

the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a 111(d)/129 plan submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a 111(d)/129 plan submission, to use VCS in place of a 111(d)/129 plan submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

B. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

C. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by July 2, 2002. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action approving the Pennsylvania 111(d)/129 plan for HMIWI may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 62

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Reporting and recordkeeping requirements, Sulfur oxides.

Dated: April 25, 2002.

Thomas C. Voltaggio,

Acting Regional Administrator, Region III.

40 CFR Part 62, Subpart NN, is amended as follows:

PART 62—[AMENDED]

1. The authority citation for part 62 continues to read as follows:

Authority: 42 U.S.C. 7401-7671q.

Subpart NN—Pennsylvania

2. Amend Subpart NN-Pennsylvania, by adding the subheading and §§ 62.9650, 62.9651 and 62.9652 after § 62.9644 to read as follows:

Emissions From Existing Hospital/Medical/Infectious Waste Incinerators (HMIWIs)—Section 111(d)/129 Plans

§ 62.9650 Identification of plan.

Section 111(d)/129 plan for designated HMIWIs and the associated state issued air quality construction and operating permits, as submitted on October 26, 1998, amended December 3, 1999, May 4, August 9, and October 22, 2001.

§ 62.9651 Identification of sources.

The plan applies to all existing HMIWIs located in Pennsylvania, excluding Allegheny County, for which construction was commenced on or before June 20, 1996.

§ 62.9652 Effective date.

The effective date of the plan is June 17, 2002.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 011015252-2081-02; I.D. 053001E]

RIN 0648-A023

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Golden Crab Fishery off the Southern Atlantic States; Amendment 3

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

ACTION: Final rule.

SUMMARY: NMFS issues this final rule to implement Amendment 3 to the Fishery Management Plan for the Golden Crab

Fishery of the South Atlantic Region (FMP). This rule extends through December 31, 2002, the allowed use of cable for a mainline attached to golden crab traps; clarifies the size of the required escape panel or door on a golden crab trap; removes the historical catch requirement for renewing a commercial vessel permit for golden crab; allows the issuance of a commercial vessel permit for golden crab for the southern zone for a vessel that held a valid permit for the southern zone in October 2000 but did not meet the 5,000-lb (2,268-kg) requirement for renewal in the following year; allows a vessel with a documented length overall greater than 65 ft (19.8 m) that is permitted to fish in the southern zone to fish also in the northern zone; allows two new commercial vessel permits to be issued for the northern zone; provides that a commercial vessel permit will not be renewed if the Regional Administrator (RA) does not receive an application for renewal by June 30 each year; liberalizes the allowed increase in the size of a permitted vessel; creates a small-vessel sub-zone in the southern zone in which only permitted vessels 65 feet (19.8 m) or less in length may fish for golden crab but may not do so in the remainder of the southern zone; and adds measures related to the proposed sub-zone to the list of management measures that may be modified via the FMP's framework procedure for regulatory adjustments. The intended effect is to protect the golden crab resource while allowing development of the fishery that is dependent on that resource.

DATES: This final rule is effective June 3, 2002, except for the amendments to § 622.17(b)(1) and (2) that are effective May 3, 2002.

ADDRESSES: Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this rule should be submitted to Robert Sadler, Southeast Regional Office, NMFS, 9721 Executive Center Drive N., St. Petersburg, FL 33702, and to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20503 (Attention: NOAA Desk Officer).

FOR FURTHER INFORMATION CONTACT: Dr. Peter J. Eldridge, Southeast Regional Office, NMFS; phone: 727-570-5305; fax: 727-570-5583; e-mail: Peter.Eldridge@noaa.gov.

SUPPLEMENTARY INFORMATION: The golden crab fishery off the southern Atlantic states is managed under the FMP. The FMP was prepared by the South Atlantic Fishery Management

Council (Council) and is implemented under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) by regulations at 50 CFR part 622.

On June 12, 2001, NMFS announced the availability of Amendment 3 and requested comments on it (66 FR 31608); no comments were received. NMFS partially approved Amendment 3 on September 12, 2001; the estimate of maximum sustainable yield was disapproved. NMFS published a proposed rule to implement the approved portions of Amendment 3 on November 27, 2001 (66 FR 59221) and requested comments on the proposed rule. The background and rationale for the measures in Amendment 3 and the proposed rule are contained in the preamble to the proposed rule and are not repeated here.

Comments and Responses

A total of nine comments were received on the proposed rule. The comments and NMFS' responses are provided below.

Comment 1: A vessel owner opposed the removal of the 5,000-lb (2,268-kg) harvest requirement for renewing the biannual permit. In addition, he opposed granting permits to permit holders in the southern zone who had not met the 5,000-lb (2,268-kg) catch requirement by October 2000, but who had met the catch requirement in October 1998. He stated that these measures would benefit fishermen who had chosen not to participate in the fishery. He also opposed the provision that would allow up to a 20 percent increase in vessel size from the vessel size on the original permit. He concluded by stating that a maximum sustainable yield (MSY) or guideline harvest level should be established for this fishery before fishing power is increased in the southern zone.

Response: During the 1998–2000 period, a large vessel set numerous traps over traps that had been set by smaller vessels. The traps became entangled and because the smaller vessels lacked gear that could retrieve the entangled traps, they lost their traps. Consequently, the smaller vessels did not participate further in the fishery because they were afraid that they would lose additional gear and, thus, were not able to land at least 5,000 lb (2,268 kg) of golden crab by October 2000. Vessel owners notified the Council that they would participate in the fishery if a sub-zone was established where only smaller vessels could fish. The approval of Amendment 3, which removes the 5,000-lb (2,268-kg) catch requirement, also establishes a sub-zone where smaller vessels can fish.

This should ensure a more constant supply of golden crab which in turn should increase revenues for this fishery. In addition, the Council concluded that because of the low number of current participants, the minimum required harvest level is no longer necessary. The Council decided to ease the restriction on vessel size because such a measure would enhance vessel safety and could result in improved vessel operations which could reduce costs of fishing. The Council believes that increasing vessel capacity will not jeopardize the continued viability of the fishery.

Amendment 3 proposed an MSY range of 4 to 12 million lb (1.8 to 5.4 million kg). NMFS disapproved the estimate because the best scientific information available indicated that the range was too high. For reasons set forth in the response to Comment 2 below, NMFS believes that the proposed MSY estimate, if implemented, could have led to overfishing of the golden crab resource. NMFS and the Council will continue to monitor landings and other biological information on this fishery. As soon as sufficient information becomes available, an improved MSY estimate will be implemented.

Comment 2: Two fishermen supported the proposed MSY estimate and were disappointed that NMFS had disapproved that measure.

Response: The fishery is conducted only in the southern and middle zones. The best scientific information available for these zones indicates that this area can support an annual harvest of somewhat less than 700,000 pounds (317,515 kg). The northern zone, which is equivalent in size to the combined southern and middle zones, lacks catch data to derive an MSY proxy. Nonetheless, information in the original FMP indicates that the MSY proxy for the northern zone could be between 0.54 and 1.65 million pounds (0.25 and 0.75 million kg). Adding the two sets of estimates together indicates an MSY proxy of between 1.25 and 2.35 million pounds (0.57 and 1.07 million kg). This information constitutes the best scientific information available and indicates that the true MSY for the combined areas most likely is between 1.5 and 2.5 million pounds (0.68 and 1.13 million kg).

Since one large vessel has the capability of landing up to 3 million pounds annually, one or two larger vessels together with existing participants could have overfished the golden crab resource if the proposed MSY proxy of 4 to 12 million pounds (1.8 to 5.4 million kg) had been approved. Consequently, NMFS

disapproved the proposed MSY proxy to minimize the possibility of overfishing this resource.

Comment 3: Six comments received on the proposed rule supported implementation of Amendment 3. In addition, these comments requested that NMFS waive the Administrative Procedure Act's (APA's) 30-day delayed effectiveness for the provision that would allow vessels in the southern zone to fish in the northern zone without losing their permit to return and fish in the southern zone. The comments stated that waiving the 30-day delayed effectiveness would allow larger vessels to transfer operations immediately to the northern zone which would reduce vessel conflict in the southern zone. Also, the comments noted that reduced conflict in the southern zone would result in safer fishing conditions.

Response: NMFS agrees with these comments and is waiving the APA's 30-day delayed effectiveness for that provision that would allow vessels to transfer their operations to the northern zone but permit them to return to the southern zone without penalty.

Changes From the Proposed Rule

In § 622.17(d), the first sentence is revised slightly to maintain consistency with § 622.4(h).

In the last sentence of § 622.38(h), the cross reference to paragraph (i) is corrected to read paragraph (h). The erroneous cross reference was introduced in a prior rulemaking.

In §§ 622.1, 622.4, 622.6, and 622.40, the phrase, "35°15.3' N. lat.", is replaced with the phrase, "35°15.19' N. lat.", to correct the latitude of the Cape Hatteras Light, consistent with a recent relocation of that structure.

Classification

NMFS has determined that Amendment 3, except for the disapproved MSY, is necessary for the conservation and management of the golden crab fishery and that it is consistent with the national standards of the Magnuson-Stevens Act and other applicable laws.

This final rule has been determined to be not significant for purposes of E.O. 12866.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel of Advocacy of the Small Business Administration when this rule was proposed that it would not have a significant economic impact on a substantial number of small entities. As a result, no regulatory flexibility analysis was required and none was prepared. No comments were received

regarding the economic impact of this rule.

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 Paperwork Reduction Act (PRA) unless that collection of information displays a currently valid OMB control number.

This rule contains but does not change two collection-of-information requirements subject to the PRA; namely, the application for a permit for the South Atlantic golden crab fishery and the submission of fishing vessel logbooks in that fishery. These collections of information have been approved by OMB under control numbers 0648-0205 and 0648-0016, respectively. The public reporting burdens for these collections of information are estimated at 20 minutes for each permit application and 10 minutes for each fishing vessel logbook submission. The estimates of public reporting burdens for these collections of information include 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 these burden estimates or any other aspects of the collections of information, including suggestions for reducing the burdens, to NMFS and OMB (see **ADDRESSES**).

Under 5 U.S.C. 553(d)(3), the Assistant Administrator for Fisheries, NOAA finds for good cause that a 30-day delay in the effective date of § 622.17(b)(1) of this rule is unnecessary. Furthermore, under 5 U.S.C. 553(d)(1) a 30-day delay in the effective date of § 622.17(b)(2) is also unnecessary because § 622.17(b)(2) relieves a restriction by allowing a vessel greater than 65 ft (19.8m) in documented length overall that is permitted to fish in the southern zone to fish also in the northern zone. Current regulations restrict such vessels to fishing in the southern zone only. In addition, § 622.17(b)(2) is expected to reduce user conflict in the more-congested southern zone by allowing some shift of fishing effort to the northern zone. The revision of § 622.17(b)(1) provided in this rule is necessary to eliminate regulatory text that would otherwise conflict with the provision of § 622.17(b)(2) that relieves the regulatory restriction on authorized fishing zones. Section 622.17(b)(1) of this rule does not contain any new regulatory requirements; it eliminates text that would otherwise result in

internal inconsistency in the regulations and restates the description of the three fishing zones for the convenience of the reader. Additionally, if the 30-day delay in effectiveness for § 622.17(b)(1) is not waived, the waiver for § 622.17(b)(2) will be ineffective. These reasons constitute good cause under 5 U.S.C. 553(d)(3) to waive the 30-day delay in effectiveness for § 622.17(b)(1).

List of Subjects in 50 CFR Part 622

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

Dated: April 26, 2002.

Willioam T. Hogarth,
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 § 622.7, paragraph (z) is revised to read as follows:

§ 622.7 Prohibitions.

(z) Fish for or possess golden crab in or from a fishing zone or sub-zone of the South Atlantic EEZ other than the zone or sub-zone for which the vessel is permitted or authorized, as specified in § 622.17(b).

3. Section 622.17 is revised to read as follows:

§ 622.17 South Atlantic golden crab controlled access.

(a) *General.* In accordance with the procedures specified in the Fishery Management Plan for the Golden Crab Fishery of the South Atlantic Region, initial commercial vessel permits have been issued for the fishery. All permits in the fishery are issued on a fishing-year (calendar-year) basis. No additional permits may be issued except as follows:

(1) *For the southern zone.* (i) Upon application, the RA will reissue a permit for the southern zone for a vessel that held a valid permit for that zone in October 2000 but did not meet the 5,000-lb (2,268-kg) requirement for renewal in the following year.

(ii) An application for a permit under paragraph (a)(1) of this section must be received by the RA no later than July 2, 2002.

(2) *For the northern zone.* (i) The RA will issue up to two new vessel permits for the northern zone. Selection will be made from the list of historical participants in the South Atlantic golden crab fishery. Such list was used at the October 1995 meeting of the South Atlantic Fishery Management Council and was prioritized based on pounds of golden crab landed, without reference to a specific zone. Individuals on the list who originally received permits will be deleted from the list.

(ii) The RA will offer in writing an opportunity to apply for a permit for the northern zone to the individuals highest on the list until two accept and apply in a timely manner. An offer that is not accepted within 30 days after it is received will no longer be valid.

(iii) An application for a permit from an individual who accepts the RA's offer must be received by the RA no later than 30 days after the date of the individual's acceptance. Application forms are available from the RA.

(iv) A vessel permit for the northern zone issued under paragraph (a)(2) of this section, and any successor permit, may not be changed to another zone. A successor permit includes a permit issued to that vessel for a subsequent owner and a permit issued via transfer from that vessel to another vessel.

(b) *Fishing zones—(1) Designation of fishing zones.* The South Atlantic EEZ is divided into three fishing zones for golden crab as follows:

(i) Northern zone—the South Atlantic EEZ north of 28° N. lat.

(ii) Middle zone—the South Atlantic EEZ from 28° N. lat. to 25° N. lat.

(iii) Southern zone—the South Atlantic EEZ south of 25° N. lat.

(2) *Authorization to fish in zones.*

Each vessel permit indicates one of the zones specified in paragraph (b)(1) of this section. A vessel with a permit to fish for golden crab in the northern zone or the middle zone may fish only in that zone. A vessel with a documented length overall greater than 65 ft (19.8 m) with a permit to fish for golden crab in the southern zone may fish in that zone, consistent with the provisions of paragraph (b)(3) of this section, and, through May 3, 2005, may also fish in the northern zone. A vessel may possess golden crab only in a zone in which it is authorized to fish, except that other zones may be transited if the vessel notifies NMFS, Office of Enforcement, Southeast Region, St. Petersburg, FL, by telephone (727-570-5344) in advance and does not fish in a zone in which it is not authorized to fish.

(3) *Small-vessel sub-zone.* Within the southern zone, a small-vessel sub-zone is established bounded on the north by

24°15' N. lat., on the south by 24°07' N. lat., on the east by 81°22' W. long., and on the west by 81°56' W. long. No vessel with a documented length overall greater than 65 ft (19.8 m) may fish for golden crab in this sub-zone, and a vessel with a documented length overall of 65 ft (19.8 m) or less that is permitted for the southern zone may fish for golden crab only in this sub-zone.

(4) *Procedure for changing zones.* (i) Upon request from an owner of a permitted vessel, the RA will change the zone specified on a permit from the middle or southern zone to the northern zone. No other changes in the zone specified on a permit are allowed, except as specified in paragraph (b)(4)(ii) of this section. An owner of a permitted vessel who desires a change to the northern zone must submit his/her request with the existing permit to the RA.

(ii) Through May 3, 2005, upon request, the RA will change a vessel permit back to the southern zone for an owner of a vessel, or the subsequent owner of a vessel, whose permit was changed from the southern zone to the northern zone provided that the documented length overall of the vessel to be used in the southern zone is not more than 20 percent greater than the vessel whose permit was originally changed from the southern zone to the northern zone.

(c) *Transferring permits between vessels—*(1) *Procedure for transferring.* An owner of a vessel who desires a golden crab permit may request that NMFS transfer an existing permit or permits to his or her vessel by returning an existing permit or permits to the RA with an application for a permit for the replacement vessel.

(2) *Vessel size limitations on transferring.* (i) To obtain a permit for the middle or southern zone via transfer, the documented length overall

of the replacement vessel may not exceed the documented length overall, or aggregate documented lengths overall, of the replaced vessel(s) by more than 20 percent. The owner of a vessel permitted for the middle or southern zone who has requested that NMFS transfer that permit to a smaller vessel (i.e., downsized) may subsequently request NMFS transfer that permit to a vessel of a length calculated from the length of the permitted vessel immediately prior to downsizing.

(ii) There are no vessel size limitations to obtain a permit for the northern zone via transfer.

(d) *Permit renewal.* NMFS will not renew a commercial vessel permit for South Atlantic golden crab if the permit is revoked or if the RA does not receive a required application for renewal within 6 months after the permit's expiration. See § 622.4(h) for the applicable general procedures and requirements for permit renewals.

4. In § 622.38, the last sentence of paragraph (h) is revised to read as follows:

§ 622.38 Landing fish intact.

* * * * *

(h) * * * For the purpose of this paragraph, a vessel is in transit through the South Atlantic EEZ when it is on a direct and continuous course through the South Atlantic EEZ and no one aboard the vessel fishes in the EEZ.

5. In § 622.40, the first sentence of paragraph (b)(3)(ii)(B) and paragraph (d)(2)(ii) are revised to read as follows:

§ 622.40 Limitations on traps and pots.

* * * * *

(b) * * *

(3) * * *

(ii) * * *

(B) A golden crab trap constructed of material other than webbing must have an escape panel or door measuring at

least 11 7/8 by 11 7/8 inches (30.2 by 30.2 cm), located on at least one side, excluding top and bottom. * * *

* * * * *

(d) * * *

(2) * * *

(ii) Rope is the only material allowed to be used for a buoy line or mainline attached to a golden crab trap, except that wire cable is allowed for a mainline through December 31, 2002.

6. In § 622.48, paragraph (g) is revised to read as follows:

§ 622.48 Adjustment of management measures.

* * * * *

(g) *South Atlantic golden crab.* Biomass levels, age-structured analyses, MSY, ABC, TAC, quotas (including quotas equal to zero), trip limits, minimum sizes, gear regulations and restrictions, permit requirements, seasonal or area closures, sub-zones and their management measures, time frame for recovery of golden crab if overfished, fishing year (adjustment not to exceed 2 months), observer requirements, authority for the RA to close the fishery when a quota is reached or is projected to be reached, definitions of essential fish habitat, and essential fish habitat HAPCs or Coral HAPCs.

* * * * *

§§ 622.1, 622.4, 622.6, 622.40 [Amended]

7. In addition to the amendments set forth above, in 50 CFR part 622, remove the phrase, "35°15.3' N lat." and add, in its place, the phrase, "35°15.19' N. lat." in the following places:

(a) Section 622.1, in footnote 4 of Table 1;

(b) Section 622.4(a)(2)(vi);

(c) Section 622.6(b)(1)(i)(B); and

(d) Section 622.40(b)(3)(i).

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