to be able to have additional crew, should he decide it is necessary.

Scott Hickman said that they are grasping for any kind of flexibility in their business and removing such rules would help.

K.P. Burnett said it should be up to the businessman to decide how to run his business.

Scott Hickman said he would like to see the intersector trade option explored, even though he knows that many people are against it. He added that with the pilot Days at Sea program, they [charter boats] are going to have full reporting.

Joe Hendrix asked if there were any further comments the attendees wished to make and hearing none, the meeting adjourned at 7:00 p.m.