Initial Regulatory Flexibility Analysis

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 that 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 FMP or amendment (including framework management measures and other regulatory actions). The RFA is also intended to ensure that the agency considers alternatives that minimize the expected impacts while meeting the goals and objectives of the FMP and applicable statutes.

With certain exceptions, the RFA requires agencies to conduct a regulatory flexibility analysis for each proposed rule. The regulatory flexibility analysis 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. In addition to analyses conducted for the RIR, the regulatory flexibility analysis provides: 1) A statement of the reasons why action by the agency is being considered; 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 practical, of all relevant Federal rules which may duplicate, overlap, or conflict with the proposed rule; and 6) a description of any significant alternatives to the proposed rule which accomplish the stated objectives of applicable statutes and which minimize any significant economic impact of the proposed rule on small entities.

Additional information on the description of affected entities was presented in Chapter 3.3, and additional information on the expected economic impacts of the proposed action was presented in Chapter 4.2 and Chapter 5.2.

2. Statement of Need for, Objectives of, and Legal Basis for the Rule

The purpose and need, issues, problems, and objectives of the proposed rule are presented in Chapter 1.0. The purpose of this amendment is to reduce the spatial and temporal coverage of the regulations proposed in Amendment 17A based on the most recent scientific information concerning the red snapper stock in the South Atlantic. This amendment addresses the need to end overfishing and rebuild the red snapper stock while minimizing, to the extent practicable,
adverse social and economic effects. The Magnuson-Stevens Fishery Conservation and Management Act, as amended, provides the statutory basis for the proposed rule.

3. 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. Previous amendments, whether already implemented or in the process of being implemented, have been considered in designing the various actions in this amendment.

4. Description and Estimate of the Number of Small Entities to Which the Proposed Rule will Apply

This proposed action is expected to directly affect commercial fishers and for-hire operators. The SBA has established size criteria for all major industry sectors in the U.S. including fish harvesters and for-hire operations. 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. For for-hire vessels, the other qualifiers apply and the annual receipts threshold is $7.0 million (NAICS code 713990, recreational industries).

An average of 944 vessels per year has been permitted to operate in the commercial snapper grouper fishery. Of these vessels, 749 held transferable permits and 195 held non-transferable permits. On average, 890 vessels landed snapper grouper species, generating dockside revenues of approximately $14.514 million (2008 dollars). Each vessel, therefore, generated an average of $16,300 gross revenues from snapper grouper. Gross dockside revenues by area are distributed as follows: $4.054 million in North Carolina, $2.563 million in South Carolina, $1.738 million in Georgia/Northeast Florida, $3.461 million in central and southeast Florida, and $2.695 million in the Florida Keys. Vessels that operate in the snapper grouper fishery may also operate in other fisheries, the revenues of which cannot be determined with available data and are not reflected in these totals.

Based on revenue information, all commercial vessels affected by the proposed action can be considered small entities.

An average of 1,635 vessels was permitted to operate in the snapper grouper for-hire fishery, of which 82 are estimated to have operated as headboats. Within the total number of vessels, 227 also possessed a commercial snapper grouper permit and would be included in the summary information provided on the commercial sector. 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 charterboat annual average gross revenue is estimated to range from approximately $62,000-$84,000 for Florida vessels, $73,000-$89,000 for North Carolina vessels,
$68,000-$83,000 for Georgia vessels, and $32,000-$39,000 for South Carolina vessels. For headboats, the corresponding estimates are $170,000-$362,000 for Florida vessels, and $149,000-$317,000 for vessels in the other states.

Based on these average revenue figures, all for-hire operations that would be affected by the proposed action can be considered small entities.

Some fleet activity may exist in both the commercial and for-hire snapper grouper sectors but its extent is unknown, and all vessels are treated as independent entities in this analysis.

5. 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

The proposed action would not introduce any changes to reporting, record-keeping, and other compliance requirements which are currently required, particularly under Amendment 17A. The component of the proposed action which would require that fishing gear be appropriately stowed when transiting the area closed to fishing is meant to ensure that the Amendment 17A requirement on this subject carries forward in this amendment. Allowing vessels, in possession of snapper grouper on board, to transit the closed area would mitigate the potential increase in travel costs as well as avoid additional safety hazards. The gear stowage requirement would help ensure that the fishing prohibition in the closed area is not circumvented.

6. Substantial Number of Small Entities Criterion

The proposed action is expected to directly affect all Federally permitted commercial and for-hire vessels that operate in the South Atlantic snapper grouper fishery. All directly affected entities have been determined, for the purpose of this analysis, to be small entities. Therefore, it is determined that the proposed action will affect a substantial number of small entities.

7. Significant Economic Impact Criterion

The outcome of ‘significant economic impact’ can be ascertained by examining two issues: disproportionally and profitability.

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

All entities that are expected to be affected by the proposed rule are considered small entities, so the issue of disproportionality does not arise in the present case.

Profitability: Do the regulations significantly reduce profit for a substantial number of small entities?
The alternatives considered in this amendment are expected to increase short-run harvests and fishing opportunities of commercial and for-hire vessels that, in turn, would increase their short-run revenues and profits.

[This section will be completed after the Council’s selection of preferred alternatives]

8. Description of Significant Alternatives

[This section will be completed after the Council’s selection of preferred alternatives]