

Issued at Washington DC this 25th day of March 2009.

**Ray LaHood,**

*Secretary of Transportation.*

For reasons discussed in the preamble, the Department of Transportation proposes to amend Title 49 of the Code of Federal Regulations, Part 26, as follows:

1. The authority citation for 49 CFR part 26 is amended to read as follows:

**Authority:** 23 U.S.C. 324; 42 U.S.C. 2000d et seq.; 49 U.S.C. 1615, 47107, 47113, 47123; Public Law 105–59, sec. 1101(b).

2. Revise § 26.45(f)(1) to read as follows:

**§ 26.45 How do recipients set overall goals?**

\* \* \* \* \*

(f)(1) If you set overall goals on a fiscal year basis, you must submit them to the applicable DOT operating administration by August 1 at three-year intervals, based on a schedule established by the FAA, FTA, or FHWA, as applicable, and posted on that agency's Web site.

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**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 622**

**RIN 0648–AX39**

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

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

**ACTION:** Notice of Availability of Amendment 29 to the Fishery Management Plan for Reef Fish Resources of the Gulf of Mexico; request for comments.

**SUMMARY:** The Gulf of Mexico Fishery Management Council (Council) has submitted Amendment 29 to the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico (FMP) for review, approval, and implementation by NMFS. Amendment 29 proposes actions to establish an individual fishing quota (IFQ) program for grouper and tilefish species, establish design elements of the program, allow permit stacking, and

establish dual classifications to the shallow water and deepwater management units for speckled hind and warsaw grouper. The measures contained in the subject amendment are intended to reduce effort in the Gulf of Mexico grouper and tilefish fisheries.

**DATES:** Comments must be received no later than 5 p.m., eastern time, on June 8, 2009.

**ADDRESSES:** You may submit comments on the amendment, identified by “0648–AX39”, by any one of the following methods:

- Electronic Submissions: Submit all electronic public comments via the Federal eRulemaking Portal <http://www.regulations.gov>.

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

Instructions: 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 check the box labeled “Select to find documents accepting comments or submissions”, 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). Attachments to electronic comments will be accepted in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

Copies of Amendment 29 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/>.

Amendment 29 includes an Environmental Impact Statement, an Initial Regulatory Flexibility Analysis, a Regulatory Impact Review, and a Social Impact Assessment/Fishery Impact Statement.

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

**SUPPLEMENTARY INFORMATION:** The reef fish fishery of the Gulf of Mexico (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).

**Background**

Current regulatory measures used to manage the commercial fisheries for the grouper/tilefish complex in the Gulf exclusive economic zone (EEZ) include a license limitation system, quotas, trip limits, minimum size limits, area/gear restrictions, and seasonal closures. Nonetheless, the commercial grouper and tilefish fisheries have become overcapitalized, which has caused increasingly restrictive commercial regulations. Under the current management structure, the commercial grouper and tilefish fisheries are expected to continue to have higher than necessary levels of capital investment, increased operating costs, increased likelihood of shortened seasons, reduced safety at-sea, wide fluctuations in grouper supply, and depressed ex-vessel prices.

The Council chose a multi-species IFQ program for grouper and tilefish species in the Gulf EEZ as the preferred alternative for effort management. The Magnuson-Stevens Act stipulates the Council may not submit, and the Secretary of Commerce (Secretary) may not approve, an IFQ program that has not first been approved by a majority of eligible voters in a referendum. NMFS conducted a referendum in December 2008, with more than 80 percent of the respondents voting in favor of the IFQ program.

Amendment 29 contains many design elements of the IFQ program, as well as major requirements for limited access privilege programs listed in the Magnuson-Stevens Act. Initial IFQ share distribution, and transfer of shares and allocation during the first 5 years, would be restricted to commercial reef fish permit holders. Initially, shares would be distributed proportionately among eligible participants based on landings during 1999–2004, with an allowance for dropping 1 year. The Regional Administrator would establish a formal appeals process and reserve 3 percent of the total available IFQ shares during the first year of the program for use in resolving disputes. If NMFS implemented commercial quota adjustments or reallocations, IFQ allocation would be redistributed proportionately among shareholders.

Five species-specific share types would be established for red grouper, gag, other shallow water groupers,

deepwater groupers, and tilefishes. In addition, 4 percent of red grouper allocation and 8 percent of gag grouper allocation for each participant would be converted into multi-use allocation valid for harvesting red or gag grouper, with restrictions. Each share type would have a separate share cap equal to the maximum share of that type assigned to an IFQ participant during initial distribution. A cap on total annual allocation equivalent to the share caps would also be established.

All dealer and shareholder operations would be conducted online. Up to 3 percent of the ex-vessel value of a transaction could be charged as cost recovery fees. IFQ share or allocation holders would be responsible for these fees and IFQ dealers would be responsible for fee collection and submission on a quarterly basis. Fishermen would be allowed to select landing sites for IFQ programs, but would require approval by NMFS Office of Law Enforcement.

Amendment 29 also contains actions to allow permit consolidation and to create dual classification for speckled hind and warsaw grouper. Permit consolidation would allow the owner of multiple Gulf of Mexico reef fish commercial vessel permits to consolidate some or all of his/her permits into one, which could contribute to a faster reduction in the number of permits and ease permit renewal requirements. Dual classification of speckled hind and warsaw grouper would reduce bycatch and allow more flexibility in the IFQ program because these species are caught in both shallow and deep water.

The Council has submitted Amendment 29 for Secretarial review, approval, and implementation. A proposed rule that would implement measures outlined in Amendment 29 has been received from the Council. In accordance with the Magnuson-Stevens Act, NMFS is evaluating the proposed rule to determine whether it is

consistent with the FMP, the Magnuson-Stevens Act, and other applicable law. If that determination is affirmative, NMFS will publish the proposed rule in the **Federal Register** for public review and comment.

Comments received by June 8, 2009, whether specifically directed to the amendment or the proposed rule, will be considered by NMFS in its decision to approve, disapprove, or partially approve the amendment. Comments received after that date will not be considered by NMFS in this decision. All comments received by NMFS on the amendment or the proposed rule during their respective comment periods will be addressed in the final rule.

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

Dated: April 1, 2009.

**Kristen C. Koch,**

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

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