

the MA organization is liable for the hospital costs only if it is determined on appeal that the hospital stay should have been covered under the MA plan.

(ii) The hospital may not charge the MA organization (or the enrollee) if—

(A) It was the hospital (acting on behalf of the enrollee) that filed the request for immediate QIO review; and

(B) The QIO upholds the non-coverage determination made by the MA organization.

(2) *When the hospital determines that hospital services are no longer required.* If the hospital determines that inpatient hospital services are no longer necessary, and the enrollee could not reasonably be expected to know that the services would not be covered, the hospital may not charge the enrollee for inpatient services received before noon of the day after the QIO notifies the enrollee of its review determination.

(f) Effect of an immediate QIO review. The QIO determination is binding upon the enrollee, physician, hospital, and MA organization except in the following circumstances:

(1) When the enrollee remains in the hospital. If the enrollee is still an inpatient in the hospital and is dissatisfied with the determination, he or she may request a reconsideration according to the procedures described in § 422.626(f).

(2) When the enrollee is no longer an inpatient in the hospital. If the enrollee is no longer an inpatient in the hospital and is dissatisfied with this determination, the enrollee may appeal to an ALJ, the MAC, or a federal court, as provided for under this subpart.

#### **PART 489—PROVIDER AGREEMENTS AND SUPPLIER APPROVAL**

10. The authority citation for part 489 continues to read as follows:

**Authority:** Secs. 1102, 1819, 1861, 1864(m), 1866, 1869, and 1871 of the Social Security Act (42 U.S.C. 1302, 1395i–3, 1395x, 1395aa(m), 1395cc, and 1395hh).

11. Section 489.27(b) is revised to read as follows:

#### **§ 489.27 Beneficiary notice of discharge rights.**

(a) \* \* \*

(b) *Notification by hospitals and other providers.* Hospitals and other providers (as identified at 489.2(b)) that participate in the Medicare program must furnish each Medicare beneficiary, or representative, applicable CMS notices in advance of discharge or termination of Medicare services, including the notices required under § 405.1205, § 422.620, § 405.1200, and § 422.624 of this chapter.

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: February 15, 2006.

**Mark B. McClellan,**

*Administrator, Centers for Medicare & Medicaid Services.*

Approved: March 7, 2006.

**Michael O. Leavitt,**

*Secretary.*

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#### **DEPARTMENT OF COMMERCE**

##### **National Oceanic and Atmospheric Administration**

##### **50 CFR Part 622**

**[Docket No. 051128312–5312–01; I.D. 111605A]**

**RIN 0648–AS15**

##### **Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Shrimp Fishery of the Gulf of Mexico; Amendment 13**

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

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

**SUMMARY:** NMFS issues this proposed rule to implement Amendment 13 to the Fishery Management Plan for the Shrimp Fishery of the Gulf of Mexico (Amendment 13), as prepared and submitted by the Gulf of Mexico Fishery Management Council (Council). This proposed rule would establish a 10-year moratorium on issuance of Federal Gulf shrimp vessel permits; require owners of vessels fishing for or possessing royal red shrimp from the Gulf of Mexico exclusive economic zone (EEZ) to have a royal red shrimp endorsement; require owners or operators of all federally permitted Gulf shrimp vessels to report information on landings and vessel and gear characteristics; and require vessels selected by NMFS to carry observers and/or install an electronic logbook provided by NMFS. In addition, Amendment 13 would establish biological reference points for penaeid shrimp and status determination criteria for royal red shrimp. The intended effects of this proposed rule are to provide essential fisheries data, including bycatch data, needed to improve management of the fishery and to control access to the fishery.

**DATES:** Written comments on this proposed rule must be received no later than 5 p.m., eastern time, on May 22, 2006.

**ADDRESSES:** You may submit comments on the proposed rule by any of the following methods:

• E-mail: 0648–

AS15.Proposed@noaa.gov. Include in the subject line of the e-mail comment the following document identifier: 0648–AS15.

• Federal e-Rulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.

• Mail: Steve Branstetter, Southeast Regional Office, NMFS, 263 13<sup>th</sup> Avenue South, St. Petersburg, FL 33701.

• Fax: 727–824–5308.

Copies of Amendment 13, which includes an Environmental Assessment, an Initial Regulatory Flexibility Analysis (IRFA), and a Regulatory Impact Review, may be obtained from the Gulf of Mexico.

Comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this proposed rule may be submitted in writing to Jason Rueter at the Southeast Regional Office address (above) and to David Rostker, Office of Management and Budget (OMB), by e-mail at [David\\_Rosker@omb.eop.gov](mailto:David_Rosker@omb.eop.gov), or by fax to 202–395–7285.

#### **FOR FURTHER INFORMATION CONTACT:**

Steve Branstetter, telephone: 727–551–5796; fax: 727–824–5308; e-mail: [Steve.Branstetter@noaa.gov](mailto:Steve.Branstetter@noaa.gov).

**SUPPLEMENTARY INFORMATION:** The shrimp fishery in the Gulf of Mexico is managed under the FMP. The FMP was prepared by the Council and is implemented under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) by regulations at 50 CFR part 622.

#### **Amendment 13**

##### **Royal Red Shrimp Permit Endorsements**

For a person aboard a vessel to fish for royal red shrimp in the Gulf of Mexico EEZ or possess royal red shrimp in or from the Gulf of Mexico EEZ, this rule would require that a valid commercial vessel permit endorsement for royal red shrimp be issued to the vessel and be on board. Note that this would be in addition to the requirement to have a Federal commercial vessel permit for Gulf shrimp.

An owner of a vessel who desires a commercial vessel permit endorsement for royal red shrimp would be required to obtain a permit application form from and submit it to the Regional

Administrator (RA), Southeast Region, NMFS. Information on the application form would consist of the standard information and documentation required for commercial vessel permits issued by the RA, as specified at 50 CFR 622.4(b)(3). There would be no earned income or landing requirements for these permit endorsements. Royal red shrimp permit endorsements would be required in the fishery 150 days after any final rule containing the requirement for permit endorsement is published. This time period is considered adequate for vessel owners currently in the fishery to obtain, complete, and submit applications and for the RA to process the applications and issue permits.

As specified at 50 CFR 622.4(d), a fee, calculated in accordance with the procedures of the NOAA Finance Handbook, would be charged for each application for a permit endorsement or written request for replacement of a permit endorsement. The applicable fee would be specified on the application form.

Information from permit endorsement applications would provide data on the universe of vessels in the fishery. Such data, in combination with the proposed requirement for the submission of catch and effort reports and the proposed requirement for vessels to carry observers, when requested, would comprise part of the program to monitor and assess bycatch, including protected resources, in the Gulf of Mexico shrimp fisheries.

#### *Commercial Shrimp Vessel Permit Moratorium*

There is excess harvesting capacity in the shrimp fishery in the Gulf of Mexico, and fewer vessels could harvest the available shrimp resources at a more profitable level. The Gulf shrimp fishery has recently experienced economic losses leading to an exodus of vessels from the fishery. The number of vessels in the offshore shrimp fleet is expected to continue declining, but, at some point, the fishery will again become profitable for the remaining participants. There is a need to prevent new effort from then entering the fishery and negating or at least lessening profitability in the future. Thus, this proposed rule proposes to establish a 10-year moratorium on the issuance of Federal commercial shrimp vessel permits for the shrimp fishery in the Gulf EEZ.

The moratorium would begin on the effective date of any final rule that would implement Amendment 13. Beginning 150 days after the effective date of any final rule that would

implement Amendment 13, the only valid commercial vessel permits for Gulf shrimp would be those issued under this proposed moratorium. As of that date, a commercial vessel moratorium permit for Gulf shrimp would be required to fish for or possess Gulf shrimp from the EEZ. Permits issued under the moratorium would be fully transferable, with or without sale of the vessel, allowing permittees the flexibility to enter or exit the fishery as they choose.

#### **Eligibility for a Moratorium Permit**

Under the proposed moratorium, eligibility for a commercial vessel moratorium permit for Gulf shrimp would be limited to a person who—

(1) Owns a vessel that was issued a Federal commercial vessel permit for Gulf shrimp on or before December 6, 2003; or

(2) On or before December 6, 2003, owned a vessel that was issued a Federal commercial vessel permit for Gulf shrimp and, prior to the date of publication of any final rule that implements Amendment 13, owns a vessel with a Federal commercial permit for Gulf shrimp that is equipped for offshore shrimp fishing and is at least 5 net tons (4.54 metric tons).

NMFS' permit records are the sole basis for determining eligibility based on permit history. An applicant who believes he/she meets the permit eligibility criteria based on ownership of a vessel under a different name, e.g., as may have occurred when ownership has changed from individual to corporate or vice versa, must document his/her continuity of ownership.

December 6, 2003, is the date the Council previously established (68 FR 22667, April 29, 2003) as a possible control date if access to the fishery was limited at a future date. Eligibility criterion (1) above addresses a current owner of a vessel that was permitted in the Gulf shrimp fishery on or prior to the control date. Eligibility criterion (2) above addresses a person who on or prior to the control date owned a vessel issued a Federal commercial vessel permit for Gulf shrimp; who may have subsequently lost ownership or use of the vessel through sale, repossession, sinking or major damage, etc.; and who obtains an appropriately permitted vessel prior to publication of the final rule that would implement the proposed moratorium.

NMFS estimates approximately 2,951 vessels have been issued Gulf shrimp permits to date, and 285 of those would not meet the December 6, 2003, qualifying criterion; thus, the number of permitted vessels under the moratorium

would be 2,666. However, only approximately 45 of these excluded vessels are anticipated to be significantly impacted by the proposal. At least 126 of the 285 vessels were not known to be active in the fishery since 2002. In addition, 87 of the active vessels were identified as operating entirely in state waters, and 27 of the remaining, active, non-qualifying vessels are small and potentially could continue fishing profitably in state waters.

#### **Moratorium Permit Requirement and Application Procedures**

A commercial vessel moratorium permit for Gulf shrimp would be required beginning 150 days after the effective date of any final rule that implements Amendment 13, and on that date, all previously issued open access commercial vessel permits for Gulf shrimp would be invalid. After that date, a person could not fish for or possess shrimp from the Gulf of Mexico EEZ without first obtaining a commercial vessel moratorium permit for Gulf shrimp.

A person who desires a commercial vessel moratorium permit for Gulf shrimp would be required to submit an application to the RA, Southeast Region, NMFS, postmarked or hand delivered no later than the date one year after the effective date of any final rule implementing Amendment 13. After that date, no applications for additional commercial vessel moratorium permits for Gulf shrimp would be accepted. This 1-year period for receiving applications is longer than normal but is intended, in part, to provide additional time for potential applicants who may have been adversely affected by recent hurricanes in the Gulf of Mexico to apply. Application forms would be available from the RA. Failure to apply in a timely manner would preclude permit issuance even when the applicant otherwise meets the permit eligibility criteria.

To facilitate the application process, NMFS will send preprinted applications to known qualifiers for which NMFS would have a valid address, i.e., current owners of vessels permitted on or prior to December 6, 2003. All other applicants must obtain an application from the RA. Ultimately, it is the applicant's responsibility to ensure that an application is obtained and submitted to NMFS prior to the application deadline. A person who believes he/she qualifies for a permit but does not receive an application from NMFS within 45 days after the date of publication of any final rule

implementing Amendment 13 should request an application from the RA.

As specified at 50 CFR 622.4(d), a fee, calculated in accordance with the procedures of the NOAA Finance Handbook, would be charged for each application for a permit or written request for transfer or replacement of a permit. The applicable fee would be specified on the application form.

#### *Recordkeeping and Reporting and Observer Requirements*

The proposed rule would change the existing reporting requirements for the Gulf of Mexico shrimp fishery. Current regulations at 50 CFR 622.5(a)(1)(iii) require the owner or operator of a vessel that fishes for shrimp in the Gulf of Mexico EEZ or in adjoining state waters, or that lands shrimp in an adjoining state, must provide information for any fishing trip, as requested by the Science and Research Director (SRD), Southeast Fisheries Science Center, NMFS, including, but not limited to, vessel identification, gear, effort, amount of shrimp caught by species, shrimp condition (heads on/heads off), fishing areas and depths, and person to whom sold.

The proposed rule would revise these regulations to require all owners or operators of permitted vessels, in contrast to those selected by the SRD, to report annually their landings and their vessel and gear characteristics. An owner or operator of a vessel with a Federal commercial vessel permit for Gulf shrimp would be required to submit an annual Gulf Shrimp Vessel and Gear Characterization Form at the time of application for and renewal of a Gulf shrimp permit. Such owner or operator must also report the permitted vessel's total annual shrimp landings and value, by species, on a form provided by the SRD.

By requiring all vessels to report landings and vessel/gear information, NMFS and the Council would be better able to estimate effort and bycatch and stratify the universe of vessels' catches into different classes or categories should the need arise in the future to cap or reduce fishing effort. Compliance with the proposed reporting requirements would be a condition for renewing a Federal shrimp vessel permit, and submission of the Gulf Shrimp Vessel and Gear Characterization Form would also be a requirement for issuance of a Federal shrimp vessel permit. NMFS would provide the Gulf Shrimp Vessel and Gear Characterization Form with all permit applications or renewal applications.

The proposed rule would also establish a standardized method to regularly monitor, report, and estimate the bycatch in the shrimp fishery of the Gulf of Mexico, in compliance with § 303(a)(11) of the Magnuson-Stevens Act. The proposed rule would require owners and operators of permitted vessels, if selected by the SRD, to install electronic logbooks (ELBs) provided by NMFS, and to carry NMFS-approved observers on trips selected by the SRD.

The ELB automatically records vessel position information over time from which conclusions can be drawn regarding vessel activity, e.g., the vessel is trawling, stopped, or transiting. The ELB program would be initiated by the SRD sending letters to selected owners or operators of permitted shrimp vessels advising them of their obligation to participate in the ELB program. In cooperation with the selected owner or operator, NMFS would arrange to meet at the selected vessel to allow NMFS staff or an authorized representative to install the ELB on the vessel and to collect basic vessel and gear information (e.g., size and number of shrimp trawls and type of bycatch reduction device and turtle excluder device) that would later be correlated with the ELB information. At intervals determined by the SRD, the ELB memory unit would be removed and provided to the SRD. The owner or operator could either mail the memory unit to the SRD or arrange for a NMFS or state port agent to collect the unit. The ELB program would supplement existing post-trip interview data and is intended to better estimate the amount and location of effort occurring during a trip.

Bycatch in the fishery would then be estimated from a second sampling program placing observers aboard selected shrimp vessels. NMFS would use total effort estimates based on best available scientific information to extrapolate observer-collected data into overall estimates of total annual finfish and invertebrate bycatch.

#### *Non-Regulatory Actions Contained in Amendment 13*

In addition to the regulatory actions described above, Amendment 13 contains non-regulatory actions establishing or revising biological reference points (BRPs) and stock determination criteria (SDCs). The Magnuson-Stevens Act requires each FMP to define BRPs in the form of maximum sustainable yield (MSY) and optimum yield (OY), and to specify objective and measurable criteria for identifying when the fishery is overfished and/or undergoing overfishing. These SDCs include a

minimum stock size threshold (MSST) and a maximum fishing mortality threshold (MFMT). Together, these four parameters (MSY, OY, MSST, and MFMT) are intended to provide fishery managers with the tools to measure the status and performance of each stock in the fishery management unit. The overfishing and overfished definitions for penaeid (brown, white, and pink) shrimp stocks, and the MSY and OY definitions for the royal red shrimp stock, were approved by NMFS in January 2000 as part of the Council's Generic Sustainable Fisheries Act Amendment. Appropriate definitions of overfishing and the overfished condition for royal red shrimp, as well as MSY and OY definitions for the penaeid shrimp stocks are needed. Approval of Amendment 13 would give effect to the following actions.

#### **Biological Reference Points (BRPs) for Penaeid Shrimp**

MSY is considered to be the largest long-term average catch that can be taken continuously from a stock under prevailing ecological and environmental conditions. Current data gaps preclude the estimation of biomass at MSY ( $B_{MSY}$ ). However, in accordance with the Magnuson-Stevens Act's National Standard Guidelines, for annual stocks like penaeid shrimp, it is appropriate to establish an MSY control rule based on maintaining a constant level of escapement (parent stock) each year that will produce sufficient recruits to maintain harvest at its historical levels. This approach relates MSY in terms of catch to a quantifiable level of escapement in each stock, where a proxy for  $B_{MSY}$  is established as the minimum parent stock size known to have produced MSY the following year. MFMT, as a fishing mortality that drives the stock below  $B_{MSY}$  in a given year when exceeded, would indicate overfishing. MSST, or the overfished level, would represent a biomass level lower than  $0.5 \cdot B_{MSY}$  (i.e., one-half the parent stock size or other proxy). In other words, this would be an MSY control rule that relied on constant escapement of  $B_{MSY}$ . The Council's approved definitions of the overfishing level for each of the penaeid species in terms of a parent stock level are as follows, and an overfished condition is one-half of these parent stock levels:

- Brown Shrimp - 125 million individuals, age 7+ months during the November through February period.
- White Shrimp - 330 million individuals, age 7+ months during the May through August period.

- Pink Shrimp - 100 million individuals, age 5+ months during the July through June year.

Based on these approved definitions, Amendment 13 proposes to revise the definitions of MSY and OY for penaeid shrimp, reflecting the yield that will maintain parent stock levels above MSST. MSY for the penaeid shrimp stocks would be defined by the lowest and highest landings taken annually from 1990–2000 not resulting in recruitment overfishing. OY would be defined as a yield equal to MSY. MSY for the brown shrimp stock would be 67 to 104 million lb (30.4 to 47.2 million kg) of tails. MSY for the white shrimp stock would be 35 to 71 million lb (15.9 to 32.2 million kg) of tails. MSY for the pink shrimp stock would be 6 to 19 million lb (2.7 to 8.6 million kg) of tails.

#### Stock Status Determination Criteria for Royal Red Shrimp

The Council's approved definition of MSY and OY for royal red shrimp is a catch between 392,000 and 650,000 lb (177,808 and 294,835 kg) of tails, annually. Based on these existing BRPs, the Council is proposing new definitions for overfishing (MFMT) and the overfished condition (MSST). MFMT for royal red shrimp would be defined as a fishing mortality rate (F) resulting in an annual catch exceeding MSY for 2 consecutive years. The royal red shrimp stock would be considered overfished when its spawning stock biomass is less than 50 percent of  $B_{MSY}$ . Specific data, such as the parent stock data available for penaeid shrimp, are not available for the royal red shrimp fishery. Only catch and limited effort information is available. However, with the proposed limited entry program and reporting requirements of this amendment and rule, a time series of data regarding the royal red shrimp fishery would be compiled. Until those data are robust enough to be used in further modifying the BRPs and SDCs, the Council has proposed to revise its existing SDCs based on catch, in accordance with Technical Guidelines recommendations.

#### Changes Proposed by NMFS

In 50 CFR 622.4(g)(1), NMFS is proposing to modify the procedures for transfers of all permits, licenses, and endorsements to require that the seller have the appropriate transfer documents notarized. This proposed revision is intended to strengthen verification of the authenticity of changes in ownership related to transfers of permits, licenses, and endorsements.

#### Classification

At this time, NMFS has not determined that Amendment 13 is consistent with the Magnuson-Stevens Act and other applicable laws. NMFS, in making that determination, will take into account the data, views, and comments received during the comment periods on Amendment 13 and this proposed rule.

This proposed rule has been determined to be significant for purposes of Executive Order 12866.

NMFS prepared an IRFA, as required by section 603 of the Regulatory Flexibility Act, for this proposed rule. The IRFA describes the economic impact this proposed rule, if adopted, would have on small entities. A description of the action, why it is being considered, and the legal basis for this action are contained at the beginning of this section in the preamble and in the SUMMARY section of the preamble. A summary of the IRFA follows.

This proposed rule would: (1) Require participants in the royal red shrimp fishery to obtain a royal red shrimp endorsement to the existing commercial shrimp vessel permit; (2) define biological reference points and status determination criteria for the royal red and penaeid shrimp stocks; (3) establish a standardized bycatch reporting methodology by requiring a sample of permitted vessels to carry electronic logbooks (ELBs) and/or observers upon request; (4) require all permitted vessels to submit a vessel and gear characterization form on an annual basis; (5) establish a moratorium on the issuance of new Federal Gulf shrimp vessel permits based on the December 6, 2003, control date; and (6) require all permitted vessels to report and certify their landings.

The purpose of the proposed rule is to: Establish status determination criteria for penaeid (brown, white, and pink) and royal red shrimp stocks; enhance the collection of information; improve estimates of effort and bycatch in the fishery; and promote economic stability by reducing permit speculation and increasing vessel owners' flexibility to enter and exit the Gulf shrimp fishery.

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

It is estimated that 2,951 small entities will be affected by the proposed rule. This estimate represents the number of vessels that obtained a Gulf shrimp permit with an effective date on or before May 2, 2005. Certain actions would apply to all permitted vessels, while others would only apply to a

subset of those permitted vessels. The actions specific to the royal red shrimp fishery would affect 15 small entities at most, though all but one of these entities is included in the larger group of 2,951.

The average annual gross revenue per permitted vessel is estimated to be \$100,477, with a range of \$0 to \$473,564. This wide range illustrates a high degree of heterogeneity between permitted vessels with respect to their gross revenues. Further, gross revenue earned from the various fisheries these entities operate in differs considerably between vessels. On average, permitted vessels rely on the Gulf food shrimp fishery for nearly 79 percent of their gross revenues. Therefore, most permitted vessels have a relatively high degree of dependency on the Gulf food shrimp fishery. However, some permitted vessels are inactive or "latent" and appear to have no reliance on the Gulf food shrimp fishery. "Small" vessels (vessels less than 60 ft (18.3 m) in length) generate lower gross revenues on average (\$30,568) relative to "large" vessels (vessels of 60 ft (18.3 m) or more in length) (\$132,890). The range of gross revenues for large vessels is \$0 and \$473,564, while that of small vessels is \$0 and \$246,391. All royal red shrimp vessels fall into the "large" vessel category.

The fleet of permitted vessels is much more homogeneous with respect its physical characteristics, though some differences do exist. On average, small vessels are smaller in regards to almost all of their physical attributes (e.g., they use smaller crews and fewer and smaller nets, have less engine horsepower and fuel capacity, etc.). Small vessels are also older on average. Large vessels also tend to be steel-hulled. Conversely, fiberglass hulls are most prominent among small vessels, although steel and wood hulls are also common. Nearly two-thirds of the large vessels have freezing capabilities, while few small vessels have such equipment. Small vessels rely on ice for refrigeration and storage, although more than one-third of large vessels also rely on ice. Some vessels are so small that they rely on live wells for storage.

An important difference between large and small vessels is with respect to their dependency on the food shrimp fishery. The percentage of gross revenues from food shrimp landings is nearly 87 percent for large vessels, but only slightly more than 61 percent for small vessels. Thus, on average, large vessels are more dependent than their smaller counterparts on the food shrimp fishery. However, dependency on food shrimp is much more variable within the small vessel sector than the large

vessel sector. That is, many small vessels are quite dependent on food shrimp landings, while others show little, if any, dependency.

When examining the distribution of gross revenues across vessels, of the 2,951 permitted vessels, 554 vessels did not have any verifiable Gulf food shrimp landings in 2002. Large and small vessels comprised approximately 75 percent and 25 percent of the active group. Small vessels represented a majority (53 percent) of the inactive group. If inactive or "latent" vessels are removed from consideration, for the permitted group as a whole, dependency on Gulf shrimp revenues increases to more than 97 percent. For large vessels, dependency on Gulf shrimp revenues increased to nearly 98 percent. Consistent with the statistics above, when the inactive vessels are removed from consideration, the change in dependency on Gulf shrimp revenues is most dramatic for the small vessels, with nearly 94 percent of their gross revenues coming from Gulf shrimp landings.

According to the most recent projections, on average, both small and large vessels are experiencing significant economic losses, ranging from a -27 percent rate of return in the small vessel sector to a -36 percent rate of return in the large vessel sector, or -33 percent on average for the fishery as a whole. Therefore, almost any but the most minor additional financial burden would be expected to generate a significant adverse impact on directly affected vessels and potentially hasten additional exit from the fishery.

The Small Business Administration defines a small business that engages in commercial fishing as a firm that is independently owned and operated, is not dominant in its field of operation, and has annual receipts up to \$3.5 million per year. There are insufficient data regarding potential ownership affiliation between vessels to identify whether an individual entity controls sufficient numbers of vessels to achieve large entity status. Therefore, it is assumed that each vessel represents a separate business entity and, based on the revenue profiles provided above, all entities in the Gulf of Mexico shrimp fishery are assumed to be small entities. Because all permitted vessels would be directly affected by one or more of the proposed actions in this proposed rule, and because all vessels are considered to be small entities, the proposed rule will affect a substantial number of small entities. However, as explained below, the vast majority of these vessels will not be impacted under the most significant actions.

The determination of significant economic impact can be ascertained by examining two issues: disproportionality and profitability. The disproportionality question is: will the regulations place a substantial number of small entities at a significant competitive disadvantage to large entities? Even though there is considerable diversity among the permitted vessels with respect to physical and operational characteristics, all entities are considered to be small entities, and therefore

disproportionality of impacts between large and small entities is not an issue.

The profitability question is: will the regulations significantly reduce profit for a substantial number of small entities? According to the most recent projections, on average, both small and large vessels are experiencing significant economic losses, ranging anywhere from a -27 percent rate of return in the small vessel sector to a -36 percent rate of return in the large vessel sector, or -33 percent on average for the fishery as a whole. Therefore, almost any but the most minor additional financial burden would be expected to significantly reduce profit because profits are negative, on average, throughout the fishery.

The royal red shrimp endorsement requirement would result in an additional cost of \$20 to the vessels operating in this fishery. This is a minimal cost and would not significantly reduce profit for the vessels operating in this fishery.

The actions, which define biological reference points and establish status determination criteria definitions for the royal red and penaeid shrimp stocks, require a sample of permitted vessels to carry electronic logbooks (ELBs) and/or observers upon request, require all permitted vessels to submit a vessel and gear characterization form on an annual basis, and require all permitted vessels to report and certify their landings, would not affect vessel profitability because they impose no direct financial costs. NMFS expects to cover all direct financial costs associated with the ELB and observer programs.

However, it should be noted that the reporting requirements will likely impose a minimal opportunity cost by imposing time burdens. Specifically, the requirement for all permitted vessel owners to submit a vessel and gear characterization form will generate a time burden of approximately 30 minutes per permitted vessel. According to the Bureau of Labor Statistics (BLS), the average wage of first line supervisors/managers in the fishing, forestry, and farming industries was

\$18.14 per hour as of May 2003, which is the most currently available information. Therefore, the form would create an annual opportunity cost of approximately \$9 per vessel. Additionally, all permitted vessels will be required to submit their landings information to NMFS. This information could be included on either the vessel and gear characterization form or the existing permit application form without any significant increase in the estimated time burdens associated with either form.

The single action that could impose significant costs and, thereby, significantly reduce the profitability of the affected small entities is the permit moratorium. The proposed rule limits participation to those vessels meeting the December 6, 2003, control date. Of the 2,951 permitted vessels, 285 vessels did not obtain their permits by the control date and, therefore, would not be issued a moratorium permit. However, according to the best available data, of those 285 vessels, 126 were not active in the Gulf shrimp fishery (EEZ or state waters), and an additional 87 vessels were determined to operate exclusively in state waters. It is, therefore, concluded that these 213 vessels will not experience direct and adverse financial impacts as a result of losing their permits. The remaining 72 vessels, of which 45 are large and 27 are small, were active in the EEZ and therefore would experience direct and adverse financial impacts.

Assuming these 72 vessels would only lose their shrimp landings and gross revenues from the EEZ (i.e., they continue their shrimp operations in state waters), they would face revenue losses ranging between 0.8 percent and 100.0 percent of their gross revenues, with an average loss of 49.3 percent per vessel. The large vessels will face a larger revenue loss on average (54.3 percent) than the small vessels (29.6 percent). However, if the small vessels shift their effort entirely into state waters and the large vessels exit the Gulf shrimp fishery instead, then only the 45 large vessels would experience a loss in landings and gross revenues, although that loss would be 100 percent of their gross revenues. On the other hand, because the permits would be fully transferable under the proposed rule, these 72 vessels may be able and willing to purchase a permit from a permitted vessel in order to continue current operations. Given an estimated permit purchase price of \$5,000, this cost would represent 5.7 percent of these vessels' average gross revenues. Thus, in the current, adverse economic climate in the Gulf shrimp fishery,

regardless of which behavioral assumptions are made, profits would be significantly reduced for the 45 to 72 directly affected vessels that would not qualify for a moratorium permit under the proposed rule.

Two alternatives, including the no action alternative, were considered to the proposed requirement for a royal red shrimp endorsement to the Gulf shrimp permit. One alternative would have created a separate royal red shrimp permit. Although the direct cost of a separate royal red shrimp permit would be the same as for a royal red shrimp endorsement to the Gulf shrimp permit, at least for participants that also possess a Gulf shrimp permit (\$20), this alternative would have eliminated the relationship between participation in the royal red shrimp fishery and possession of a Gulf shrimp permit. As a result, vessels that did not qualify under the proposed permit moratorium action and vessels from other fisheries would be able to obtain royal red shrimp permits, though at a higher cost of \$50 per permit, and, thereby, potentially introduce greater instability in the royal red shrimp fishery. Stable participation is particularly important in the royal red shrimp fishery because it is managed under a hard quota of 392,000 lb (177,808 kg). The no action alternative would not have met the Council's objective of creating a readily available means to identify participants and operations in the royal red shrimp fishery.

A total of nine alternatives, including three no action alternatives, were considered for the establishment of a standardized bycatch reporting methodology portion of the proposed rule. In general, the alternatives not included in the proposed rule would have either not met required mandates, imposed greater reporting and record keeping burdens, or not met the Council's objectives.

Two alternatives to the proposed rule would have required paper logbooks. Paper logbooks can impose significant impacts on small entities. Assuming a time burden of 10 minutes per daily form, and an average of 182 days at sea per vessel per year, the average annual time burden per vessel would be approximately 30.33 hours. From an economic perspective, even though there is no direct cash expense from a paper logbook program, there is an opportunity cost associated with any time burden created by additional reporting requirements. As previously noted, opportunity cost is approximated using the average wage or salary of the affected persons, who in this case would be the vessel owners and captains as

they would be responsible for submitting the logbook forms. Using the average wage of first line supervisors/managers in the fishing, forestry, and farming industries, which was \$18.14 as of May 2003 according to the BLS, the average annual opportunity cost per vessel of a paper logbook reporting requirement would be approximately \$550.19 ( $\$18.14/\text{hour} \times 30.33 \text{ hours}$ ). If only a sample of vessels were selected to report, which was also considered but not proposed, then the opportunity cost would be proportionally less and dependent on the chosen sampling rate for the fishery as a whole, but still \$550.19 annually per vessel.

An alternative to the proposed ELB requirement would have required all permitted vessels to use ELBs rather than a statistically valid sample. Requiring all vessels to use ELBs would have increased the costs and burden of the program relative to the proposed rule. Given that the proposed rule does not require paper logbooks, selecting the no action alternative for ELBs would have resulted in the Council's objective of improving estimates of effort and bycatch in the Gulf shrimp fishery not being met.

An alternative to the proposed observer program would have utilized the existing voluntary observer program. However, such a system does not provide for a statistically valid sample of the fishery and provides no authority to ensure adequate representation. Thus, this alternative would not meet the Council's objective of improving estimates of effort and bycatch in the Gulf shrimp fishery. Given that Section 303(a)(11) of the Magnuson-Stevens Act requires the establishment of a standardized bycatch reporting methodology, and bycatch data can only be practically collected by observers in this fishery, the no action alternative would cause the Council to not be in compliance and, thus, was not proposed.

Two alternatives, including the no action alternative, were considered to the proposed vessel and gear characterization form requirement. The no action alternative and the alternative to require only a sample of permitted vessels to submit the vessel and gear characterization form would have reduced the minimal opportunity cost associated with the form. However, because ELBs do not collect gear information, and the ELB and observer programs require certain census level information to ensure that statistically valid samples are selected, both alternatives would not have met the Council's objective of improving

estimates of effort and bycatch in the Gulf shrimp fishery.

One alternative was considered to the requirement for all vessels to report and certify their landings to NMFS. This alternative would have continued NMFS' current practice of only having selected vessels as opposed to all vessels individually report their landings information. Maintaining this current practice would severely limit the Council's ability to determine whether permitted vessels are active in the fishery and the extent of that participation. In turn, this lack of information would significantly hamper the Council's ability to potentially develop alternatives for long-term effort management in the fishery in the future, which is inconsistent with the Council's objectives.

Including the no action alternative, three alternatives were considered to the proposed permit moratorium. The no action alternative would not achieve the Council's objective of promoting economic stability by reducing permit speculation and increasing vessel owners' flexibility to enter and exit the Gulf shrimp fishery.

Another alternative would have used a qualification date of May 18, 2004, rather than a December 6, 2003, control date. Under this alternative, the number of non-qualifying vessels would be 161, which is 124 fewer vessels than under the proposed rule. Of those 161 vessels, 68 vessels were not active in the Gulf shrimp fishery and 46 operated in state waters only according to the best available data. Thus, it is concluded that these 114 vessels' profits would not have been affected under this alternative. Assuming that the remaining 47 vessels would lose all their landings and gross revenues from the EEZ, losses per vessel would range between 0.9 percent and 100.0 percent of their gross revenues, with an average loss in gross revenues of 48.4 percent. Contrariwise, if it is assumed that small vessels shift their operations into state waters and large vessels exit the fishery, then only the 26 large vessels would be directly impacted. For these vessels, they would lose 100 percent of their gross revenues. However, because the permits would be fully transferable under this alternative, the 47 vessels that have been active in the EEZ may be able and willing to purchase a permit from a qualifying vessel in order to continue current operations. Given an estimated permit purchase price of \$5,000, this cost would represent 5.2 percent of these vessels' average gross revenues. Although this alternative would generate somewhat less adverse economic impacts relative to the

proposed action, it would also allow for a higher number of latent or speculative permit holders, which is contrary to the Council's objectives.

Another alternative would have allowed all vessels that possessed a valid permit within one year of the publication date of the final rule implementing these actions to qualify for a moratorium permit. Because the date of the final rule's publication is presently unknown, it was assumed that all vessels that possessed a permit on at least one day during the current calendar year would qualify under this alternative. Thus, using this assumption, 347 vessels would be denied a moratorium permit under this alternative according to currently available information. Of those 347 vessels, 88 were not active in the Gulf shrimp fishery, and 72 only operated in state waters. Thus, it is concluded that these 160 vessels' profits would not have been affected under this alternative. The other 187 vessels were active in the EEZ and thus would have been directly impacted. Specifically, assuming these vessels would lose all their landings and gross revenues from the EEZ, the percentage losses in gross revenues would range from 0.2 percent to 100.0 percent, with an average loss of 71.8 percent. If it is assumed that small vessels shift their operations into state waters and large vessels exit the fishery, then only the 168 large vessels would be directly impacted. These 168 large vessels would lose 100 percent of their gross revenues. However, because the permits would be fully transferable under this alternative, the 187 vessels active in the EEZ may be able and willing to purchase a permit from a qualifying vessel in order to continue current operations. Given an estimated permit purchase price of \$5,000, this cost would represent 4.3 percent of these vessels' average gross revenues. However, if all the owners of these 187 vessels were to renew their permits prior to the publication of the final rule, then none of these vessels would be impacted under this alternative. Although this alternative could potentially generate less adverse economic impacts than the proposed rule, based on currently available information, it is more likely that it would generate greater adverse economic impacts. Furthermore, because this alternative would continue to allow individuals to apply for and receive valid permits until the publication of the final rule, it could also lead to a considerably higher number of latent or speculative permit

holders, which is contrary to the Council's objectives.

This proposed rule contains collection-of-information requirements subject to the PRA--namely, requirements for: (1) Application for a royal red shrimp endorsement; (2) electronic logbook installation and data downloads; (3) notification for observer placement prior to a trip; (4) vessel and gear characterization form; and (5) submission of landings data. These requirements have been submitted to OMB for approval. The public reporting burdens for these collections of information are estimated to average 20 minutes, 31 minutes, 4 minutes, 20 minutes, and 5 minutes per response for items (1), (2), (3), (4), and (5), respectively. These estimates of the public reporting burdens include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collections of information. Public comment is sought regarding: Whether these proposed collections of information are necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; the accuracy of the burden estimates; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collections of information, including through the use of automated collection techniques or other forms of information technology. Send comments regarding the burden estimates or any other aspect of the collection-of-information requirements, including suggestions for reducing the burden, to NMFS and to OMB (see **ADDRESSES**).

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

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

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

Dated: March 30, 2006.

**James W. Balsiger,**

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

For the reasons set out in the preamble, 50 CFR part 622 is proposed to be amended as follows:

#### PART 622—FISHERIES OF THE CARIBBEAN, GULF, AND SOUTH ATLANTIC

1. The authority citation for part 622 continues to read as follows:

**Authority:** 16 U.S.C. 1801 *et seq.*

2. In § 622.4, paragraphs (a)(2)(xi) and (g)(1) are revised, and paragraph (s) is added to read as follows:

#### § 622.4 Permits and fees.

(a) \* \* \*

(2) \* \* \*

(xi) *Gulf shrimp fisheries*—(A) *Gulf shrimp permit*. For a person aboard a vessel to fish for shrimp in the Gulf EEZ or possess shrimp in or from the Gulf EEZ, a commercial vessel permit for Gulf shrimp must have been issued to the vessel and must be on board. See paragraph (s) of this section regarding a moratorium on commercial vessel permits for Gulf shrimp and the associated provisions. See the following paragraph, (a)(2)(xi)(B) of this section, regarding an additional endorsement requirement related to royal red shrimp.

(B) *Gulf royal red shrimp endorsement*. Effective 150 days after the effective date of the final rule implementing the moratorium under paragraph (s) of this section, for a person aboard a vessel to fish for royal red shrimp in the Gulf EEZ or possess royal red shrimp in or from the Gulf EEZ, a commercial vessel permit for Gulf shrimp with a Gulf royal red shrimp endorsement must be issued to the vessel and must be on board.

\* \* \* \* \*

(g) \* \* \*

(1) *Vessel permits, licenses, and endorsements and dealer permits*. A vessel permit, license, or endorsement or a dealer permit issued under this section is not transferable or assignable, except as provided in paragraph (m) of this section for a commercial vessel permit for Gulf reef fish, in paragraph (n) of this section for a fish trap endorsement, in paragraph (o) of this section for a king mackerel gillnet permit, in paragraph (p) of this section for a red snapper license, in paragraph (q) of this section for a commercial vessel permit for king mackerel, in paragraph (r) of this section for a charter vessel/headboat permit for Gulf coastal migratory pelagic fish or Gulf reef fish, in paragraph (s) of this section for a commercial vessel moratorium permit for Gulf shrimp, in § 622.17(c) for a commercial vessel permit for golden crab, in § 622.18(e) for a commercial vessel permit for South Atlantic snapper-grouper, or in § 622.19(e) for a commercial vessel permit for South



Atlantic rock shrimp. A person who acquires a vessel or dealership who desires to conduct activities for which a permit, license, or endorsement is required must apply for a permit, license, or endorsement in accordance with the provisions of this section. If the acquired vessel or dealership is currently permitted, the application must be accompanied by the original permit and a copy of a signed bill of sale or equivalent acquisition papers. In those cases where a permit, license, or endorsement is transferable, the seller must sign the back of the permit, license, or endorsement and have the signed transfer document notarized.

\* \* \* \* \*

(s) *Moratorium on commercial vessel permits for Gulf shrimp.* The provisions of this paragraph (s) are applicable through the date that is 10 years after the effective date of the final rule that implements this moratorium.

(1) *Date moratorium permits are required.* Beginning 150 days after the effective date of the final rule that implements this moratorium, the only valid commercial vessel permits for Gulf shrimp are those issued under the moratorium criteria in this paragraph (s).

(2) *Initial eligibility for a moratorium permit.* Initial eligibility for a commercial vessel moratorium permit for Gulf shrimp is limited to a person who

(i) Owns a vessel that was issued a Federal commercial vessel permit for Gulf shrimp on or before December 6, 2003; or

(ii) On or before December 6, 2003, owned a vessel that was issued a Federal commercial vessel permit for Gulf shrimp and, prior to the date of publication of the final rule that implements this moratorium, owns a vessel with a Federal commercial permit for Gulf shrimp that is equipped for offshore shrimp fishing, is at least 5 net tons (4.54 metric tons), and is documented by the Coast Guard.

(3) *Application deadline and procedures.* An applicant who desires a commercial vessel moratorium permit for Gulf shrimp must submit an application to the RA postmarked or hand delivered not later than the date 1 year after the effective date of the final rule implementing this moratorium. After that date, no applications for additional commercial vessel moratorium permits for Gulf shrimp will be accepted. Application forms are available from the RA. Failure to apply in a timely manner will preclude permit

issuance even when the applicant otherwise meets the permit eligibility criteria.

(4) *Determination of eligibility.* NMFS' permit records are the sole basis for determining eligibility based on permit history. An applicant who believes he/she meets the permit eligibility criteria based on ownership of a vessel under a different name, as may have occurred when ownership has changed from individual to corporate or vice versa, must document his/her continuity of ownership.

(5) *Incomplete applications.* If an application that is postmarked or hand-delivered in a timely manner is incomplete, the RA will notify the applicant of the deficiency. If the applicant fails to correct the deficiency within 30 days of the date of the RA's notification, the application will be considered abandoned.

(6) *Notification of ineligibility.* If the applicant does not meet the applicable eligibility requirements of paragraph (s)(2) of this section, the RA will notify the applicant, in writing, of such determination and the reasons for it.

(7) *Permit transferability.* Commercial vessel moratorium permits for Gulf shrimp are fully transferable, with or without the sale of the vessel. To request that the RA transfer a commercial vessel moratorium permit for Gulf shrimp, the owner of a vessel that is to receive the transferred permit must complete the transfer information on the reverse of the permit and return the permit and a completed application for transfer to the RA. Transfer documents must be notarized as specified in paragraph (g)(1) of this section.

(8) *Renewal.* (i) Renewal of a commercial vessel moratorium permit for Gulf shrimp is contingent upon compliance with the recordkeeping and reporting requirements for Gulf shrimp specified in § 622.5(a)(1)(iii).

(ii) A commercial vessel moratorium permit for Gulf shrimp that is not renewed will be terminated and will not be reissued during the moratorium. A permit is considered to be not renewed when an application for renewal, as required, is not received by the RA within 1 year of the expiration date of the permit.

3. In § 622.5, paragraph (a)(1)(iii) is revised to read as follows:

**§ 622.5 Recordkeeping and reporting.**

\* \* \* \* \*

(a) \* \* \*

(1) \* \* \*

(iii) *Gulf shrimp*—(A) *General reporting requirement.* The owner or operator of a vessel that fishes for shrimp in the Gulf EEZ or in adjoining state waters, or that lands shrimp in an adjoining state, must provide information for any fishing trip, as requested by the SRD, including, but not limited to, vessel identification, gear, effort, amount of shrimp caught by species, shrimp condition (heads on/heads off), fishing areas and depths, and person to whom sold.

(B) *Electronic logbook reporting.* The owner or operator of a vessel for which a Federal commercial vessel permit for Gulf shrimp has been issued and who is selected by the SRD must participate in the NMFS-sponsored electronic logbook reporting program as directed by the SRD. In addition, such owner or operator must provide information regarding the size and number of shrimp trawls deployed and the type of BRD and turtle excluder device used, as directed by the SRD. Compliance with the reporting requirements of this paragraph (B) is required for permit renewal.

(C) *Vessel and Gear Characterization Form.* All owners or operators of vessels applying for or renewing a commercial vessel moratorium permit for Gulf shrimp must complete an annual Gulf Shrimp Vessel and Gear Characterization Form. The form will be provided by NMFS at the time of permit application and renewal. Compliance with this reporting requirement is required for permit issuance and renewal.

(D) *Landings report.* The owner or operator of a vessel for which a Federal commercial vessel permit for Gulf shrimp has been issued must annually report the permitted vessel's total annual landings of shrimp and value, by species, on a form provided by the SRD. Compliance with this reporting requirement is required for permit renewal.

\* \* \* \* \*

4. In § 622.8, paragraph (a)(4) is added to read as follows:

**§ 622.8 At-sea observer coverage.**

(a) \* \* \*

(4) *Gulf shrimp.* A vessel for which a Federal commercial vessel permit for Gulf shrimp has been issued must carry a NMFS-approved observer, if the vessel's trip is selected by the SRD for observer coverage. Vessel permit



renewal is contingent upon compliance  
with this paragraph (a)(4).

\* \* \* \* \*

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