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**Final – REEF FISH AMENDMENT 34  
Commercial Reef Fish Permit Requirements and  
Crew Size on Dual-Permitted Vessels**

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



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# 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

Administrative  Legislative  
 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.

~~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 under 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 under 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 crewmembers 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 six or more 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.