

(CAPE) of the Department of Defense and such analysis supports the findings (10 U.S.C. 2306b(i)(1)(B)).

(iii) The system being acquired pursuant to such contract has not been determined to have experienced cost growth in excess of the critical cost growth threshold pursuant to section 10 U.S.C. 2433(d) within 5 years prior to the date the Secretary anticipates such contract (or a contract for advance procurement entered into consistent with the authorization for such contract) will be awarded (10 U.S.C. 2306b(i)(1)(C)).

(iv) A sufficient number of end items of the system being acquired under such contract have been delivered at or within the most current estimates of the program acquisition unit cost or procurement unit cost for such system to determine that current estimates of such unit costs are realistic (10 U.S.C. 2306b(i)(1)(D)).

(v) During the fiscal year in which such contract is to be awarded, sufficient funds will be available to perform the contract in such fiscal year, and the future-years defense program for such fiscal year will include the funding required to execute the program without cancellation (10 U.S.C. 2306b(i)(1)(E)).

(vi) The contract is a fixed price type contract (10 U.S.C. 2306b(i)(1)(F)).

(vii) The proposed multiyear contract provides for production at not less than minimum economic rates, given the existing tooling and facilities. The head of the agency shall submit to USD(C)(P/B) information supporting the agency's determination that this requirement has been met (10 U.S.C. 2306b(i)(1)(G)).

(viii) The head of the agency shall submit information supporting this certification to USD(C)(P/B) for transmission to Congress through the Secretary of Defense.

(ix) In the case of a contract with a cancellation ceiling in excess of \$100 million, if the budget for the contract does not include proposed funding for the costs of contract cancellation up to the cancellation ceiling established in the contract—

(A) The head of the agency shall, as part of this certification, give written notification to the congressional defense committees of—

(1) The cancellation ceiling amounts planned for each program year in the proposed multiyear contract, together with the reasons for the amounts planned;

(2) The extent to which costs of contract cancellation are not included in the budget for the contract; and

(3) A financial risk assessment of not including the budgeting for costs of

contract cancellation (10 U.S.C. 2306b(g)); and

(B) The head of the agency shall provide copies of the notification to the Office of Management and Budget at least 14 days before contract award in accordance with the procedures at PGI 217.1.

(3) If the value of a multiyear contract for a particular system or component exceeds \$500 million, use of a multiyear contract is specifically authorized by—

(i) An appropriations act (10 U.S.C. 2306b(l)(3)); and

(ii) A law other than an appropriations act (10 U.S.C. 2306b(i)(3)).

(4) The contract is for the procurement of a complete and usable end item (10 U.S.C. 2306b(i)(4)(A)).

(5) Funds appropriated for any fiscal year for advance procurement are obligated only for the procurement of those long-lead items that are necessary in order to meet a planned delivery schedule for complete major end items that are programmed under the contract to be acquired with funds appropriated for a subsequent fiscal year (including an economic order quantity of such long-lead items when authorized by law (10 U.S.C. 2306b(i)(4)(b))).

(6) The Secretary may make the certification under paragraph (f)(2) of this section notwithstanding the fact that one or more of the conditions of such certification are not met if the Secretary determines that, due to exceptional circumstances, proceeding with a multiyear contract under this section is in the best interest of the Department of Defense and the Secretary provides the basis for such determination with the certification (10 U.S.C. 2306b(i)(5)).

(7) The Secretary of Defense may not delegate this authority to make the certification under 217.172(f)(2) or the determination under 217.172(f)(6) to an official below the level of the Under Secretary of Defense for Acquisition, Technology, and Logistics (10 U.S.C. 2306b(i)(6)).

(8) The Secretary of Defense shall send a notification containing the findings of the agency head under FAR 17.105(b), and the basis for such findings, 30 days prior to the award of a multiyear contract or a defense acquisition program that has been specifically authorized by law ((10 U.S.C. 2306b(i)(7)).

(9) All other requirements of law are met and there are no other statutory restrictions on using a multiyear contract for the specific system or component (10 U.S.C. 2306b(i)(2)). One such restriction may be the achievement of specified cost savings. If the agency

finds, after negotiations with the contractor(s), that the specified savings cannot be achieved, the head of the agency shall assess the savings that, nevertheless, could be achieved by using a multiyear contract. If the savings are substantial, the head of the agency may request relief from the law's specific savings requirement. The request shall—

(i) Quantify the savings that can be achieved;

(ii) Explain any other benefits to the Government of using the multiyear contract;

(iii) Include details regarding the negotiated contract terms and conditions; and

(iv) Be submitted to OUSD (AT&L) DPAP for transmission to Congress via the Secretary of Defense and the President.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 090206140-91414-04]

RIN 0648-AX39

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Reef Fish Fishery of the Gulf of Mexico; Amendment 29 Supplement

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

ACTION: Final rule.

SUMMARY: NMFS issues this final rule to supplement the regulations implementing Amendment 29 to the Fishery Management Plan for Reef Fish Resources of the Gulf of Mexico (FMP), as prepared and submitted by the Gulf of Mexico Fishery Management Council (Council). Amendment 29 established a multi-species individual fishing quota (IFQ) program for the grouper and tilefish component of the commercial sector of the reef fish fishery in the Gulf of Mexico (Gulf) exclusive economic zone. This final rule removes several measures constraining harvest of shallow-water grouper species that were inadvertently not removed in the final rule for Amendment 29, further clarifies existing criteria for approval of new landing locations for both the red snapper IFQ program and grouper and tilefish IFQ program, and provides a

definition of “offloading” in the codified text for IFQ participants. The intent of this final rule is to enhance IFQ program enforcement capabilities, reduce confusion for IFQ participants offloading their fish, and allow for more efficient functioning of the IFQ programs for red snapper and groupers and tilefishes.

DATES: This rule is effective March 31, 2010.

ADDRESSES: Copies of the final regulatory flexibility analysis (FRFA) and record of decision may be obtained from Susan Gerhart, Southeast Regional Office, NMFS, 263 13th Avenue South, St. Petersburg, FL 33701-5505.

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this final rule may be submitted by e-mail to rich.malinowski@noaa.gov, or David_Rostker@omb.eop.gov, or by fax to 202-395-7285.

FOR FURTHER INFORMATION CONTACT: Susan Gerhart, telephone: 727-824-5305.

SUPPLEMENTARY INFORMATION: The reef fish fishery of the Gulf is managed under the FMP. The FMP was prepared by the Council and is implemented through regulations at 50 CFR part 622 under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

This final rule includes administrative measures that were not included in the final rule for Amendment 29 (74 FR 44732). These measures allow for more efficient functioning of the grouper and tilefish IFQ program, reduce confusion among IFQ participants who are offloading their fish, and further enhance enforcement capabilities of the IFQ programs, as intended by the Council. This final rule also discusses two options considered by the Council at the October 2009 Council meeting. On December 10, 2009, NMFS published a proposed rule to supplement the final rule for Amendment 29 and requested public comment (74 FR 65500). NMFS invited comments in the proposed rule on these options, which include extending the offloading window past 6 p.m. and providing an option to fishermen at the time of landing to provide a headcount of the IFQ fish onboard. NMFS received comments on both of these options, which are provided along with NMFS' responses to these comments in the comments and responses section below.

Comments and Responses

NMFS received seven public comments on the proposed supplemental rule to Amendment 29. One comment, regarding transferability of IFQ shares, fell outside the scope of the rule and was not addressed in this final rule. One comment pertained to the actions addressed in the proposed rule; the rest pertained to options the Council may consider in the future. No comments were received pertaining to the FRFA or economic impacts of this action. The following are NMFS' responses to topics in these comments.

Comment 1: The rule should further clarify what it means for a landing location to be accessible by public roads.

Response: The text states that in order for a proposed landing location to be considered publicly accessible, vehicles must have access to the site via public roads. NMFS believes that this language provides a sufficient description of the requirement, and further clarification is unnecessary.

Comment 2: If a landing location is disapproved, documentation should be provided explaining the disapproval, and an appeals process should be created.

Response: NMFS is working to develop a process for informing participants of the reasons for disapproving a landing location. This may include a publicly posted list of disapproved sites, or individual responses to participants.

An appeals process is neither practical nor necessary for the NMFS disapproval of a landing location. Locations are disapproved by NMFS if they are not accessible or are deemed unsafe for law enforcement agents. If participants rectify the situation to eliminate these deficiencies, they can re-submit the location for another review.

Comment 3: Fishermen with smaller vessels frequently do not have computers onboard and should be allowed to call dealers to receive a landing transaction code to transport fish.

Response: Under current regulations, the dealer must enter all landing transactions through the dealer IFQ account to receive a landing transaction code. Thus, fishermen may call their dealer to electronically connect to the IFQ system if they are at a landing site other than the dealer facility. The fishermen must still accurately weigh the fish on site to complete the landing transaction before transporting the fish. There is no specific requirement for a computer to be onboard a vessel and be

used as the mechanism to receive a landing transaction code, only that a landing transaction code be received by the fishermen prior to transporting fish.

Comment 4: Allowing a headcount would help small-scale fishermen because weighing fish onboard is difficult, time consuming, and not very accurate.

Response: The Council is considering this option for the same reasons expressed in the comment. NMFS' preliminary determination is that providing a headcount instead of the weight of the catch at the time of landing would not allow for adequate monitoring and enforcement of the IFQ program. However, if the Council chooses to proceed with this option, some controls would need to be applied to restrict the use of this option (see Comment 5).

Comment 5: If a headcount is implemented, limitations and controls should be developed, such as allowing the headcount only for trailered vessels at public sites, creating a trip limit (e.g., 200 lb (90.7 kg)) for vessels using a headcount, and requiring weights if the shareholder's allocation is less than a minimum amount.

Response: If the Council chooses to proceed with the headcount option, the suggested restrictions would be considered. These controls and limitations would help address NMFS' concerns about monitoring and enforcement. However, these changes to the regulations would need to be addressed in future regulatory action before regulations could be implemented.

Comment 6: Extending the offloading time period past 6 p.m. would help fishermen who trailer their boats. Under current regulations, some fishermen landing after 6 p.m. must leave the boat overnight at their landing location and offload in the morning. Problems include: leaving a vessel unattended in a public area, the need to reassemble a crew for offloading, and restrictions on docking/parking at public sites.

Response: The Council is considering this option for the same reasons expressed in the comment. Because Amendment 29 specifically states that the allowable time period to offload IFQ fish is between 6 a.m. and 6 p.m. local time, the Council would need to address this option in a future plan amendment if it is to be implemented in the future.

Classification

The Administrator, Southeast Region, NMFS has determined that the FMP, Amendment 29, and the final rule are consistent with the Magnuson-Stevens Act, and other applicable laws.

This final rule has been determined to be not significant for purposes of Executive Order 12866.

NMFS prepared an FEIS for Amendment 29. A notice of availability for the FEIS was published on May 8, 2009 (74 FR 21684).

NMFS prepared a FRFA, as required by section 604 of the Regulatory Flexibility Act, for Amendment 29. A copy of the full analysis is available from NMFS (see ADDRESSES). Two of the measures contained in this final rule, namely the measure to remove the trip limit and accountability measures that constrain commercial harvest and the measure to clarify existing landing location criteria, are measures inherent in an IFQ program. Providing a definition of the term "offloading" for IFQ participants is further clarification of an existing IFQ component. The FRFA prepared for Amendment 29 analyzed the economic conditions that would exist assuming these measures were already included in the IFQ program for Gulf groupers and tilefishes. No new economic effects would be expected to accrue to this rule in addition to those described in Amendment 29 and no comments were received about the economic impacts of the proposed rule, therefore, no new economic analysis has been conducted for those measures in this final rule.

This final rule contains a collection-of-information requirement subject to the Paperwork Reduction Act (PRA) and which has been approved by OMB under control number (0648-0587). Public reporting burden for the "Landing Location Criteria Form" is estimated to average 5 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Send comments regarding the burden estimate or any other aspect of the collection-of-information requirement, including suggestions for reducing the burden, to NMFS and to the OMB (see ADDRESSES).

Notwithstanding any other provision of law, no person is required to respond to, nor shall a person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA unless that collection of information displays a currently valid OMB control number.

List of Subjects in 50 CFR Part 622

Fisheries, Fishing, Puerto Rico, Reporting and recordkeeping requirements, Virgin Islands.

Dated: February 23, 2010.

Eric C. Schwaab, Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 622 is amended as follows:

PART 622—FISHERIES OF THE CARIBBEAN, GULF, AND SOUTH ATLANTIC

1. The authority citation for part 622 continues to read as follows:

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

2. In § 622.16, a sentence is added after the heading in paragraph (c)(3)(ii) and paragraphs (c)(3)(v)(A) and (B) are revised to read as follows:

§ 622.16 Gulf red snapper individual fishing quota (IFQ) program.

* * * * *

(c) * * *

(3) * * *

(ii) * * * For the purpose of this paragraph, offloading means to remove IFQ red snapper from a vessel. * * *

* * * * *

(v) * * *

(A) Landing locations must have a street address. If there is no street address on record for a particular landing location, global positioning system (GPS) coordinates for an identifiable geographic location must be provided.

(B) Landing locations must be publicly accessible by land and water, and must satisfy the following criteria:

(1) Vehicles must have access to the site via public roads;

(2) Vessels must have access to the site via navigable waters;

(3) No other condition may impede free and immediate access to the site by an authorized law enforcement officer. Examples of such conditions include, but are not limited to: A locked gate, fence, wall, or other barrier preventing 24-hour access to the site; a gated community entry point; a guard animal; a posted sign restricting access to the site; or any other physical deterrent.

* * * * *

3. In § 622.20, a sentence is added after the heading in paragraph (c)(3)(ii) and paragraphs (c)(3)(v)(A) and (B) are revised to read as follows:

§ 622.20 Individual fishing quota (IFQ) program for Gulf groupers and tilefishes.

* * * * *

(c) * * *

(3) * * *

(ii) * * * For the purpose of this paragraph, offloading means to remove

IFQ groupers and tilefishes from a vessel. * * *

* * * * *

(v) * * *

(A) Landing locations must have a street address. If there is no street address on record for a particular landing location, global positioning system (GPS) coordinates for an identifiable geographic location must be provided.

(B) Landing locations must be publicly accessible by land and water, and must satisfy the following criteria:

(1) Vehicles must have access to the site via public roads;

(2) Vessels must have access to the site via navigable waters;

(3) No other condition may impede free and immediate access to the site by an authorized law enforcement officer. Examples of such conditions include, but are not limited to: A locked gate, fence, wall, or other barrier preventing 24-hour access to the site; a gated community entry point; a guard animal; a posted sign restricting access to the site; or any other physical deterrent.

* * * * *

§ 622.44 [Amended]

4. In § 622.44, paragraph (h) is removed.

5. In § 622.49, paragraphs (a)(3)(i), (a)(4)(i), and (a)(5)(i) are revised to read as follows:

§ 622.49 Accountability measures.

(a) * * *

(3) * * *

(i) Commercial fishery. If SWG commercial landings exceed the applicable ACL as specified in this paragraph (a)(3)(I), the AA will file a notification with the Office of the Federal Register, at or near the beginning of the following fishing year, to maintain the SWG commercial quota for that following year at the level of the prior year's quota. The applicable commercial ACLs for SWG, in gutted weight, are 7.99 million lb (3.62 million kg) for 2010, and 8.04 million lb (3.65 million kg) for 2011 and subsequent fishing years.

* * * * *

(4) * * *

(i) Commercial fishery. If gag commercial landings exceed the applicable ACL as specified in this paragraph (a)(4)(I), the AA will file a notification with the Office of the Federal Register, at or near the beginning of the following fishing year, to maintain the gag commercial quota for that following year at the level of the prior year's quota. The applicable commercial ACLs for gag, in gutted

weight, are 1.71 million lb (0.78 million kg) for 2010, and 1.76 million lb (0.80 million kg) for 2011 and subsequent fishing years.

* * * * *

(5) * * *

(i) *Commercial fishery.* If red grouper commercial landings exceed the ACL, 5.87 million lb (2.66 million kg) gutted weight, the AA will file a notification with the Office of the **Federal Register**, at or near the beginning of the following fishing year, to maintain the red grouper

commercial quota for that following year at the level of the prior year's quota.

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