

consistently endorsed and required use of this process (40 U.S.C. 1101 *et seq.* and FAR part 36.6).

*Response:* DHS disagrees. The USCG Authorization Act for Fiscal Year 2006 specifically authorizes the Secretary to use one-step turnkey design-build procedures when entering into construction contracts. See Public Law 109-241 section 205. In addition, in the past, the one-step turn-key design-build procedures were authorized by Congress pursuant to 10 U.S.C. 2862. This law allows DoD service secretaries (the Secretary of the Army, the Secretary of the Air Force and the Secretary of the Navy) to use the one-step turnkey procedures for military construction contracts. The purpose of this rule is to delegate authority of the Secretary of Homeland Security under section 205 of Public Law 109-241 (14 U.S.C. 677) to the Coast Guard.

*Comment:* A few comments took exception with the notion that the two-phase design-build selection process required by the FAR (48 CFR 36.6) results in a much longer process. They commented that the two-phase design-build selection process is the most effective way to get the best results using design-build contracting and works well for large and small, simple and complex projects when used correctly. They also felt that the most effective way for an owner to communicate desired project outcomes is through the use of performance-based requirements, which describe the nature of the project in terms of desire performance outcomes and an owner's goals, challenges, and problems, rather than through restrictive design specifications. They felt that this approach maximizes an offeror's flexibility and allows an owner to evaluate design-build teams' innovation and creativity in providing optimum solutions. Moreover, they felt this approach would capture owner requirements more efficiently while dramatically reducing statement of work paperwork by more than 90 percent.

*Response:* DHS disagrees. The Coast Guard has studied the one-step turnkey design-build process and believes it to be in the best interest of both the Coast Guard and the government to adopt this streamlined acquisition method. The potential spectrum of one-step design-build projects is broad and could involve a performance-based design that complements the efficiencies that a one-step approach can provide in certain situations.

*Comment:* One commenter wrote that DHS should also encourage the U.S. Coast Guard to include recognition of designated Design-Build Professionals

in the selection procedures in the acquisition process.

*Response:* DHS agrees. The Coast Guard will include this recommendation in the guidance that it prepares on the one-step turnkey design build guidelines.

### III. Regulatory Analyses

#### A. Executive Order 12866 Assessment

DHS has determined that this final rule is neither a major rule under 5 U.S.C. 804 nor a significant regulatory action under Executive Order 12866, Regulatory Planning and Review. It therefore does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order, and the Office of Management and Budget has not reviewed it.

#### B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act (5 U.S.C. 601-612), the term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. This final rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act.

#### List of Subjects in 48 CFR Part 3036

Government procurement.

- Therefore, DHS amends 48 CFR part 3036 as set forth below:

#### PART 3036—CONSTRUCTION AND ARCHITECT—ENGINEER CONTRACTS

- 1. The authority citation for 48 CFR part 3036 continues to read as follows:

**Authority:** 41 U.S.C. 418(a) and (b).

- 2. Add subpart 3036.1 to read as follows:

##### Subpart 3036.1—General

Sec.

3036.104 Policy.

3036.104-90 Authority for one-step turnkey design-build contracting for the United States Coast Guard (USCG).

##### Subpart 3036.1—General

3036.104 Policy.

**3036.104-90 Authority for one-step turnkey design-build contracting for the United States Coast Guard (USCG).**

The Head of the Contracting Activity (HCA) of the U.S. Coast Guard may use one-step turn-key selection procedures to enter into fixed-price design-build

contracts in accordance with 14 U.S.C. 677.

**Thomas W. Essig,**

*Chief Procurement Officer, Department of Homeland Security.*

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 622

[Docket No. 040205043-4043-01]

RIN 0648-XG27

#### Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Reef Fish Fishery of the Gulf of Mexico; Closure of the 2008 Deepwater Grouper Commercial Fishery

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

**ACTION:** Temporary rule; closure.

**SUMMARY:** NMFS closes the commercial fishery for deepwater grouper (misty grouper, snowy grouper, yellowedge grouper, warsaw grouper, and speckled hind) in the exclusive economic zone (EEZ) of the Gulf of Mexico. NMFS has determined that the deepwater grouper quota for the commercial fishery will have been reached by May 10, 2008. This closure is necessary to protect the deepwater grouper resource.

**DATES:** Closure is effective 12:01 a.m., local time, May 10, 2008, until 12:01 a.m., local time, on January 1, 2009.

**FOR FURTHER INFORMATION CONTACT:** Britni Tokotch, telephone 727-824-5305, fax 727-824-5308, e-mail [Britni.Tokotch@noaa.gov](mailto:Britni.Tokotch@noaa.gov).

**SUPPLEMENTARY INFORMATION:** The reef fish fishery 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 and is implemented under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) by regulations at 50 CFR part 622. Those regulations set the commercial quota for deepwater grouper in the Gulf of Mexico at 1.02 million lb (463,636 kg) for the current fishing year, January 1 through December 31, 2008.

Under 50 CFR 622.43(a), NMFS is required to close the commercial fishery

for a species or species group when the quota for that species or species group is reached, or is projected to be reached, by filing a notification to that effect with the Office of the **Federal Register**. Based on current statistics, NMFS has determined that the available commercial quota of 1.02 million lb (463,636 kg) for deepwater grouper will be reached on or before May 10, 2008. Accordingly, NMFS is closing the commercial deepwater grouper fishery in the Gulf of Mexico EEZ from 12:01 a.m., local time, on May 10, 2008, until 12:01 a.m., local time, on January 1, 2009. The operator of a vessel with a valid commercial vessel permit for Gulf reef fish having deepwater grouper aboard must have landed and bartered, traded, or sold such deepwater grouper prior to 12:01 a.m., local time, May 10, 2008.

During the closure, the bag and possession limits specified in 50 CFR 622.39(b) apply to all harvest or possession of deepwater grouper in or from the Gulf of Mexico EEZ, and the sale or purchase of deepwater grouper taken from the EEZ is prohibited. Vessels with commercial quantities of reef fish on board are prohibited from retaining a recreational bag limit. The prohibition on sale or purchase does not apply to sale or purchase of deepwater grouper that were harvested, landed ashore, and sold prior to 12:01 a.m., local time, May 10, 2008, and were held in cold storage by a dealer or processor.

#### Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA, (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such prior notice and opportunity for public comment is unnecessary and contrary to the public interest. Such procedures would be unnecessary because the rule itself has already been subject to notice and comment, and all that remains is to notify the public of the closure. Allowing prior notice and opportunity for public comment is contrary to the public interest because of the need to immediately implement this action to protect the fishery since the capacity of the fishing fleet allows for rapid harvest of the quota. Prior notice and opportunity for public comment would require time and would potentially result in a harvest well in excess of the established quota.

For the aforementioned reasons, the AA also finds good cause to waive the

30-day delay in the effectiveness of this action under 5 U.S.C. 553(d)(3).

This action is taken under 50 CFR 622.43(a) and is exempt from review under Executive Order 12866.

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

Dated: April 30, 2008.

**Emily H. Menashes,**

*Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 622

[Docket No. 040205043-4043-01]

RIN 0648-XG71

#### Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Reef Fish Fishery of the Gulf of Mexico; Closure of the 2008 Commercial Fishery for Tilefishes

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

**ACTION:** Temporary rule; closure.

**SUMMARY:** NMFS closes the commercial fishery for tilefishes in the exclusive economic zone (EEZ) of the Gulf of Mexico. NMFS has determined that the quota for the commercial fishery for tilefishes will have been reached by May 10, 2008. This closure is necessary to protect the tilefish resource.

**DATES:** Closure is effective 12:01 a.m., local time, May 10, 2008, until 12:01 a.m., local time, on January 1, 2009.

**FOR FURTHER INFORMATION CONTACT:** Britni Tokotch, telephone 727-824-5305, fax 727-824-5308, e-mail [Britni.Tokotch@noaa.gov](mailto:Britni.Tokotch@noaa.gov).

**SUPPLEMENTARY INFORMATION:** The reef fish fishery 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 and is implemented under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) by regulations at 50 CFR part 622. Those regulations set the commercial quota for tilefishes in the Gulf of Mexico at 440,000 lb (200,000 kg) for the current fishing year, January 1 through December 31, 2008.

Under 50 CFR 622.43(a), NMFS is required to close the commercial fishery for a species or species group when the quota for that species or species group is reached, or is projected to be reached, by filing a notification to that effect with the Office of the Federal Register. Based on current statistics, NMFS has determined that the available commercial quota of 440,000 lb (200,000 kg) for tilefishes will be reached on or before May 10, 2008. Accordingly, NMFS is closing the commercial fishery for tilefishes in the Gulf of Mexico EEZ from 12:01 a.m., local time, on May 10, 2008, until 12:01 a.m., local time, on January 1, 2009. The operator of a vessel with a valid commercial vessel permit for Gulf reef fish having tilefishes aboard must have landed and bartered, traded, or sold such tilefishes prior to 12:01 a.m., local time, May 10, 2008.

During the closure, the bag and possession limits specified in 50 CFR 622.39(b) apply to all harvest or possession of tilefishes in or from the Gulf of Mexico EEZ, and the sale or purchase of tilefishes taken from the EEZ is prohibited. The prohibition on sale or purchase does not apply to sale or purchase of tilefishes that were harvested, landed ashore, and sold prior to 12:01 a.m., local time, May 10, 2008, and were held in cold storage by a dealer or processor. Vessels with commercial quantities of other Gulf reef fish on board are prohibited from retaining a recreational bag limit of tilefishes.

#### Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA, (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such prior notice and opportunity for public comment is unnecessary and contrary to the public interest. Such procedures would be unnecessary because the rule itself has already been subject to notice and comment, and all that remains is to notify the public of the closure. Allowing prior notice and opportunity for public comment is contrary to the public interest because of the need to immediately implement this action to protect the fishery since the capacity of the fishing fleet allows for rapid harvest of the quota. Prior notice and opportunity for public comment would require time and would potentially result in a harvest well in excess of the established quota.