

identical in cross-sectional structure, including both leg and cross member characteristics; if the towers are of unequal height, the sample loops shall be mounted identically with respect to tower cross members at the appropriate elevations above the base insulator. If the tower height used in the model is other than the physical height of the tower, the sampling loop shall be located at a height that is the same fraction of the total tower height as the minimum in tower current with the tower detuned in the model. Sample lines from the sensing element to the antenna monitor must be equal in both length (within one electrical degree) and characteristic impedance (within two ohms), as established by impedance measurements, including at the open-circuit resonant frequency closest to carrier frequency to establish length, at frequencies corresponding to odd multiples of  $\frac{1}{8}$  wavelength immediately above and below the open circuit resonant frequency closest to carrier frequency, while open circuited, to establish characteristic impedance, and at carrier frequency or, if necessary, at nearby frequencies where the magnitude of the measured impedance is no greater than 200 ohms with the sampling devices connected. Samples may be obtained from current transformers at the output of the antenna coupling and matching equipment for base-fed towers whose actual electrical height is 120 degrees or less, or greater than 190 electrical degrees. Samples may be obtained from base voltage sampling devices at the output of the antenna coupling and matching equipment for base-fed towers whose actual electrical height is greater than 105 degrees. Samples obtained from sample loops located as described above can be used for any height of tower. For towers using base current or base voltage sampling derived at the output of the antenna coupling and matching equipment, the sampling devices shall be disconnected and calibrated by measuring their outputs with a common reference signal (a current through them or a voltage across them, as appropriate) and the calibration must agree within the manufacturer's specifications. A complete description of the sampling system, including the results of the measurements described in this paragraph, shall be submitted with the application for license.

(ii) Proper adjustment of an antenna pattern shall be determined by correlation between the measured antenna monitor sample indications and the parameters calculated by the method of moments program, and by correlation

between the measured matrix impedances for each tower and those calculated by the method of moments program. The antenna monitor sample indications must be initially adjusted to agree with the moment method model within  $\pm 5$  percent for the field ratio and  $\pm 3$  degrees in phase. The measured matrix impedances must agree with the moment method model within  $\pm 2$  ohms and  $\pm 4$  percent for resistance and reactance.

(3) Reference field strength measurement locations shall be established in directions of pattern minima and maxima. On each radial corresponding to a pattern minimum or maximum, there shall be at least three measurement locations. The field strength shall be measured at each reference location at the time of the proof of performance. The license application shall include the measured field strength values at each reference point, along with a description of each measurement location, including GPS coordinates and datum reference.

■ 5. Add new § 73.155 to read as follows:

**§ 73.155 Periodic Directional Antenna Performance Recertification.**

A station licensed with a directional antenna pattern pursuant to a proof of performance using moment method modeling and internal array parameters as described in § 73.151(c) shall recertify the performance of that directional antenna pattern at least once within every 24 month period.

(a) Measurements shall be made to verify the continuing integrity of the antenna monitor sampling system.

(1) For towers using base current or base voltage sampling derived at the output of the antenna coupling and matching equipment, the sampling devices shall be disconnected and calibrated by measuring their outputs with a common reference signal (a current through them or a voltage across them, as appropriate) and the calibration must agree with the manufacturer's specifications.

(2) For towers using base current or base voltage sampling derived at the output of the antenna coupling and matching equipment, sampling line measurements shall be made to verify the open-circuit resonant frequency closest to carrier frequency, to establish length, and also at frequencies corresponding to odd multiples of  $\frac{1}{8}$  wavelength immediately above and below the open-circuit resonant frequency closest to carrier frequency, while open circuited, to verify their characteristic impedance. The frequencies measured must be the same

as were measured in the most recent proof of performance and must demonstrate that the sampling lines continue to meet the requirements of § 73.151(c) with regard to their length and characteristic impedance.

(3) For towers having sampling loops, measurements shall be made at carrier frequency or, if necessary, at nearby frequencies where the magnitude of the measured impedance is no greater than 200 ohms with the sampling loops connected. The frequencies measured must be the same as were measured in the most recent proof of performance and the measured impedances must agree within  $\pm 2$  ohms and  $\pm 4$  percent resistance and reactance of the proof values.

(b) Field strength measurements shall be made at the reference field strength measurement locations that were established by the most recent proof of performance. If locations have become inaccessible or their readings contaminated by localized electromagnetic environmental changes, new locations that meet the requirements of the moment method proof of performance rules in § 73.151(c)(3) shall be established to replace them.

(c) The results of the periodic directional antenna performance recertification measurements shall be retained in the station's public inspection file.

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**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 622**

[Docket No. 0808051052-81365-02]

RIN 0648-AW85

**Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Reef Fish Fishery of the Gulf of Mexico; Referendum Procedures for a Potential Gulf of Mexico Grouper and Tilefish Individual Fishing Quota Program**

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

**ACTION:** Final rule; statement of procedure.

**SUMMARY:** NMFS issues this final rule to provide information concerning the procedures, schedule, and eligibility requirements NMFS will use in

conducting a referendum for an individual fishing quota (IFQ) program for the Gulf of Mexico (Gulf) commercial grouper and tilefish fisheries. If the IFQ program, as developed by the Gulf of Mexico Fishery Management Council (Council), is approved through the referendum process, the Council may choose to submit the IFQ program to the Secretary of Commerce (Secretary) for review, approval, and implementation. The intended effect of this rule is to implement the referendum consistent with the requirements of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

**DATES:** This final rule is effective December 1, 2008.

**ADDRESSES:** Copies of supporting documentation for this final rule, which includes a regulatory impact review (RIR) and a Regulatory Flexibility Act Analysis (RFAA), are available from Susan Gerhart, NMFS, Southeast Regional Office, 263 13th Avenue South, St. Petersburg, FL 33701.

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

**SUPPLEMENTARY INFORMATION:** The reef fish fishery in the exclusive economic zone (EEZ) of the Gulf is managed under the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico (FMP). The FMP was prepared by the Council and is implemented under the authority of the Magnuson-Stevens Act by regulations at 50 CFR part 622.

### Background

The Council first considered an IFQ program for the Gulf grouper fishery in 2004. At that time, the Council anticipated future action was needed to further control effort in the Gulf grouper fishery. At its October 2004 meeting, the Council requested NMFS publish a control date to discourage speculative participation in the grouper fishery for the purpose of developing a catch history. The Council chose October 15, 2004, as the control date. NMFS published the control date in the **Federal Register** on November 16, 2004 (69 FR 67106), and requested public comment.

The Council is currently developing Amendment 29 to the FMP, which includes a multi-species IFQ program as the preferred management approach to address overcapacity issues and to rationalize effort in the Gulf commercial grouper and tilefish fisheries. A Public Hearing Draft of Amendment 29 is available on the Council's website at <http://www.gulfcouncil.org>.

Section 303A of the Magnuson-Stevens Act specifies general requirements for limited access privilege (LAP) programs implemented in U.S. marine fisheries. A LAP is defined as a Federal limited access permit that provides a person the exclusive privilege to harvest a specific portion of a fishery's total allowable catch. This definition includes exclusive harvesting privileges allocated to participants under IFQ programs.

Section 303A(c)(6)(D) of the Magnuson-Stevens Act outlines specific requirements for IFQ program proposals developed by the Council. The Magnuson-Stevens Act requires such program proposals, as ultimately developed, be approved through referenda before they may be submitted for review and implementation by the Secretary. The Magnuson-Stevens Act also mandates the Secretary publish referendum guidelines to determine procedures for initiating, conducting, and deciding IFQ program referenda, as well as voting eligibility requirements. These procedures and guidelines are intended to ensure referenda conducted on IFQ program proposals are fair and equitable and will provide the Council the flexibility to define IFQ program referenda voting eligibility requirements on a fishery-specific basis, yet within the constraints of the Magnuson-Stevens Act and other applicable law. NMFS published proposed guidelines in the **Federal Register** on April 23, 2008 (73 FR 21893), and requested public comment.

On September 4, 2008, NMFS published a proposed rule to implement the referendum procedures for a potential Gulf commercial grouper and tilefish IFQ program and requested public comment through October 6, 2008 (73 FR 51617, September 4, 2008).

### Comments and Responses

NMFS received eleven individual comment letters and one letter signed by 42 individuals, with comments falling into three general categories. Several comments were in favor of the referendum, some comments opposed the eligibility criteria for voting in the Gulf grouper and tilefish referendum, and other comments opposed a potential IFQ program. Those comments that expressed opposition to the IFQ program itself fall outside the scope of this rulemaking. The purpose of this rulemaking is to establish the procedures, schedule, and eligibility requirements to conduct a referendum for a potential IFQ program. Opportunities for public comment on the IFQ program proposal contained in Amendment 29 will be available during

the proposed rule stage if the referendum is approved. Following is a summary of the comments NMFS received and NMFS' respective responses.

*Comment 1:* The eligibility criteria and procedures for conducting the referendum are fair and equitable and meet other mandates of the Magnuson-Stevens Act. NMFS is urged to conduct the referendum in December so that an implementation date of no later than January 1, 2010, can be accomplished.

*Response:* NMFS determined the criteria for conducting the referendum were fair and equitable. In making this determination, NMFS concluded that: 1) The Council's referendum criteria are rationally connected to and further the objectives of the proposed IFQ program, 2) referendum voting eligibility requirements are designed to prevent any one person or single entity from obtaining an excessive share of the voting privileges, 3) the criteria enable validating a participants eligibility, and 4) the referendum can be administered in a fair and equitable manner within a reasonable time period.

NMFS' proposed timeline to conduct the referendum is consistent with the guidelines. NMFS will mail referendum ballots to eligible voters as soon as practicable after the final referendum rule is published. Eligible voters must submit their ballots to be received by NMFS no later than 30 days from the postmark date on the envelope containing the ballots provided by NMFS. NMFS will tally the votes and post the results within 60 days of receiving the ballots. If the referendum is approved, the Council may submit the IFQ program proposal contained in Amendment 29 to the FMP to NMFS for review, approval, and implementation. If Amendment 29 is approved by the Secretary, the expected implementation date would be January 1, 2010.

*Comment 2:* The proposed minimum landing requirement of 8,000 lb (3,629 kg) average is unfair, and all individuals who fish for grouper should be eligible to vote. Every permit holder should be entitled to vote, even if no grouper or tilefish were landed during the qualifying time period. Those poised to benefit from the IFQ program would be the only people allowed to vote. This heavily skews the outcome.

*Response:* Section 303A(c)(6)(D) of the Magnuson-Stevens Act states, "For multi-species permits in the Gulf of Mexico, only those participants who have substantially fished the species proposed to be included in the individual fishing quota program shall be eligible to vote in such a referendum." The Council interprets

“substantially fished” to mean a substantial contribution to overall fishery production in total harvest. The Council indicated in its referendum initiation request letter that a potential participant’s annual harvest, in combination with maintaining a high level of harvest during the qualifying time period, is the most straightforward, readily accessible, and accurate means of identifying whether a participant has substantially fished for grouper or tilefish species. Under the 8,000-lb (3,629-kg) criterion, individuals eligible to vote in the referendum account for 89 percent of grouper and tilefish landings during the qualifying time period.

#### **Purpose of this Final Rule and the Referendum**

NMFS, in accordance with the provisions of section 303A(c)(6)(D) of the Magnuson-Stevens Act, will conduct a referendum to determine whether Amendment 29, as ultimately developed by the Council, should be submitted to the Secretary for review, and possible approval and implementation. The determination will be based on a majority vote of eligible voters. The primary purpose of this final rule is to notify potential participants in the referendum, and members of the public, of the procedures, schedule, and eligibility requirements that NMFS will use in conducting the referendum. The procedures and eligibility criteria used for the purposes of conducting the referendum are independent of the procedures and eligibility requirements in the proposed IFQ program for the Gulf commercial grouper and tilefish fisheries contained in Amendment 29 to the FMP. The proposed IFQ program is being developed by the Council through the normal plan amendment and rulemaking processes and involves extensive opportunities for public review and comment during Council meetings and public comment on any proposed rule.

#### **Referendum Process**

##### *Will the Referendum Be Conducted in a Fair and Equitable Manner?*

The Magnuson-Stevens Act requires the Secretary to conduct referenda for potential IFQ programs in a fair and equitable manner. NMFS’ referendum guidelines outline criteria that NMFS must consider when reviewing the Council’s referendum initiation request letter and supporting analyses to ensure the referendum will be conducted in a fair and equitable manner and is consistent with the national standards and other provisions of the Magnuson-

Stevens Act, and other applicable law. NMFS has reviewed these documents from the Council and has concluded that the referendum criteria are consistent with the guidelines.

##### *Who Will Be Eligible to Vote in the Referendum?*

Section 303A(c)(6)(D) of the Magnuson-Stevens Act establishes criteria regarding eligibility of persons who may vote in the referendum. For Gulf fisheries managed with multi-species permits, such as the Gulf commercial grouper and tilefish fisheries, the Magnuson-Stevens Act states that those participants who have substantially fished the species considered for the IFQ program will be eligible to vote in the referendum. The Council’s referendum initiation request letter defined “substantially fished” as “only those commercial reef fish permit holders, with active or renewable permits (within 1 year of the grace period immediately following expiration), who have combined average annual grouper and tilefish landings from logbooks during the qualifying years of at least 8,000 lb (3,629 kg) (per permit).” The qualifying years selected by the Council are 1999 through 2004, with an allowance for dropping one year. Therefore, NMFS will use landings data from logbooks submitted to and received by the Science and Research Director, Southeast Fisheries Science Center by December 31, 2006, for the years 1999 through 2004, with the allowance for dropping one year, as the sole basis to determine those permit holders that meet the Council’s eligibility criterion and will be eligible to vote in the referendum.

##### *Will Votes Be Weighted?*

The Council is assigning one vote for each permit associated with qualifying landings from the years 1999 through 2004, with no additional vote weighting based on catch history.

##### *How Will Votes Be Conducted?*

On or about December 1, 2008, NMFS will mail eligible voters a ballot for each permit associated with qualifying landings from the years 1999 through 2004. NMFS will mail the ballots and associated explanatory information, via certified mail return receipt requested, to the address of record indicated in NMFS’ permit database for eligible permit holders. The completed ballot must be mailed to Susan Gerhart, Southeast Regional Office, NMFS, 263 13th Avenue South, St. Petersburg, FL 33701. A referendum ballot must be received at that address by 4:30 p.m., eastern time, no later than 30 days after

the postmark date on the envelope containing the ballots provided by NMFS; ballots received after that deadline will not be considered in determining the outcome of the referendum. Although it will not be required, voters may want to consider submitting their ballots by registered mail.

##### *How Will the Outcome of the Referendum Be Determined?*

Vote counting will be conducted by NMFS. Approval or disapproval of the referendum will be determined by a majority (i.e., a number greater than half of a total) of the votes cast. NMFS will prepare a media release announcing the results of the referendum and will distribute the release to all Gulf reef fish permittees, including dealers, and other interested parties within 60 days of the deadline for receiving the ballots from eligible voters. The results will also be posted on NMFS’ Southeast Regional Office’s website at <http://sero.nmfs.noaa.gov>.

##### *What Will Happen After the Referendum is Conducted?*

NMFS will present the results of the referendum at the April 13–17, 2009, Council meeting. If the referendum fails to approve the proposed IFQ program, the Council may consider an alternative management approach to control effort in the Gulf commercial grouper and tilefish fisheries, or the Council may modify the proposed IFQ program and request a new referendum. According to the guidelines, any request from the Council to initiate a new referendum in the same fishery must include an explanation of the substantive changes to the proposed IFQ program or the changes in the fishery that would warrant initiation of an additional referendum.

If the referendum is approved, the Council is authorized, if it so decides, to submit Amendment 29 and proposed regulations to NMFS for review and possible approval and implementation of an IFQ program for the Gulf commercial grouper and tilefish fisheries. The proposed IFQ program was developed through the normal Council process that involved extensive opportunities for industry and public review and input at various Council meetings. The public would have additional opportunities to comment during public comment periods on Amendment 29 and the proposed regulations.

### Summary Information About the Potential IFQ Program

The current management of Gulf commercial grouper and tilefish fisheries is based on a traditional command and control approach. This management approach has resulted in overcapitalization of the commercial grouper and tilefish fisheries which has caused increased derby fishing conditions and in some years has led to closures of these fisheries prior to the end of the fishing year. The purpose of implementing an IFQ program for the commercial grouper and tilefish fisheries is to rationalize effort and reduce overcapacity in the fleet. Actions in Amendment 29 include: Initial eligibility for participation in the IFQ program, initial apportionment of IFQ shares, IFQ share categories, multi-use allocation and trip allowances, transfer eligibility requirements, IFQ share ownership caps, IFQ allocation ownership caps, a procedure to accommodate adjustments to the commercial quota, establishment and structure of an appeals process, a “use

it or lose it” policy for IFQ shares, a cost recovery plan, and approval of landing sites. The Council has selected its preferred alternatives for each of these actions through the normal Council process. If the referendum is approved, the Council, if it so decides, may continue with the submission of Amendment 29 to the Secretary for review and possible approval and implementation. More information on Amendment 29, including Frequently Asked Questions about the proposed IFQ program, may be found on NMFS’ Southeast Regional Office’s website at <http://sero.nmfs.noaa.gov/sf/Amendment29.htm>.

### Classification

The Administrator, Southeast Region, NMFS, determined that this action is 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.

The Chief Counsel for Regulation of the Department of Commerce certified

to the Chief Counsel for Advocacy of the Small Business Administration during the proposed rule stage that this action would not have a significant economic impact on a substantial number of small entities. The factual basis for this certification was published in the proposed rule and is not repeated here. No comments were received regarding this certification. As a result, no initial or final regulatory flexibility analysis is required and none has been prepared. Copies of the RIR and RFAA are available (see **ADDRESSES**).

IFQ program referenda conducted under section 303A(c)(6)(D)(iv) of the Magnuson-Stevens Act are exempt from the Paperwork Reduction Act.

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

Dated: October 24, 2008.

**Samuel D. Rauch III,**

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

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