

Dated: October 2, 2003.

**James F. Fulton,**

*Acting Regional Director, Western Regional Coordinating Center.*

[FR Doc. 03-27045 Filed 10-24-03; 8:45 am]

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Parts 52 and 81

[Docket # OR-02-003b; FRL-7275-8]

#### Approval and Promulgation of Air Quality Implementation Plans; State of Oregon; Grants Pass PM-10 Nonattainment Area Redesignation to Attainment and Designation of Areas for Air Quality Planning Purposes

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** On November 4, 2002, the State of Oregon submitted a PM-10 maintenance plan for Grants Pass to EPA for approval and concurrently requested that EPA redesignate the Grants Pass nonattainment area to attainment for the National Ambient Air Quality Standard (NAAQS) for particulate matter with an aerodynamic diameter of less than ten micrometers (PM-10). In this action, EPA is proposing to approve the maintenance plan and to redesignate the Grants Pass PM-10 nonattainment area to attainment.

**DATES:** Comments on this proposed rule must be received in writing by November 26, 2003.

**ADDRESSES:** Comments may be submitted either by mail or electronically. Written comments should be mailed to Steven K. Body, Office of Air Quality, (OAQ-107), EPA Region 10, 1200 Sixth Ave., Seattle, Washington 98101. Electronic comments should be sent either to [r10aircomm@epa.gov](mailto:r10aircomm@epa.gov) or to <http://www.regulations.gov>, which is an alternative method for submitting electronic comments to EPA. To submit comments, please follow the detailed instructions described in the Direct Final Rule, **SUPPLEMENTARY INFORMATION** section, Part VII, General Information.

Copies of the documents relevant to this action are available for public inspection between 8 a.m. and 4 p.m., Monday through Friday at the following office: United States Environmental Protection Agency, Region 10, Office of Air Quality, 1200 Sixth Ave., Seattle, WA 98101.

**FOR FURTHER INFORMATION CONTACT:** Steven K. Body, Office of Air Quality, (OAQ-107), EPA Region 10, 1200 Sixth Ave., Seattle, WA 98101, (206) 553-0782, or [body.steve@epa.gov](mailto:body.steve@epa.gov).

**SUPPLEMENTARY INFORMATION:** In the Final Rules section of this **Federal Register**, EPA is approving the State's redesignation request and State Implementation Plan (SIP) revision, involving the maintenance plan, as a direct final rule without prior proposal because the Agency views the redesignation and SIP revision as noncontroversial and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this proposed rule, no further activity is contemplated in relation to this rule. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time.

For additional information see the direct final rule, of the same title, published in the rules section of this **Federal Register**.

Dated: October 2, 2003.

**Ronald A. Kreizenbeck,**

*Acting Regional Administrator, Region 10.*

[FR Doc. 03-26918 Filed 10-24-03; 8:45 am]

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 622

[Docket No. 031017264-3264-01; I.D. 100103C]

RIN 0648-AR48

#### Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Reef Fish Fishery of the Gulf of Mexico; Referendum Procedures for a Potential Gulf of Mexico Red Snapper Individual Fishing Quota Program

**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 provide potential participants information about the schedule,

procedures, and eligibility requirements for participating in referendums to determine whether an individual fishing quota (IFQ) program for the Gulf of Mexico commercial red snapper fishery should be prepared and, if so, whether it subsequently should be submitted to the Secretary of Commerce (Secretary) for review. The intended effect of this proposed rule is to implement the referendums consistent with the requirements of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

**DATES:** Comments must be received no later than 5 p.m., eastern time, on November 12, 2003.

**ADDRESSES:** Written comments on the proposed rule must be sent to Phil Steele, Southeast Regional Office, NMFS, 9721 Executive Center Drive N., St. Petersburg, FL 33702. Comments also may be sent via fax to 727-570-5583. Comments will not be accepted if submitted via e-mail or Internet.

Copies of supporting documentation for this proposed rule, which includes a regulatory impact review (RIR) and a Regulatory Flexibility Act Analysis (RFAA), are available from NMFS at the address above.

**FOR FURTHER INFORMATION CONTACT:** Phil Steele, telephone: 727-570-5305, fax: 727-570-5583, e-mail: [phil.steele@noaa.gov](mailto:phil.steele@noaa.gov).

**SUPPLEMENTARY INFORMATION:** The reef fish fishery in the exclusive economic zone (EEZ) of the Gulf of Mexico is managed under the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico (FMP). The FMP was prepared by the Gulf of Mexico Fishery Management Council (Council) and is implemented under the authority of the Magnuson-Stevens Act by regulations at 50 CFR part 622.

#### Background

During the early to mid-1990s, the Council began development of an IFQ program for the commercial red snapper fishery in the Gulf of Mexico. Development of this program involved extensive interaction with the fishing industry, other stakeholders, and the public through numerous workshops, public hearings, and Council meetings. The program was approved by NMFS and scheduled for implementation in 1996. However, Congressional action in late 1995 prohibited implementation of any new IFQ programs in any U.S. fishery before October 2000. Subsequent Congressional actions incorporated this prohibition and related provisions into the 1996 amendments to the Magnuson-Stevens Act and ultimately extended the prohibition until October 1, 2002.

Under § 407(c) of the Magnuson-Stevens Act, the Council is now authorized to prepare and submit a plan amendment and regulations to implement an IFQ program for the commercial red snapper fishery under certain conditions. First, the preparation of such a plan amendment and implementing regulations must be approved in a referendum. If the referendum is approved by a majority of the votes cast, the Council would be responsible for preparing any such plan amendment and regulations through the normal Council and rulemaking processes that would involve extensive opportunities for industry and public review and input at various Council meetings and public hearings and during public comment periods on the plan amendment and regulations. Second, the submission of the plan amendment and regulations to the Secretary for review, approval/disapproval, and implementation must be approved in a subsequent referendum. Both referendums must be conducted in accordance with § 407(c)(2) of the Magnuson-Stevens Act. Section 407(c)(2) of the Magnuson-Stevens Act also specifies that, "Prior to each referendum, the Secretary, in consultation with the Council, shall: (A) Identify and notify all such persons holding permits with red snapper endorsements and all such vessel captains; and (B) make available to all such persons and vessel captains information about the schedule, procedures, and eligibility requirements for the referendum and the proposed individual fishing quota program."

#### **Purpose of This Proposed Rule and the Referendums**

NMFS, in accordance with the provisions of § 407(c) of the Magnuson-Stevens Act, will conduct referendums to determine, based on the majority vote of eligible voters, whether a plan amendment and regulations to implement an IFQ program for the Gulf of Mexico commercial red snapper fishery should be prepared and, if so, whether any subsequently prepared plan amendment and implementing regulations should be submitted to the Secretary for review, approval/disapproval, and implementation. 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. The procedures and eligibility criteria used for purposes of conducting the referendums have no bearing on the procedures and eligibility

requirements that might be applied in any future IFQ program that may be developed by the Council. The provisions of any proposed IFQ program would be developed independently by the Council through the normal plan amendment and rulemaking processes that would involve extensive opportunities for public review and comment during Council meetings, public hearings, and public comment on any proposed rule. There is no relation between eligibility to vote in the referendums, as described in this proposed rule, and any eligibility regarding a subsequent IFQ program.

#### **Referendum Processes**

##### *Who Would Be Eligible To Vote in the Referendums?*

Section 407(c)(2) of the Magnuson-Stevens Act establishes criteria regarding eligibility of persons to vote in the referendums. Those criteria are subject to various interpretations. After careful consideration of those criteria and the practicality and fairness of several possible interpretations, NMFS has determined that the following persons would be eligible to vote in the referendums.

##### (I) For the initial referendum:

(A) A person who according to NMFS permit records has continuously held their Gulf red snapper endorsement/Class I license from September 1, 1996, through the date of publication in the **Federal Register** of the final rule implementing these referendum procedures;

(B) In the case of a Class 1 license that has been transferred through sale since September 1, 1996, the person who according to NMFS' permit records holds such Class 1 license as of the date of publication in the **Federal Register** of the final rule implementing these referendum procedures;

(C) In the case of a Class 1 license that has been transferred through lease since September 1, 1996, both the final lessor and final lessee as of the date of publication in the **Federal Register** of the final rule implementing these referendum procedures, as determined by NMFS' permit records; and

(D) A vessel captain who harvested red snapper under a red snapper endorsement in each red snapper commercial fishing season occurring between January 1, 1993, and September 1, 1996.

##### (II) For the second referendum:

(A) A person who according to NMFS permit records has continuously held their Gulf red snapper endorsement/Class I license from September 1, 1996, through the date of publication in the

**Federal Register** of a subsequent notice announcing the second referendum;

(B) In the case of a Class 1 license that has been transferred through sale since September 1, 1996, the person that according to NMFS' permit records holds such Class 1 license as of the date of publication in the **Federal Register** of a subsequent notice announcing the second referendum;

(C) In the case of a Class 1 license that has been transferred through lease since September 1, 1996, both the final lessor and final lessee as of the date of publication in the **Federal Register** of a subsequent notice announcing the second referendum, as determined by NMFS' permit records; and

(D) A vessel captain who harvested red snapper under a red snapper endorsement in each red snapper commercial fishing season occurring between January 1, 1993, and September 1, 1996.

A person who was simultaneously the holder of an endorsement/Class 1 license and a vessel captain operating under that endorsement/Class 1 license would not be granted dual eligibility. Such person may only receive eligibility under one of the eligibility criteria.

NMFS will have sufficient information in the Southeast Regional Office fisheries permit database to identify those persons eligible to vote in the referendums based on their having held a red snapper endorsement/Class 1 license during the required periods. However, NMFS did not have sufficient information to identify vessel captains whose eligibility would be based on the harvest of red snapper under a red snapper endorsement in each red snapper commercial fishing season occurring between January 1, 1993, and September 1, 1996. To obtain that information, NMFS prepared and distributed a fishery bulletin that described the general referendum procedures and provided a 20-day period (ending August 18, 2003) for submittal of detailed information by those vessel captains. That fishery bulletin was widely distributed to all Gulf reef fish permittees, including dealers, and to major fishing organizations, state fisheries directors, and others. Information received from that solicitation would be used to identify vessel captains whose eligibility to vote in the referendums is based on the red snapper harvest criterion.

##### *How Would Votes Be Weighted?*

Section 407(c)(2) of the Magnuson-Stevens Act requires that NMFS develop a formula to weight votes based on the proportional harvests under each

eligible endorsement and by each eligible captain during the period January 1, 1993, and September 1, 1996. NMFS would obtain applicable red snapper landings data from the Southeast Fisheries Science Center reef fish logbook database. Information from NMFS' Southeast Regional Office permit database would be used to assign total applicable landings to each eligible voter (red snapper endorsement/Class 1 license holder, lessee/lessor, or vessel captain).

The weighting procedure is complicated somewhat by requirements to protect the confidentiality of landings data, when the applicable landings history involves landings by different entities. To address confidentiality concerns, NMFS would establish a series of categories (ranges) of red snapper landings, e.g., 1,000–1,500 lb (454–680 kg); 1501–2000 lb (681–907 kg); etc.. Each eligible voter's total landings during the period January 1, 1993, and September 1, 1996, would be attributed to the appropriate category. The overall average landings attributed to each category would be determined. That average number of pounds would be the vote weighting factor, i.e., one vote for each such pound, for each eligible voter whose landings fall within that category. For example, if the overall average number of pounds attributed to the 1,000–1,500-lb (454–689-kg) category is 1,328 lb (602 kg), each eligible voter within that category would receive 1328 votes.

#### *How Would the Vote Be Conducted?*

On or about November 1, 2003, NMFS would mail each eligible voter a ballot that would specify the number of votes (weighting) that that voter is assigned. NMFS would mail the ballots and associated explanatory information, via certified mail return receipt requested, to the address of record indicated in NMFS' permit database for endorsement/Class I license holders and, for vessel captains, to the address provided to NMFS by the captains during the prior information solicitation that ended August 18, 2003. All votes assigned to an eligible voter must be cast for the same decision, i.e., either all to approve or all to disapprove the applicable referendum question. The ballot must be signed by the eligible voter. Ballots must be mailed to Phil Steele, Southeast Regional Office, NMFS, 9721 Executive Center Drive N., St. Petersburg, FL 33702. Ballots for the initial referendum must be received at that address by 4:30 p.m., eastern time, December 15, 2003; ballots received after that deadline would not be considered in determining the outcome

of the initial referendum. Although it would not be required, voters may want to consider submitting their ballots by registered mail.

#### *How Would the Outcome of the Referendums Be Determined?*

Vote counting would be conducted by NMFS. Approval or disapproval of the referendums would be determined by a majority of the votes cast. NMFS would prepare a fishery bulletin announcing the results of each referendum that is conducted and would distribute the bulletin to all Gulf reef fish permittees, including dealers, and to other interested parties. The results would also be posted on NMFS' Southeast Regional Office's website at <http://caldera.sero.nmfs.gov>.

#### *What Would Happen After the Initial Referendum?*

NMFS would present the results of the initial referendum at the January 13–16, 2004, Council meeting in San Antonio, TX. If the initial referendum fails, the Council cannot proceed with preparation of a plan amendment and regulations to implement an IFQ program for the commercial red snapper fishery in the Gulf of Mexico. If the initial referendum is approved, the Council would be authorized, if it so decides, to proceed with development of a plan amendment and regulations to implement an IFQ program for the commercial red snapper fishery in the Gulf of Mexico. The proposed IFQ program would be developed through the normal Council and rulemaking processes that would involve extensive opportunities for industry and public review and input at various Council meetings and public hearings and during public comment periods on the plan amendment and regulations. The plan amendment and regulations could only be submitted to the Secretary for review, approval/disapproval, and implementation if in a second referendum approval of the submission was passed by a majority of the votes cast by the eligible voters as described in this proposed rule. NMFS would announce any required second referendum by publishing a notice in the **Federal Register** that would provide all pertinent information regarding the referendum. Any second referendum would be conducted in conformance with § 407(c)(2) of the Magnuson-Stevens Act and the provisions outlined in this proposed rule.

#### **Background Information About a Potential IFQ Program**

In anticipation of the October 2002 expiration of the Congressional

moratorium on development of IFQ programs, some members of the commercial red snapper fishery requested that the Council develop an IFQ profile for the fishery. Based on that request, the Council convened an Ad Hoc Red Snapper Advisory Panel (AHR SAP), comprised of participants in the commercial red snapper fishery and other individuals knowledgeable about the fishery and/or IFQ programs, to develop a profile. This profile, later referred to as an Individual Transferable Quota (ITQ) Options Paper for the Problems Identified in the Gulf of Mexico Red Snapper Fishery, provides background information about historical management of the red snapper fishery, problems in the fishery, management goals, and issues and management alternatives associated with a potential IFQ/ITQ program. The profile addresses such issues as: ITQ units of measurement (percentage of quota or pounds of red snapper); duration of ITQ rights; set-aside for non-ITQ catches under current commercial quota; actions to be taken if the quota increases or decreases; types of ITQ share certificates; initial allocation of ITQ shares and annual coupons (including eligibility, apportionment, transferability of landings histories, etc.); possible controls on ownership and transfer of ITQ shares; whether to include a "use it or lose it" provision; disposition of unused or sanctioned ITQ shares and coupons; possible landings restrictions; monitoring of ITQ share certificates and annual coupons; quota tracking; an appeals process; and size limit changes.

This profile represents an outline of an IFQ program as envisioned by the AHR SAP, with input from the Council—it does not reflect any final decisions by the Council regarding the structure of a proposed IFQ program for the red snapper commercial fishery. The Council may consider the options in the profile, and perhaps a variety of other options, if it chooses to pursue development of an IFQ program for the fishery. However, for purposes of the initial referendum, the Council intentionally refrained from adopting the profile. Any subsequent development of a proposed IFQ program for the red snapper commercial fishery would be conducted through the normal Council and Federal rulemaking processes that ensure numerous opportunities for review and comment by industry participants and members of the public.

## 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.*

Dated: October 22, 2003.

**John Oliver,**

*Deputy Assistant Administrator for Operations, National Marine Fisheries Service.*

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