

Classification

This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this rule would not have a significant economic impact on a substantial number of small entities. The basis for this certification follows:

The Magnuson-Stevens Act, as amended, provides the statutory basis for the proposed rule. The proposed rule would implement up to two referendums on a potential IFQ program for the commercial red snapper fishery in the Gulf of Mexico, consistent with the requirements of the Magnuson-Stevens Act. The primary purpose of this proposed rule is to notify potential participants in the referendums, and members of the public, of the procedures, schedule, and eligibility requirements that NMFS would use in conducting the referendums.

One hundred and thirty-seven entities have been identified as having a vessel permit with a red snapper Class 1 License during the specified eligibility time frame and, therefore, qualify for participation in the referendums. Approximately 35 of these licenses are currently being fished on vessels operated by other entities through lease arrangements. An additional four vessel captains have been identified as referendum qualifiers. Although the number of Class 1 Licenses and vessel captains is known with certainty, lease arrangements may be subject to cancellation prior to a referendum such that the total number of eligible entities due to lease arrangements is not known with certainty. Although new lease arrangements are also a possibility, such that the number of lease arrangements could increase from the current total, increased leasing is not expected since this would dilute the voting power of the Class 1 License holder, absent control over the subsequent vote by the lessee. Thus, it is expected that the number of lease qualifiers will decline by some unknown amount. Assuming, however, that all current qualifiers

maintain their status, the total number of entities that qualify for participation in the referendum is 176. The total red snapper fishery is valued at approximately \$10 million in ex-vessel revenue on an annual basis. Although participants in this fishery do not harvest red snapper exclusively, among those vessels that target red snapper (as determined by whether the revenues from red snapper on an individual trip were greater than the revenues from any other individual species), approximately 57 percent of annual revenues for these vessels came as red snapper sales. If all qualifiers target red snapper and all red snapper ex-vessel revenues are attributed to these participants, and assuming red snapper revenues equal 57 percent of total commercial revenues for these participants, the average ex-vessel revenue per entity is approximately \$100,000 $([(\$10 \text{ million}/0.57)]/176)$. If evaluated over the number of Class 1 licenses (137), the appropriate average revenue is approximately \$128,000. Although it is logical to assume that the qualifiers target red snapper, these estimates are biased high because all red snapper revenues cannot be attributed to either category of entities. Thus, the average ex-vessel revenue per entity is less than either figure.

All referendum qualifiers that would be directly affected by the proposed rule are commercial fishing operations. The Small Business Administration defines a small business that engages in commercial fishing as a firm with receipts up to \$3.5 million. Based on the revenue profile provided above, all commercial entities that would qualify for participation in the referendums are considered small entities. Because all qualifying entities would be affected by the proposed rule, it is concluded that the proposed rule would affect a substantial number of small entities.

The outcome of "significant economic impact" can be ascertained by examining two issues: Disproportionality and profitability. The disproportionality question is, do the regulations place a substantial number of small entities at a significant competitive disadvantage to large entities? Because all the entities that would be affected by the proposed rule

are considered small entities, the issue of disproportionality does not arise in the present case.

The profitability question is, do the regulations significantly reduce profit for a substantial number of small entities? Since the proposed rule simply defines the procedures, schedule, and eligibility requirements that NMFS would use in conducting the referendums, there are no implementing regulations associated with the proposed rule and, therefore, there would be no direct effects on current fishery participation, effort, harvests, or other use of the resource. All current entities can continue to participate in the fishery in the manner in which they currently operate. Therefore, all current harvests, costs, and profits would remain unchanged. Any effects, adverse or otherwise, on small entities that participate in the fishery would only occur in the future, should an IFQ program be implemented. The likelihood of this occurring in either the near or distant future is unknown. Further, the resultant impacts of such a program are unknown because the specific program has not been designed. These impacts, however, would be determined should an IFQ program be proposed. Because the proposed rule would not directly affect fishery participation or harvest in any way, the rule would not reduce business profit for any fishery participants or related businesses. Profits are therefore not expected to be significantly reduced by the proposed rule. On this basis, the proposed rule may be adjudged not to have a significant economic impact on a substantial number of small entities.

Accordingly, an initial regulatory flexibility analysis was not required or prepared. Copies of the RIR and Regulatory Flexibility Act Analysis are available (see **ADDRESSES**).

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

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