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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Chapters II, III, IV, V, and VI

RIN 0648-XE742

Plan for Periodic Review of Regulations

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

ACTION: Notice of regulatory review; request for comments.

SUMMARY: The Regulatory Flexibility Act (RFA) requires that NMFS periodically review existing regulations that have a significant economic impact on a substantial number of small entities, such as small businesses, small organizations, and small governmental jurisdictions. This plan describes how NMFS will perform this review and describes the regulations that are being proposed for review during the current review cycle.

DATES: Written comments must be received by NMFS by *[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]*.

ADDRESSES: You may submit comments on this document, identified by NOAA-NMFS-2016-0099, by any of the following methods:

- *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to <http://www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2016-0099>, click the “Comment Now!” icon, complete the required fields, and enter or attach your comments.

- *Mail:* Submit written comments to Tara Scott, National Marine Fisheries Service, NOAA, Office of Sustainable Fisheries, 1315 East-West Highway, Silver Spring, MD 20910 (mark outside of envelope “Comments on 610 Review”).
- *Fax:* 301-713-1193; Attn: Tara Scott.

Instructions: Comments must be submitted by one of the above methods to ensure that the comments are received, documented, and considered by NMFS. Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered. All comments received are a part of the public record and will generally be posted for public viewing on www.regulations.gov without change. All personal identifying information (e.g., name, address, etc.) submitted voluntarily by the sender will be publicly accessible. Do not submit confidential business information, or otherwise sensitive or protected information. NMFS will accept anonymous comments (enter "N/A" in the required fields if you wish to remain anonymous).

FOR FURTHER INFORMATION CONTACT: Tara Scott, (301) 427-8579.

SUPPLEMENTARY INFORMATION:

Background

The RFA, 5 U.S.C. 601 *et seq.*, requires that Federal agencies take into account how their regulations affect “small entities,” including small businesses, small Governmental jurisdictions and small organizations. For regulations proposed after January 1, 1981, the agency must either prepare a Regulatory Flexibility Analysis or certify that the regulation, if promulgated, will not have a significant economic impact on a substantial number of small entities. Section 602 of the RFA requires that NMFS issue an Agenda of Regulations identifying rules the Agency is

developing that are likely to have a significant economic impact on a substantial number of small entities.

Section 610 of the RFA requires Federal agencies to review existing regulations. It requires that NMFS publish a plan in the **Federal Register** explaining how it will review its existing regulations which have or will have a significant economic impact on a substantial number of small entities. Regulations that become effective after January 1, 1981, must be reviewed within 10 years of the publication date of the final rule. Section 610(c) requires that NMFS annually publish a list of final rules it will review during the succeeding 12 months in the **Federal Register**. The list must describe, explain the need for, and provide the legal basis for the rule, as well as invite public comment on the rule.

Criteria for Review of Existing Regulations

The purpose of the review is to determine whether existing rules should be left unchanged, or whether they should be revised or rescinded in order to minimize significant economic impacts on a substantial number of small entities, consistent with the objectives of other applicable statutes. In deciding whether change is necessary, the RFA establishes five factors that NMFS must consider:

- (1) Whether the rule is still needed;
- (2) What type of complaints or comments were received concerning the rule from the public;
- (3) The complexity of the rule;
- (4) How much the rule overlaps, duplicates or conflicts with other Federal rules, and, to the extent feasible, with State and local governmental rules; and

(5) How long it has been since the rule has been evaluated or how much the technology, economic conditions, or other factors have changed in the area affected by the rule.

Plan for Periodic Review of Rules

NMFS will ensure that all rules which have or will have a significant economic impact on a substantial number of small entities are reviewed within 10 years of the year in which they were originally issued. By December 31, 2016, NMFS will review the following rules issued during 2009:

1. Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Reef Fish Fishery of the Gulf of Mexico; Amendment 30B. RIN 0648-AV80 (74 FR 17603; April 16, 2009).

NMFS issued this final rule to implement Amendment 30B to the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico prepared by the Gulf of Mexico Fishery Management Council. This final rule established annual catch limits (ACLs) and accountability measures (AMs) for commercial and recreational gag, red grouper, and shallow-water grouper (SWG); established a commercial quota for gag; adjusted the commercial quotas for red grouper and SWG; removed the commercial closed season for SWG; established an incidental bycatch allowance trip limit for commercial gag and red grouper; reduced the commercial minimum size limit for red grouper; reduced the gag bag limit and the aggregate grouper bag limit; increased the red grouper bag limit; extended the closed season for recreational SWG; eliminated the end date for the Madison-Swanson and Steamboat Lumps marine reserves; and required that federally permitted reef fish vessels comply with the more restrictive of Federal or state reef fish regulations when fishing in state waters. In addition, Amendment 30B established

management targets and thresholds for gag consistent with the requirements of the Sustainable Fisheries Act (SFA); set the gag and red grouper total allowable catch (TAC); and established interim allocations for the commercial and recreational gag and red grouper fisheries. This final rule was intended to end overfishing of gag and maintain catch levels of red grouper consistent with achieving optimum yield (OY).

2. Fisheries of the Exclusive Economic Zone off Alaska; Revisions to the Pollock Trip Limit Regulations in the Gulf of Alaska. RIN 0648-AW54 (74 FR 18156; April 21, 2009). NMFS issued this final rule to prohibit a catcher vessel from landing more than 300,000 lb (136 mt) of unprocessed pollock during a calendar day, and from landing a cumulative amount of unprocessed pollock from any Gulf of Alaska reporting area that exceeds 300,000 lb multiplied by the number of calendar days the pollock fishery is open to directed fishing in a season. This prevented catcher vessels from circumventing the intent of then-current trip limit regulations when making deliveries of pollock. Amending the then-current trip limit regulation to limit a vessel to 300,000 lb of pollock caught in a day allowed for the continued dispersion of catches of pollock in a manner that is consistent with the intent of Steller sea lion protection measures in the Gulf of Alaska. This action was intended to promote the goals and objectives of the Magnuson-Stevens Fishery Conservation and Management Act (MSA) and other applicable laws.
3. Taking of Marine Mammals Incidental to Commercial Fishing Operations; Atlantic Pelagic Longline Take Reduction Plan. RIN 0648-AV65 (74 FR 23349; May 19, 2009). NMFS determined that the pelagic longline fishery had a high level of mortality and serious injury across a number of marine mammal stocks, and issued the final Atlantic Pelagic Longline Take Reduction Plan (PLTRP) and implemented regulations to reduce

serious injuries and mortalities of pilot whales and Risso's dolphins in the Atlantic pelagic longline fishery. The PLTRP was based on consensus recommendations submitted by the Atlantic Pelagic Longline Take Reduction Team. The PLTRP was intended to meet the statutory mandates and requirements of the Marine Mammal Protection Act (MMPA) through both regulatory and non-regulatory measures, including a special research area, gear modifications, outreach material, observer coverage, and captains' communications.

4. Endangered and Threatened Species; Designation of Critical Habitat for Atlantic Salmon (*Salmo Salar*) Gulf of Maine Distinct Population Segment. RIN 0648-AW77 (74 FR 29299; June 19, 2009). NMFS issued a final rule designating critical habitat for the Atlantic salmon (*Salmo salar*) Gulf of Maine Distinct Population Segment (GOM DPS). NMFS previously determined that naturally spawned and several hatchery populations of Atlantic salmon which constitute the GOM DPS warranted listing as endangered under the Endangered Species Act of 1973, as amended (ESA). NMFS was required to designate critical habitat for the GOM DPS as a result of this listing. NMFS designated critical habitat for 45 specific areas occupied by Atlantic salmon at the time of listing that comprise approximately 19,571 km of perennial river, stream, and estuary habitat and 799 square km of lake habitat within the range of the GOM DPS and in which are found those physical and biological features essential to the conservation of the species. The entire occupied range of the GOM DPS in which critical habitat is designated is within the State of Maine. NMFS excluded approximately 1,256 km of river, stream, and estuary habitat and 100 square km of lake habitat from critical habitat pursuant to section 4(b)(2) of the ESA.

5. Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Snapper-Grouper Fishery off the Southern Atlantic States; Amendment 16. RIN 0648-AW64 (74 FR 30964; June 29, 2009). NMFS issued the final rule to implement the approved measures of Amendment 16 to the Fishery Management Plan for the Snapper-Grouper Fishery of the South Atlantic Region (Amendment 16), as prepared and submitted by the South Atlantic Fishery Management Council. This final rule established a seasonal closure of the recreational and commercial fisheries for gag and associated shallow-water grouper species; established a seasonal closure of the recreational fishery for vermilion snapper; reduced the aggregate bag limit for grouper and tilefish; reduced the bag limit for gag or black grouper combined; reduced the bag limit for vermilion snapper; prohibited captain and crew of a vessel operating as a charter vessel or headboat from retaining any fish under the aggregate bag limit for grouper and tilefish or the vermilion snapper bag limit; established semiannual quotas for the commercial vermilion snapper fishery; established a quota for the commercial gag fishery; established restrictions on the possession, sale, and purchase of gag and associated shallow-water grouper species after the gag commercial quota is reached; and required possession of a dehooking device on board a vessel when fishing for South Atlantic snapper-grouper and use of such device as needed to release fish with a minimum of injury. In addition, Amendment 16, for both gag and vermilion snapper, revised the definitions of maximum sustainable yield and OY, specified TAC, and established interim allocations of TACs for the recreational and commercial sectors. Amendment 16 also specified a minimum stock size threshold for gag and, based on the new assessment, for vermilion snapper. The intended effects of this final rule were to end overfishing of gag and vermilion snapper, protect shallow-water

grouper during their spawning season, and reduce bycatch mortality of snapper-grouper species in the South Atlantic, pursuant to the MSA.

6. International Fisheries; Western and Central Pacific Fisheries for Highly Migratory Species; Fishing Restrictions and Observer Requirements in Purse Seine Fisheries for 2009-2011 and Turtle Mitigation Requirements in Purse Seine Fisheries. RIN 0648-AX60. (74 FR 38544; August 4, 2009). NMFS issued regulations under authority of the Western and Central Pacific Fisheries Convention Implementation Act (WCPFC Implementation Act) to implement certain decisions of the Commission for the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean (WCPFC). Those decisions required that the members of the WCPFC, including the United States, take certain measures with respect to their purse seine fisheries in the area of competence of the WCPFC, which included most of the western and central Pacific Ocean (WCPO). The regulations included limits on the number of days that may be fished, periods during which fishing may not be done on schools in association with fish aggregating devices (FADs), areas of high seas closed to fishing, requirements to retain tuna on board up to the first point of landing or transshipment, requirements to carry observers, and requirements to handle sea turtles in a specified manner. This action was necessary for the United States to satisfy its international obligations under the Convention on the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean, to which it is a Contracting Party.
7. Fisheries of the Exclusive Economic Zone off Alaska; Bering Sea and Aleutian Islands (Amendment 92) and Gulf of Alaska License (Amendment 82) Limitation Program. RIN

0648-AX14 (74 FR 41080; August 14, 2009). NMFS issued regulations to implement Amendment 92 to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area and Amendment 82 to the Fishery Management Plan for Groundfish of the Gulf of Alaska. This action removed trawl gear endorsements on licenses issued under the license limitation program in specific management areas if those licenses had not been used on vessels that met minimum recent landing requirements using trawl gear. This action provided exemptions to this requirement for licenses that were used in trawl fisheries subject to certain limited access privilege programs. This action issued new area endorsements for trawl catcher vessel licenses in the Aleutian Islands if minimum recent landing requirements in the Aleutian Islands were met. This action was intended to promote the goals and objectives of the MSA, the Fishery Management Plans, and other applicable law.

8. Endangered and Threatened Species; Critical Habitat for the Endangered Distinct Population Segment of Smalltooth Sawfish. RIN 0648-AV74 (74 FR 45353; September 2, 2009). NMFS, issued a final rule to designate critical habitat for the U.S. distinct population segment (DPS) of smalltooth sawfish (*Pristis pectinata*), which was listed as endangered on April 1, 2003, under the ESA. The critical habitat consists of two units: the Charlotte Harbor Estuary Unit, which comprises approximately 221,459 acres of coastal habitat; and the Ten Thousand Islands/Everglades Unit (TTI/E), which comprises approximately 619,013 acres of coastal habitat. The two units are located along the southwestern coast of Florida between Charlotte Harbor and Florida Bay. NMFS issued this rule to satisfy requirements under the Endangered Species Act.

9. Endangered and Threatened Wildlife and Plants: Final Rulemaking to Designate Critical Habitat for the Threatened Southern Distinct Population Segment of North American Green Sturgeon. RIN 0648-AX04 (74 FR 52299; October 9, 2009). NMFS designated critical habitat for the threatened Southern distinct population segment of North American green sturgeon (Southern DPS of green sturgeon) pursuant to section 4 of the ESA. Specific areas proposed for designation included: Coastal U.S. marine waters within 60 fathoms (fm) depth from Monterey Bay, CA (including Monterey Bay), north to Cape Flattery, WA, including the Strait of Juan de Fuca, WA, to its United States boundary; the Sacramento River, lower Feather River, and lower Yuba River in California; the Sacramento-San Joaquin Delta and Suisun, San Pablo, and San Francisco bays in California; the lower Columbia River estuary; and certain coastal bays and estuaries in California (Humboldt Bay), Oregon (Coos Bay, Winchester Bay, Yaquina Bay, and Nehalem Bay), and Washington (Willapa Bay and Grays Harbor). This rule designated approximately 515 kilometers (km) (320 miles (mi)) of freshwater river habitat, 2,323 km² (897 mi²) of estuarine habitat, 29,581 km² (11,421 mi²) of marine habitat, 784 km (487 mi) of habitat in the Sacramento-San Joaquin Delta, and 350 km² (135 mi²) of habitat within the Yolo and Sutter bypasses (Sacramento River, CA) as critical habitat for the Southern DPS of green sturgeon. This rule excluded the following areas from designation because the economic benefits of exclusion outweigh the benefits of inclusion, and exclusion would not result in the extinction of the species: Coastal U.S. marine waters within 60 fm depth from the California/Mexico border north to Monterey Bay, CA, and from the Alaska/Canada border northwest to the Bering Strait; the lower Columbia River from river kilometer 74 to the Bonneville Dam; and certain coastal bays

and estuaries in California (Elkhorn Slough, Tomales Bay, Noyo Harbor, and the estuaries to the head of the tide in the Eel and Klamath/Trinity rivers), Oregon (Tillamook Bay and the estuaries to the head of the tide in the Rogue, Siuslaw, and Alsea rivers), and Washington (Puget Sound). Particular areas were also excluded based on impacts on national security and impacts on Indian lands. The areas excluded from the designation comprised approximately 0.2 km (0.1 mi) of freshwater habitat, 2,945 km² (1,137 mi²) of estuarine habitat and 1,034,935 km² (399,590 mi²) of marine habitat. This final rule responded to and incorporated public comments received on the proposed rule and supporting documents, as well as peer reviewer comments received on the draft biological report and draft ESA section 4(b)(2) report.

10. Fisheries of the United States Exclusive Economic Zone off Alaska; Fisheries of the Arctic Management Area; Bering Sea Subarea. RIN 0648-AX71 (74 FR 56734; November 3, 2009). NMFS issued a final rule that implements the Fishery Management Plan for Fish Resources of the Arctic Management Area (Arctic FMP) and Amendment 29 to the Fishery Management Plan for Bering Sea/Aleutian Islands King and Tanner Crabs (Crab FMP). The Arctic FMP and Amendment 29 to the Crab FMP established sustainable management of commercial fishing in the Arctic Management Area and moved the northern boundary of the Crab FMP out of the Arctic Management Area south to Bering Strait. This action was necessary to establish a management framework for commercial fishing and to provide consistent management of fish resources in the Arctic Management Area before the potential onset of unregulated commercial fishing in the area. This action was intended to promote the goals and objectives of the MSA, the Arctic and Crab FMPs, and other applicable laws.

11. Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Snapper-Grouper Fishery off the Southern Atlantic States; Amendment 15B; Reef Fish Fishery of the Gulf of Mexico. RIN 0648-AW12 (74 FR 58902; November 16, 2009). NMFS issued this final rule to implement Amendment 15B to the Fishery Management Plan for the Snapper-Grouper Fishery of the South Atlantic Region, as prepared and submitted by the South Atlantic Fishery Management Council. This final rule, for South Atlantic snapper-grouper, required a private recreational vessel that fishes in the exclusive economic zone (EEZ), if selected by NMFS, to maintain and submit fishing records; required a vessel that fishes in the EEZ, if selected by NMFS, to carry an observer and install an electronic logbook and/or video monitoring equipment provided by NMFS; prohibited the sale of snapper-grouper harvested or possessed in the EEZ under the bag limits and prohibited the sale of snapper-grouper harvested or possessed under the bag limits by vessels with a Federal charter vessel/headboat permit for South Atlantic snapper-grouper regardless of where the snapper-grouper were harvested; required an owner and operator of a vessel for which a commercial or charter vessel/headboat permit has been issued and that has on board any hook-and-line gear to comply with sea turtle and smalltooth sawfish release protocols, possess on board specific gear to ensure proper release of such species, and comply with guidelines for proper care and release of such species that are incidentally caught; and expanded the allowable transfer of a commercial vessel permit under the limited access program and extended the allowable period for renewal of such a permit. Amendment 15B also revised the stock status determination criteria for golden tilefish and specified commercial/recreational allocations for snowy grouper and red pogy. In addition, NMFS removed language specifying commercial quotas for snowy grouper and

red porgy that were no longer in effect and revised sea turtle bycatch mitigation requirements applicable to the Gulf reef fish fishery to add two devices that were inadvertently omitted from a prior rule. The intended effects of this final rule were to provide additional information for, and otherwise improve the effective management of, the South Atlantic snapper-grouper fishery; minimize the impacts on incidentally caught threatened and endangered sea turtles and smalltooth sawfish; and remove outdated language, all pursuant to the MSA.

12. International Fisheries Regulations; Fisheries in the Western Pacific; Pelagic Fisheries; Hawaii-Based Shallow-Set Longline Fishery. RIN 0648-AW49 (74 FR 65460; December 10, 2009). This final rule implemented the management provisions in Amendment 18 to the Pelagics Fishery Management Plan for the pelagic fisheries in the U.S. western Pacific, and made several housekeeping changes to the pelagic fishing regulations that were not related to Amendment 18. This final rule removed the annual limit on the number of fishing gear deployments (sets) for the Hawaii-based pelagic shallow-set longline fishery, and increased the annual number of allowable incidental interactions that occur between the fishery and loggerhead sea turtles. The final rule optimized yield from the fishery without jeopardizing the continued existence of sea turtles and other protected resources. This final rule also made several administrative clarifications to the

regulations. The intent of this final rule was to achieve optimal yield from the fishery, pursuant to the MSA, without jeopardizing the continued existence of sea turtles and other protected resources.

Dated: August 1, 2016

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