

**DEPARTMENT OF COMMERCE****National Oceanic and Atmospheric Administration****50 CFR Part 622**

[Docket No. 090206140-91419-04]

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:** Proposed rule; request for comments.

**SUMMARY:** NMFS issues this proposed 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 proposed rule would remove several measures constraining harvest of shallow-water grouper species that were inadvertently not removed in the final rule for Amendment 29, further clarify existing criteria for approval of new landing locations for both the red snapper IFQ program and grouper and tilefish IFQ program, and provide a definition of "offloading" in the codified text for IFQ participants. This proposed rule also discusses two options considered by the Council. NMFS is seeking comment on one of these options, which would give IFQ fishermen the option to provide a headcount of the fish on board at the time of landing. The intent of this proposed 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:** Written comments on this proposed rule must be received no later than 5 p.m., eastern time, on January 11, 2010.

**ADDRESSES:** You may submit comments, identified by "0648-AX39," by any one of the following methods:

- Electronic Submissions: Submit all electronic public comments via the

Federal e-Rulemaking Portal <http://www.regulations.gov>

- Fax: 727-824-5308, Attn: Susan Gerhart.

- Mail: Susan Gerhart, Southeast Regional Office, NMFS, 263 13th Avenue South, St. Petersburg, FL 33701

Instructions: No comments will be posted for public viewing until after the comment period has closed. All comments received are a part of the public record and will generally be posted to <http://www.regulations.gov> without change. All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

To submit comments through the Federal e-Rulemaking Portal: <http://www.regulations.gov>, enter "NOAA-NMFS-2008-0223" in the keyword search, then select "Send a Comment or Submission." NMFS will accept anonymous comments (enter N/A in the required fields, if you wish to remain anonymous). You may submit attachments to electronic comments in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

Copies of Amendment 29, which includes a final environmental impact statement (FEIS), an initial regulatory flexibility analysis, and a regulatory impact review (RIR) may be obtained from the Gulf of Mexico Fishery Management Council, 2203 North Lois Avenue, Suite 1100, Tampa, FL 33607; telephone 813-348-1630; fax 813-348-1711; e-mail [gulfcouncil@gulfcouncil.org](mailto:gulfcouncil@gulfcouncil.org); or may be downloaded from the Council's website at <http://www.gulfcouncil.org/>.

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.

Written comments regarding the burden-hour estimate or other aspects of the collection-of-information requirement contained in this proposed rule may be submitted to Richard Malinowski, Southeast Regional Office, NMFS, and by e-mail to [David\\_Rostker@omb.eop.gov](mailto: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 of Mexico 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).

**Background**

On July 2, 2009, NMFS approved Amendment 29. Amendment 29 created an IFQ program for the grouper and tilefish component of the commercial sector of the Gulf reef fish fishery. A final rule implementing the amendment published on August 31, 2009 (74 FR 44732). This proposed rule includes three administrative measures that were not included in the final rule for Amendment 29. These administrative measures would allow for more efficient functioning of the grouper and tilefish IFQ program, reduce confusion among IFQ participants that are offloading their fish, and further enhance enforcement capabilities of the red snapper IFQ program and the IFQ program for groupers and tilefishes, as intended by the Council. This proposed rule also discusses two options considered by the Council at the October 2009 Council meeting. NMFS specifically invites comments in this proposed rulemaking on one of these options, namely a provision that would allow fishermen to provide a headcount of the fish on board at the time of landing.

**Management Measures Contained in This Proposed Rule***Remove measures that constrain commercial harvest*

Amendment 29 states, "Approval and implementation of the IFQ program will result in the elimination of existing management measures intended to constrain commercial harvest, such as grouper trip limits." However, the trip limit and accountability measures (AMs) implemented in May 2009, through the final rule for Amendment 30B to the FMP (74 FR 17603, April 18, 2009), were inadvertently not removed in the final rule for Amendment 29. This proposed rule would remove the trip limit and AMs implemented through Amendment 30B to the FMP that constrain commercial harvest.

IFQ programs are intended to eliminate the need for trip limits so fishermen have the flexibility to fish when and where they want, thereby promoting safety at sea and reducing economic hardship. In the current regulations, the trip limit is defined as follows: if 80 percent of either the gag or the red grouper quota is reached, and 100 percent of the quota is projected to be reached prior to the end of the fishing year, a 200-lb (90.7-kg) trip limit will be implemented for the

applicable species. This proposed rule would remove this trip limit as it is no longer needed to constrain commercial harvest with the implementation of the grouper and tilefish IFQ program. Under the IFQ program, the rate of harvest would be controlled by the availability of individual fishing quotas.

The Magnuson-Stevens Act, reauthorized in 2006, requires that annual catch limits (ACLs) and AMs for stocks that are undergoing overfishing or are overfished be implemented by the end of 2010. The National Standard 1 guidelines define AMs as management controls to prevent ACLs, including sector ACLs, from being exceeded, and to correct or mitigate overages of the ACL if they occur. The AMs implemented through Amendment 30B that constrain commercial harvest state: if 100 percent of any one of the three quotas (gag, red grouper, or shallow-water grouper) is reached, the entire shallow-water grouper sector of the commercial fishery will close for the remainder of the fishing year. The grouper and tilefish IFQ program was designed to act as an AM, in and of itself, by constraining harvest to individual fishing quotas. The IFQ program also requires any overage (as much as 10 percent of allocation remaining on the shareholder's last trip) to be deducted from the shareholder's allocation the subsequent fishing year. This provision acts as an AM by mitigating overages after they occur. Because the IFQ program itself acts as an AM and there are other AMs inherent in the IFQ program, the AMs included in Amendment 30B that constrain commercial harvest would be removed through this rulemaking.

The FEIS, FRFA, and RIR conducted for Amendment 29 adequately analyzed the impacts of the management measures proposed in this rule. Regulatory provisions in this rule were either inadvertently not included in the proposed and final rules for Amendment 29, or they provide greater specificity for provisions previously implemented through Amendment 29. The supporting regulatory analyses for Amendment 29 either specifically addressed the impacts of these measures, or analyzed associated impacts assuming these measures would also be implemented. Because no additional analysis is necessary to support the measures currently proposed, no such analysis was prepared.

#### *Clarify landing location criteria*

NMFS Office for Law Enforcement must approve landing locations prior to landing or offloading red snapper,

groupers, or tilefishes. Proposed landing locations may be submitted at any time; however, new landing locations are approved only at the end of each calendar-year quarter. To have a landing location approved by the end of the calendar-year quarter, it must be submitted at least 45 days before the end of the calendar-year quarter. Current regulations state that landing locations must be publicly accessible by land and water, and a street address must be provided for a landing location. If there is no street address on record, then Global Positioning System coordinates must be provided.

To assist law enforcement in determining eligibility of landing locations submitted for review, more specific criteria would be established to provide greater clarification for the requirement that landing locations must be publicly accessible. These criteria would include, but are not limited to the following: the site must be accessible for vehicles via public roads; the site must be accessible for vessels via navigable waters; and no other condition may impede free and immediate access to the landing location, such as locked gates, guard dogs, or any other physical barrier. Any participant submitting a landing location request would be required to fill out a form on the IFQ website at [ifq.sero.nmfs.noaa.gov](http://ifq.sero.nmfs.noaa.gov). The form would include a series of questions regarding the landing location and its accessibility. NMFS Office for Law Enforcement would include this form in their review to approve or disapprove proposed sites. Approved landing locations are posted on the IFQ website listed above.

#### *Define offloading*

The current regulations define "landing" specifically for the red snapper IFQ program and the IFQ program for groupers and tilefishes, however, "offloading" has not yet been defined in the regulations for IFQ participants. For the purposes of the red snapper IFQ program and the IFQ program for groupers and tilefishes, "landing" is defined as arriving at a dock, berth, beach, seawall, or ramp. This proposed rule would provide a definition of "offloading" for IFQ participants in the codified text. For the purposes of the red snapper IFQ program and the IFQ program for groupers and tilefishes, "offloading" would be defined as removing IFQ fish from a vessel.

#### **Options considered by the Council**

*Provide a headcount as a means to estimate the IFQ fish onboard*

Some fishermen who operate in the red snapper IFQ program and the IFQ program for groupers and tilefishes trailer their fish to the dealer. When IFQ fish are offloaded to a vehicle for transportation to a dealer or are trailered to a dealer, a transaction approval code must accompany those fish. The implementing regulations for Amendment 29 specify that an accurate weight must be submitted to complete a landing transaction to determine that the fisherman has sufficient allocation to cover the amount of fish landed. Therefore, the fishermen must have on-site capability to weigh their fish and connect electronically to the online IFQ system to complete the transaction and obtain a transaction approval code to transport these fish. At the October 2009 Council meeting, the Council voted to seek public comment on a provision that would give fishermen the option to provide a headcount of the fish on board at the time of landing, in lieu of reporting the weight. Reporting the weight of IFQ fish landed is considered to be an important component of monitoring the IFQ program and preventing overages. NMFS' preliminary determination is that providing a headcount instead of the weight at the time of landing would not allow for adequate monitoring and enforcement of the IFQ program. If fishermen were to provide a headcount at the time of landing, they would still need to connect electronically to the online IFQ system and obtain a transaction approval code (using the headcount) to transport those fish to the dealer. When they offload their fish at the dealer location, the accurate weight would then need to be updated under the same transaction approval code (replacing the headcount) to complete that transaction. NMFS invites comments on this option, particularly whether fishermen would find this option to provide a headcount at the time of landing beneficial to their business plans.

#### *Extend the offloading window*

The current allowable time period to offload red snapper, groupers, and tilefishes is from 6 a.m. to 6 p.m. At the October 2009 Council meeting, the Council voted to consider an option that would extend the allowable time period to offload fish by four hours. Therefore, the offloading window would be between 6 a.m. and 10 p.m. Extending the offloading window could potentially give fishermen greater flexibility for when they may offload their fish.

However, Amendment 29 specifically states that the allowable time period to offload IFQ fish is between 6 a.m. and 6 p.m. Therefore, the Council would need to address this option in a plan amendment if it is to be implemented in the future.

**Classification**

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that this proposed rule is consistent with Amendment 29, other provisions of the Magnuson-Stevens Act, and other applicable law, subject to further consideration after public comment.

This proposed 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 proposed rule, namely the measure to remove the trip limit and AMs 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. Because 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 analysis has been conducted for those measures in this proposed rule.

This proposed rule contains a collection-of-information requirement subject to the Paperwork Reduction Act (PRA). This requirement has been submitted to the Office of Management and Budget (OMB) for approval. 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.

Public comment is sought regarding: whether this proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; the accuracy of the burden estimate; ways to enhance the quality, utility, and

clarity of the information to be collected; and ways to minimize the burden of the collection of information, including through the use of automated collection techniques or other forms of information technology. 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: December 4, 2009.

**Samuel D. Rauch III,**

*Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.*

For the reasons set out in the preamble, 50 CFR part 622 is proposed to be 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.

\* \* \* \* \*

[FR Doc. E9-29478 Filed 12-9-09; 8:45 am]

BILLING CODE 3510-22-S

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 679

[Docket No. 070718366-7372-01]

RIN 0648-AV32

#### Fisheries of the Exclusive Economic Zone off Alaska; Maximum Retainable Amounts for Non-American Fisheries Act Trawl Catcher/Processors

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

**ACTION:** Proposed rule; withdrawal.

**SUMMARY:** NMFS withdraws the proposed rule to revise accounting regulations for maximum retainable amounts of selected groundfish species caught by trawl catcher/processors that

are not eligible under the American Fisheries Act to participate in directed fishing for pollock (February 13, 2009). Thus, the current maximum retainable amounts accounting regulations remain in effect for the following species: yellowfin sole, rock sole, flathead sole, "other flatfish," arrowtooth flounder, Pacific cod, and Atka mackerel in the Bering Sea and Aleutian Islands management area and for Pacific ocean perch in the Aleutian Islands.

**FOR FURTHER INFORMATION CONTACT:** Jeff Hartman, 907-586-7442

#### SUPPLEMENTARY INFORMATION:

##### Background

NMFS manages the groundfish fisheries in the exclusive economic zone of the Bering Sea and Aleutian Islands Management Area (BSAI) under the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Area (FMP), which was prepared by the North Pacific Fishery Management Council (Council) pursuant to the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), 16 U.S.C. 1801 *et seq.* Regulations implementing the FMP appear at 50 CFR part 679. General regulations that pertain to U.S. fisheries appear at subpart H of 50 CFR part 600.

Maximum retainable amounts (MRAs) assist in limiting catch of a species within its annual total allowable catch (TAC). Once the TAC for a species is reached, retention of that species becomes prohibited and all catch of that species must be discarded. NMFS closes a species to directed fishing before the entire TAC is taken to leave sufficient amounts of the TAC available for incidental catch. The amount of the TAC remaining available for incidental catch is managed by a species-specific MRA. The MRA is the maximum round weight of a species closed to directed fishing that may be retained onboard a vessel. MRAs are calculated as a percentage of the weight of catch of each species open to directed fishing (the basis species) that is retained onboard the vessel. If the MRA for a species is 35 percent, then the round weight of the retained incidental species must be no more than 35 percent of the round weight of basis species. Directed fishing is defined in 50 CFR part 679 as "any fishing activity that results in the retention of an amount of a species or species group onboard a vessel that is greater than the MRA for that species or species group." Table 11 to 50 CFR part 679 lists each incidental catch and basis species and the MRA of each incidental

catch species as a percentage of each basis species.

Current regulations at § 679.20(e) require, with one exception for pollock, that the MRAs apply at any time during a fishing trip. This MRA accounting period is known as "instantaneous," because the MRA may not be exceeded at any point in time during the fishing trip. The exception to this requirement, implemented in 2004 to reduce regulatory discards of pollock, allows the MRA for pollock retained by non-American Fisheries Act (AFA) vessels to apply at the end of each offload rather than at any time during the trip. Regulatory discards of a species occur when regulations prohibit retention of some portion of the catch for a species that is closed to directed fishing.

The amount and rate of groundfish discards resulting from the non-AFA trawl catcher/processor (C/P) sector have been a continuing issue with the Council. These vessels have among the highest groundfish discard (and lowest retention) amounts and rates compared with other processing sectors participating in the BSAI groundfish fisheries.

At the October 2005 Council meeting, the non-AFA trawl C/P sector proposed a way to further reduce its regulatory discards. Sector representatives noted that substantial portions of groundfish discard in the BSAI are regulatory discards. They testified that increasing the MRA accounting and calculation interval from "instantaneous" to a one-time calculation at the time of offload would allow more time to accumulate species open to directed fishing to use as a basis for the MRA, i.e., for retaining catch of species closed to directed fishing. The sector predicted that additional time to accumulate basis species would reduce the amount of regulatory discards, particularly in situations when relatively high rates of incidentally caught species were taken early in a fishing trip.

The Council took the sector's proposal under consideration because of the multi-species nature of the sector's fisheries and its longstanding difficulties in reducing discards. The action was also intended to provide an opportunity for non-AFA trawl C/Ps to minimize bycatch and so would be consistent with National Standard 9 of the Magnuson Stevens Act. National Standard 9 requires that conservation and management measures minimize bycatch and, to the extent bycatch cannot be avoided, minimize the mortality of such bycatch.

Although the Council's action provided relief from the "instantaneous" accounting interval, the