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DEPARTMENT OF DEFENSE

48 CFR Part 213

Defense Federal Acquisition Regulation Supplement; Contingency Small Purchases

AGENCY: Department of Defense (DoD).
ACTION: Proposed rule with request for public comments.

SUMMARY: The Defense Acquisition Regulations Council is proposing changes to the Defense FAR Supplement to permit use of the small purchase procedures of FAR part 13 for acquisitions of up to \$100,000, made outside the United States, in support of a contingency operation declared by the Secretary of Defense.

DATES: Comments on the proposed DFARS rule should be submitted in writing at the address shown below on or before July 15, 1992, to be considered in the formulation of a final rule. Please cite DAR Case 91-310.

ADDRESSES: Interested parties should submit written comments to The Defense Acquisition Regulations Council, ATTN: Ms. Kathy Fenk, OUSD(A)DP(DARS), The Pentagon, Washington, DC 20301-3002. FAX (703) 697-9845.

FOR FURTHER INFORMATION CONTACT: Kathy Fenk, (703) 697-7265.

SUPPLEMENTARY INFORMATION:

A. Background

These changes implement section 805 of the FY 92 National Defense Authorization Act, which amended Section 2302(7) of title 10, United States Code. Revisions to the Defense FAR Supplement are proposed to add sections 213.000 and 213.101 to increase the small purchase threshold, up to \$100,000, for any contract to be awarded and performed, or purchase to be made outside the United States in support of a contingency operation declared by the Secretary of Defense.

B. Regulatory Flexibility Act

The proposed rule is not expected to have significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601 et seq., because the proposed rule only applies to purchases made and contracts awarded and performed outside the

United States during contingency operations. An initial regulatory flexibility analysis has, therefore, not been performed. Comments are invited from small businesses and other interested parties. Comments from small entities concerning the affected DFARS sections will also be considered in accordance with section 610 of the Act. Such comments must be submitted separately and cite DFARS Case 92-610 in correspondence.

C. Paperwork Reduction Act

The proposed rule does not impose any reporting or recordkeeping requirements which require the approval of OMB under 44 U.S.C. 3501, et seq.

List of Subjects in 48 CFR Part 213

Government procurement.

Claudia L. Naugle,

Executive Editor, Defense Acquisition Regulations Council.

Therefore, it is proposed that 48 CFR part 213 be amended as follows:

PART 213—SMALL PURCHASES AND OTHER SIMPLIFIED PURCHASE PROCEDURES

1. The authority citation for 48 CFR part 213 continues to read as follows:

Authority: 5 U.S.C. 301, 10 U.S.C. 2202, Defense FAR Supplement 201.301.

2. Section 213.00 is added to read as follows:

213.000 Scope of part.

This part also implements section 805 of Public Law 102-190 (10 U.S.C. 2302(7)) which increases the small purchase threshold to \$100,000 for any acquisition to be awarded and performed outside the United States in support of a contingency operation declared by the Secretary of Defense.

3. Subpart 213.1 is added to read as follows:

Subpart 213.1—General

213.101 Definitions.

Small purchase also means an acquisition of \$100,000 or less using the procedures prescribed in FAR Part 13, if the acquisition is awarded and performed outside the United States in support of a contingency operation declared by the Secretary of Defense.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 653

[Docket No. 920648-2148]

RIN 0648-AE75

Red Drum Fishery of the Gulf of Mexico

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Proposed rule.

SUMMARY: NMFS issues this proposed rule to implement Amendment 3 to the Fishery Management Plan for the Red Drum Fishery of the Gulf of Mexico (FMP). This proposed rule would remove from the regulations the detailed procedures applicable to the Gulf of Mexico Fishery Management Council (Council) and NMFS for assessing the stock and determining the allowable biological catch (ABC) of red drum; remove from the regulations language specifying that, at such time as a catch of red drum were allowed, a person landing red drum, other than from a directed commercial fishery, must comply with the landing and possession laws of the state where landed; and make other minor corrections and clarifications to the regulations. In addition, Amendment 3 would change the requirement that the procedure for stock assessments, panel reports, and setting ABC and total allowable catch (TAC) be commenced prior to October 1 every year to "prior to October 1 every other year or at such time as agreed upon by the Council and the Regional Director," Southeast Region, NMFS (Regional Director). The intended effects of this rule are to simplify the regulations by removing administrative procedures that are not applicable to the conduct of the red drum fishery; to comply with a ruling by the U.S. District Court for the District of Columbia; and to ease an unnecessarily burdensome requirement for stock assessments, panel reports, and findings regarding ABC and TAC.

DATES: Written comments must be received on or before July 31, 1992.

ADDRESSES: Comments on the proposed rule should be sent to Robert A. Sadler, NMFS, Southeast Regional Office, 9450 Koger Boulevard, St. Petersburg, FL 33702.

Copies of Amendment 3, which includes an Environmental Assessment and a Regulatory Impact Review, may be obtained from the Gulf of Mexico

Fishery Management Council, 5401 West Kennedy Boulevard, suite 331, Tampa, FL 33609.

FOR FURTHER INFORMATION CONTACT: Robert A. Sadler, 813-893-3161.

SUPPLEMENTARY INFORMATION: The red drum fishery is managed under the FMP, prepared and amended by the Council, and its implementing regulations at 50 CFR part 653 under the authority of the Magnuson Fishery Conservation and Management Act (Magnuson Act).

The FMP, as amended, and § 653.24 of the implementing regulations require annually that (1) the Science and Research Director, Southeast Fisheries Science Center, NMFS, prepare a stock assessment for the red drum fishery; (2) the Council appoint a scientific assessment group to review the Science and Research Director's report and other data and to prepare an assessment report; (3) the Council consider the reports and public comments, hold a public hearing, and, if a change in TAC is proposed, initiate an FMP amendment to set TAC within the ABC range. Amendment 3 would change the annual requirement for these procedures, commencing in 1993, to "prior to October 1 every other year or such time as agreed upon by the Council and Regional Director." The Council believes that annual assessments are unnecessarily frequent and that changes over such a brief time span are difficult to measure.

Rather than revise § 653.24 of the implementing regulations, NMFS proposes to delete the section from the regulations because the procedures (1) are purely administrative; (2) do not control the conduct of the fishery; and (3) do not constitute a framework procedure for amending the regulations—changes that may result from the procedures may only be implemented by an amendment to the FMP. The procedures would still be effective as part of the approved FMP, as amended.

In its ruling in the case of *Southeastern Fisheries Ass'n v. Mosbacher*, D.D.C. No. 89-1045 (August 6, 1991), the U.S. District Court for the District of Columbia held that the failure by the Secretary of Commerce (Secretary) to supersede state laws with respect to the landing of red drum taken in the EEZ was arbitrary and an abuse of discretion. The case is moot as a practical matter, because current regulations prohibit harvest or possession of red drum from the EEZ. However, the FMP and the regulations at 50 CFR 653.3(c) provide that, at such time as a TAC for red drum is specified, a person landing red drum, other than

from a directed commercial red drum fishery, must comply with the landing and possession laws of the state where landed. These provisions are not in accord with the District Court's ruling. Accordingly, NMFS intends to withdraw the Secretary's approval of the provision of Amendment 1 that preserves the state landing laws and to remove 50 CFR 653.3(c). This withdrawal and removal does not preclude use by the Council and NMFS of specific state landing and possession laws in future management regimes for red drum, if it can be demonstrated that the state laws are consistent with the Federal management scheme.

NMFS also proposes to remove definitions that are no longer used in the regulations.

Additional information regarding the proposed change in the frequency of the stock assessment procedure is contained in Amendment 3, the availability of which was published in the Federal Register (57 FR 23199, June 2, 1992).

Classification

Section 304(a)(1)(D)(ii) of the Magnuson Act, as amended, requires the Secretary to publish regulations proposed by a council within 15 days of receipt of an FMP amendment and regulations. At this time, the Secretary has not determined that Amendment 3, which this proposed rule would implement, is consistent with the national standards, other provisions of the Magnuson Act, and other applicable law. The Secretary, in making that determination, will take into account the data, views, and comments received during the comment period.

This proposed rule is exempt from the procedures of E.O. 12291 under section 8(a)(2) of that order. It is being reported to the Director, Office of Management and Budget, with an explanation of why it is not possible to follow the procedures of that order.

The Assistant Administrator for Fisheries, NOAA, has initially determined that this proposed rule is not a "major rule" requiring the preparation of a regulatory impact analysis under E.O. 12291. This proposed rule, if adopted, is not likely to result in an annual effect on the economy of \$100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, state, or local government agencies, or geographic regions; or a significant adverse effect on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Council prepared a regulatory impact review (RIR) for Amendment 3, which concludes that this rule, if adopted, would reduce costs.

The General Counsel of the Department of Commerce has certified to the Small Business Administration that this proposed rule, if adopted, will not have a significant economic impact on a substantial number of small entities. The red drum fishery in the exclusive economic zone is closed to all harvest, and that prohibition is expected to continue for a long-time period. Accordingly, there are no "small business entities" to be affected, and the action is not considered "significant."

The Council prepared an environmental assessment (EA) as part of Amendment 3 that discusses the impact on the environment as a result of this rule. A copy of the EA is available (see ADDRESSES) and comments on it are requested.

The Council has determined that this rule will be implemented in a manner that is consistent to the maximum extent practicable with the approved coastal zone management programs of Alabama, Florida, Louisiana, and Mississippi. Texas does not participate in the coastal zone management program. These determinations have been submitted for review by the responsible state agencies under section 307 of the Coastal Zone Management Act.

This proposed rule does not contain a collection-of-information requirement subject to the Paperwork Reduction Act.

This proposed rule does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under E.O. 12612.

List of Subjects in 50 CFR Part 653

Fisheries, Reporting and recordkeeping requirements.

Dated: June 10, 1992.

Samuel W. McKee,
Acting Assistant Administrator for Fisheries,
National Marine Fisheries Service.

For the reasons set forth in the preamble, 50 CFR part 653 is proposed to be amended as follows:

PART 653—RED DRUM FISHERY OF THE GULF OF MEXICO

1. The authority citation for part 653 continues to read as follows:

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

§ 653.2 [Amended]

2. In § 653.2, the definition for *Commercial fishing (fishery)*:
Directed commercial red drum fishing

(fishery)", and "Regional Director" are removed.

§ 653.3 [Amended]

3. In § 653.3, paragraph (c) is removed.

4. In § 653.7, paragraph (d) is revised to read as follows:

§ 653.7 Prohibitions.

(d) Fail to release immediately with a minimum of harm a red drum caught in the EEZ; or possess a red drum in or from the EEZ, as specified in § 653.22(a).

§ 653.22 [Amended]

5. In § 653.22, the section heading is revised to read "Harvest and possession limitations."

§ 653.24 [Removed]

6. Section 653.24 is removed.

§ 653.25 [Redesignated as § 653.24]

7. Section 653.25 is redesignated as new § 653.24.

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50 CFR Part 683

(Docket No. 920530-2130)

Western Pacific Bottomfish and Seamount Groundfish Fisheries

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Proposed rule.

SUMMARY: NMFS proposes a rule to extend for 6 years the moratorium on fishing in the Hancock Seamount fisheries under the Fishery Management Plan for the Bottomfish and Seamount Groundfish Fisheries of the Western Pacific (FMP). This proposed rule is intended to ensure that fishing mortality in the exclusive economic zone (EEZ) will not contribute to further declines in the seamount groundfish stocks and may help foster a rebound of those stocks throughout their range. The seamount groundfish stocks are overfished, and if the moratorium is not extended and fishing resumed, the recovery of the stocks would be further threatened.

DATES: Comments on the proposed rule must be received on or before July 16, 1992.

ADDRESSES: Comments should be sent to E.C. Fullerton, Director, Southwest Region, National Marine Fisheries Service, 501 West Ocean Boulevard, Long Beach, CA 90802. Copies of the document requesting and supporting this

action and the environmental impact statement prepared for the FMP imposing the initial Hancock Seamount fishery moratorium may be obtained from the Western Pacific Fishery Management Council, 1164 Bishop Street, suite 1405, Honolulu, HI 96813.

FOR FURTHER INFORMATION CONTACT: Svein Fougner, NMFS, at 310-980-4034, or Alvin Katekaru, NMFS, at 808-955-8831.

SUPPLEMENTARY INFORMATION: The FMP was prepared by the Western Pacific Fishery Management Council (Council) and approved and implemented by the Secretary of Commerce in 1988 (51 FR 27413, July 31, 1988). The FMP established a moratorium on fishing for bottomfish and seamount groundfish (mainly pelagic armorhead and alfonsoin) within the Hancock Seamount subarea of the EEZ due to the severely depressed status of the stocks. It was noted at the time that the range of the stocks extends beyond the EEZ, and that action in the EEZ alone would not ensure rebuilding of the stocks. Nonetheless, it was concluded that affirmative action in the EEZ was appropriate. The moratorium was designed to last for 6 years (i.e., until August 27, 1992), after which it was hoped that stocks would have rebounded in the EEZ to permit a fishery.

The FMP also provided a framework (codified at 50 CFR 683.24) for changing the conservation and management measures through rulemaking rather than an FMP amendment.

NMFS has conducted periodic assessments of the stocks in the EEZ for the past 5 years and has concluded that the stocks have not recovered. In its annual report on the bottomfish and seamount groundfish fisheries for the 1990 fishing year, the Council's plan team indicated that the estimated current spawning potential ratio (SPR), which is a measure of the spawning biomass relative to the spawning biomass prior to the fishery, was only 2.2 percent, far below the threshold (SPR = 20 percent) established to define overfishing for bottomfish and seamount groundfish stocks. The catch per unit effort of pelagic armorhead in research fishing was at the lowest point since research fishing began in 1985. The team recommended that the Council request that the moratorium be extended indefinitely.

At its March 1992 meeting, the Council considered the information from the team and concluded that extension of the moratorium is warranted. The Council subsequently submitted a request for NMFS to take action under

the framework procedure of the FMP. The Assistant Administrator for Fisheries, NOAA (Assistant Administrator), has agreed that there is a sound basis for this request and proposes to implement it.

The proposed rule would extend the moratorium on harvest of bottomfish and seamount groundfish in the EEZ through August 31, 1998. This will provide additional time for recovery of the stocks in the EEZ and may contribute to a recovery of the stocks throughout their range. NMFS will continue to monitor the status of the stocks and will advise the Council of its findings annually.

The Assistant Administrator requests public comment on this proposed rule.

Classification

This proposed rule is published under the authority of 50 CFR part 683 and was prepared at the request of the Council. The Assistant Administrator initially has determined that this proposed rule is necessary for the conservation and management of the western Pacific bottomfish and seamount groundfish fishery and is consistent with the Magnuson Act and other applicable law.

An environmental impact statement (EIS) was incorporated into the original FMP and included assessment of the impacts of the moratorium for the seamount groundfish fishery proposed and implemented at that time. There has been no change in the condition of the stocks and extension of the moratorium is within the range of alternatives considered in the EIS. Therefore, this action is categorically excluded from the requirement to prepare an environmental assessment in accordance with paragraph 6.02c.3.(f) of NOAA Administrative Order 216-6. A copy of the EIS is available from the Council (see ADDRESSES).

In a Biological Opinion on the original FMP, NMFS concluded that the FMP, including the moratorium on the Hancock Seamount fishery, would not jeopardize the continued existence of any species listed under the Endangered Species Act or adversely affect any critical habitat for listed species. Extension of the moratorium for 6 years will not affect any listed species or any critical habitat in a manner not analyzed in that Biological Opinion.

The Assistant Administrator initially has determined that the proposed rule is not a major rule requiring a regulatory impact analysis under Executive Order 12291. The proposed action will not have a cumulative effect of \$100 million or