

program in accordance with Subtitle I of RCRA, 42 U.S.C. 6991 *et seq.*

(ii) Letter from the Attorney General of West Virginia to EPA, June 30, 1997, though not incorporated by reference, is referenced as part of the approved underground storage tank program in accordance with Subtitle I of RCRA, 42 U.S.C. 6991 *et seq.*

(3) *Demonstration of procedures for adequate enforcement.* The "Demonstration of Procedures for Adequate Enforcement" submitted as part of the original application on July 7, 1997, though not incorporated by reference, is referenced as part of the approved underground storage tank program in accordance with Subtitle I of RCRA, 42 U.S.C. 6991 *et seq.*

(4) *Program Description.* The program description and any other material submitted as part of the original application on July 7, 1997, though not incorporated by reference, are referenced as part of the approved underground storage tank program in accordance with Subtitle I of RCRA, 42 U.S.C. 6991 *et seq.*

(5) *Memorandum of Agreement.* The Memorandum of Agreement between EPA Region III and the West Virginia Division of Environmental Protection, signed by the EPA Regional Administrator on September 15, 1997, though not incorporated by reference, is referenced as part of the approved underground storage tank program in accordance with Subtitle I of RCRA, 42 U.S.C. 6991 *et seq.*

■ 3. Appendix A to Part 282 is amended by adding in alphabetical order "West Virginia" and its listing.

Appendix A to Part 282—State Requirements Incorporated by Reference in Part 282 of the Code of Federal Regulations

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West Virginia

(a) The statutory provisions include:

(1) Code of West Virginia, Article 17: Underground Storage Tanks

Section 22-17-1 Short title

Section 22-17-2 Declaration of policy and purpose

Section 22-17-3 Definitions

Section 22-17-4 Designation of division of environmental protection as the state underground storage tank program lead agency

Section 22-17-6 Promulgation of rules and standards by director, except § 22-17-6.(b)(12) and (b)(13)

Section 22-17-8 Notification requirements

Section 22-17-9 Registration requirements; undertaking activities without registration

Section 22-17-10 Financial responsibility

Section 22-17-11 Performance standards for new underground storage tanks

Section 22-17-12 Confidentiality, except § 22-17-12.(b)

Section 22-17-14 Corrective action for underground petroleum storage tanks

Section 22-17-22 Underground storage tank insurance fund

(b) The regulatory provisions include:

(1) West Virginia Code of State Regulations, Title 33: Office of Waste Management Rule, Series 30: Underground Storage Tanks

Section 33-30-1 General

Section 33-30-2 Adoption of Federal Regulations

Section 33-30-4 Notification Requirements, except § 33-30-4.2.b and 4.4.b

[FR Doc. 04-13281 Filed 6-14-04; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 282

[FRL-7658-3]

Underground Storage Tank Program: Approved State Program for Virginia

AGENCY: Environmental Protection Agency (EPA).

ACTION: Immediate final rule.

SUMMARY: The Resource Conservation and Recovery Act of 1976, as amended (RCRA), authorizes the EPA to grant approval to States to operate their underground storage tank programs in lieu of the Federal program. The Code of Federal Regulations (CFR) contains a codification of EPA's decision to approve State programs and incorporates by reference those provisions of the State statutes and regulations that will be subject to EPA's inspection and enforcement authorities in accordance with sections 9005 and 9006 of RCRA Subtitle I and other applicable statutory and regulatory provisions. This rule codifies the prior approval of the Commonwealth of Virginia's (Commonwealth or State) underground storage tank program and incorporates by reference appropriate provisions of State statutes and regulations.

DATES: This regulation is effective August 16, 2004, unless EPA receives adverse written comments by the close of business July 15, 2004. If EPA receives adverse written comments, we will publish a timely withdrawal in the **Federal Register**. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register, as of August 16, 2004, in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

ADDRESSES: Send written comments to Ms. Rosemarie Nino, Mailcode 3WC21,

RCRA State Programs Branch, U.S. EPA Region III, 1650 Arch Street, Philadelphia, PA 19103-2029.

Comments may also be submitted electronically through the Internet to: nino.rose@epa.gov or by facsimile at (215) 814-3163. You can examine copies of the codification materials during normal business hours at the following location: EPA Region III, Library, 2nd Floor, 1650 Arch Street, Philadelphia, PA 19103-2029, Phone Number (215) 814-5254.

FOR FURTHER INFORMATION CONTACT: Ms. Rosemarie Nino, Mailcode 3WC21, RCRA State Programs Branch, U.S. EPA Region III, 1650 Arch Street, Philadelphia, PA 19103-2029. Phone: (215) 814-3377.

SUPPLEMENTARY INFORMATION:

Background

Section 9004 of RCRA, 42 U.S.C. 6991c, allows the EPA to approve a State underground storage tank program to operate in the State in lieu of the Federal underground storage tank program. EPA published a notice in the **Federal Register** announcing its decision to grant approval to Virginia on September 28, 1998, and approval was effective on October 28, 1998 (63 FR 51528).

EPA codifies its approval of a State program in 40 CFR part 282 and incorporates by reference therein the State's statutes and regulations that make up the approved program which is federally-enforceable in accordance with sections 9005 and 9006 of Subtitle I of RCRA, 42 U.S.C. 6991d and 6991e, and other applicable statutory and regulatory provisions. Today's rulemaking codifies EPA's approval of Virginia's underground storage tank program. This codification reflects the State program in effect at the time EPA granted Virginia approval, in accordance with RCRA section 9004(a), 42 U.S.C. 6991c(a), for its underground storage tank program. Notice and opportunity for comment were provided earlier on the Agency's decision to approve the Virginia program, and EPA is not now reopening that decision nor requesting comment on it.

To codify EPA's approval of Virginia's underground storage tank program, EPA has added § 282.96 to title 40 of the CFR. 40 CFR 282.96(d)(1)(i) incorporates by reference the State's statutes and regulations that make up the approved program which is federally-enforceable. 40 CFR 282.96 also describes the Attorney General's Statement, the Demonstration of Adequate Enforcement Procedures, the Program Description, and the Memorandum of

Agreement, which were evaluated as part of the approval process of the underground storage tank program, in accordance with Subtitle I of RCRA.

EPA retains the authority in accordance with sections 9005 and 9006 of Subtitle I of RCRA, 42 U.S.C. 6991d and 6991e, and other applicable statutory and regulatory provisions, to undertake inspections and enforcement actions in approved States. With respect to such an enforcement action, EPA will rely on Federal sanctions, Federal inspection authorities, and Federal procedures rather than the State-authorized analogues to these provisions. Therefore, Virginia's inspection and enforcement authorities are not incorporated by reference, nor are they part of Virginia's approved state program which operates in lieu of the Federal program. These authorities, however, are listed in 40 CFR 282.96(d)(1)(ii) for informational purposes, and also because EPA considered them in determining the adequacy of Virginia's enforcement authority. Virginia's authority to inspect and enforce the State's underground storage tank requirements continues to operate independently under State law.

Some provisions of the State's underground storage tank program are not part of the federally-approved State program. These non-approved provisions are not part of the RCRA Subtitle I program because they are "broader in scope" than Subtitle I of RCRA. See 40 CFR 281.12(a)(3)(ii). As a result, State provisions which are "broader in scope" than the Federal program are not incorporated by reference for purposes of Federal enforcement in 40 CFR part 282. Section 282.96 of the codification simply lists for reference and clarity the Virginia statutory and regulatory provisions which are "broader in scope" than the Federal program and which are not, therefore, part of the approved program being codified today. "Broader in scope" provisions cannot be enforced by EPA; the State, however, will continue to enforce such provisions.

Statutory and Executive Order Reviews

This rule only codifies EPA-authorized underground storage tank program requirements pursuant to RCRA section 9004 and imposes no requirements other than those imposed by State law (see Supplementary Information). Therefore, this rule complies with applicable executive orders and statutory provisions as follows.

1. Executive Order 12866: Regulatory Planning Review—The Office of Management and Budget has exempted

this rule from its review under Executive Order (EO) 12866. 2. Paperwork Reduction Act—This rule does not impose an information collection burden under the Paperwork Reduction Act. 3. Regulatory Flexibility Act—After considering the economic impacts of today's rule on small entities under the Regulatory Flexibility Act, I certify that this rule will not have a significant economic impact on a substantial number of small entities. 4. Unfunded Mandates Reform Act—Because this rule codifies pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act. 5. Executive Order 13132: Federalism—EO 13132 does not apply to this rule because it will not have federalism implications (*i.e.*, substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government). 6. Executive Order 13175: Consultation and Coordination with Indian Tribal Governments—EO 13175 does not apply to this rule because it will not have tribal implications (*i.e.*, substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes). 7. Executive Order 13045: Protection of Children from Environmental Health & Safety Risks—This rule is not subject to EO 13045 because it is not economically significant and it is not based on health or safety risks. 8. Executive Order 13211: Actions that Significantly Affect Energy Supply, Distribution, or Use—This rule is not subject to EO 13211 because it is not a significant regulatory action as defined in EO 12866. 9. National Technology Transfer Advancement Act—EPA codifies approved State programs as long as they meet criteria required by RCRA, so it would be inconsistent with applicable law for EPA, in its review of a State program, to require the use of any particular voluntary consensus standard in place of another standard that meets the requirements of RCRA. Thus, section 12(d) of the National Technology Transfer and Advancement Act does not apply to this rule. 10. Congressional Review Act—EPA will submit a report containing this rule and other information required by the

Congressional Review Act (5 U.S.C. 801 *et seq.*) to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2). This action will be effective on August 16, 2004.

List of Subjects in 40 CFR part 282

Environmental protection, Hazardous substances, Incorporation by reference, Intergovernmental relations, State program approval, Underground storage tanks, Water pollution control.

Dated: March 25, 2004.

Donald S. Welsh,

Regional Administrator, EPA Region III.

■ For the reasons set forth in the preamble, 40 CFR part 282 is amended as follows:

PART 282—APPROVED UNDERGROUND STORAGE TANK PROGRAMS

■ 1. The authority citation for part 282 continues to read as follows:

Authority: 42 U.S.C. 6912, 6991c, 6991d, and 6991e.

Subpart B—Approved State Programs

■ 2. Subpart B is amended by adding § 282.96 to read as follows:

§ 282.96 Virginia State-Administered Program.

(a) The State of Virginia's underground storage tank program is approved in lieu of the Federal program in accordance with Subtitle I of the Resource Conservation and Recovery Act of 1976 (RCRA), as amended, 42 U.S.C. 6991 *et seq.* The State's program, as administered by the Virginia Department of Environmental Quality, was approved by EPA pursuant to 42 U.S.C. 6991c and part 281 of this chapter. EPA approved the Virginia underground storage tank program on September 28, 1998, and approval was effective on October 28, 1998.

(b) Virginia has primary responsibility for enforcing its underground storage tank program. However, EPA retains the authority to exercise its inspection and enforcement authorities in accordance with sections 9005 and 9006 of Subtitle I of RCRA, 42 U.S.C. 6991d and 6991e, regardless of whether the State has taken its own actions, as well as in accordance with other statutory and regulatory provisions.

(c) To retain program approval, Virginia must revise its approved

program to adopt new changes to the Federal Subtitle I program which make it more stringent, in accordance with section 9004 of RCRA, 42 U.S.C. 6991c, and 40 CFR part 281, subpart E. If Virginia obtains approval for the revised requirements pursuant to section 9004 of RCRA, 42 U.S.C. 6991c, the newly approved statutory and regulatory provisions will be added to this subpart and notice of any change will be published in the **Federal Register**.

(d) Virginia has final approval for the following elements submitted to EPA in the State's program application for final approval. On September 28, 1998, EPA published notice of approval of the State's program in the **Federal Register**, 63 FR 51528. That approval became effective on October 28, 1998. Copies of Virginia's program application may be obtained from the Virginia Department of Environmental Quality, 629 East Main Street, Richmond, VA 23240-0009.

(1) *State statutes and regulations.* (i) The provisions cited in this paragraph, with the exception of the provisions cited in paragraphs (d)(1)(ii) and (iii) of this section, are incorporated by reference as part of the approved underground storage tank program in accordance with Subtitle I of RCRA, 42 U.S.C. 6991 *et seq.*

(A) Virginia Statutory Requirements Applicable to the Underground Storage Tank Program, 1998.

(B) Virginia Regulatory Requirements Applicable to the Underground Storage Tank Program, 1998.

(ii) EPA considered the following statutes in evaluating the State program, but did not incorporate them by reference.

(A) The statutory provisions include:

(1) Code of Virginia, Title 10.1, Subtitle II, Chapter 11.1: Department of Environmental Quality, Article 1: General Provisions

Section 10.1-1186 General powers of the department

(2) Code of Virginia, Title 62.1, Chapter 3.1: State Water Control Law, Article 2: Control Board Generally

Section 62.1-44.14 Chairman; Executive Director; employment of personnel; supervision; budget preparation

Section 62.1-44.15 Powers and duties

(3) Code of Virginia, Title 62.1, Chapter 3.1: State Water Control Law, Article 5: Enforcement and Appeal Procedure

Section 62.1-44.20 Right to entry to obtain information

Section 62.1-44.21 Information to be furnished to Board

Section 62.1-44.21 Private rights not affected

Section 62.1-44.23 Enforcement by injunction

Section 62.1-44.23:1 Intervention of Commonwealth in actions involving surface water withdrawals

Section 62.1-44.24 Testing validity of regulations; judicial review

Section 62.1-44.25 Right to hearing

Section 62.1-44.26 Hearings

Section 62.1-44.27 Rules of evidence in hearings

Section 62.1-44.28 Decisions of the Board in hearings pursuant to § 62.1-44.15 and 62.1-44.25

Section 62.1-44.29 Judicial review

Section 62.1-44.30 Appeal to Court of Appeals

(4) Code of Virginia, Title 62.1, Chapter 3.1: State Water Control Law, Article 6: Offenses and Penalties

Section 62.1-44.31 Violation of special order or certificate or failure to cooperate with Board

Section 62.1-44.32 Penalties

(iii) The following statutory and regulatory provisions are broader in scope than the Federal program, are not part of the approved program, and are not incorporated by reference. These provisions are not federally enforceable.

(A) The statutory provisions include:

(1) Code of Virginia, Title 62.1, Chapter 3.1: State Water Control Law

Section 62.1-44.34:8 Definitions, "Aboveground storage tank" and "Regulated substance"

(2) Code of Virginia, Title 62.1, Chapter 3.1: State Water Control Law, Article 10: Petroleum Storage Tank Fund

Section 62.1-44.34.10 Definitions, "Aboveground storage tank" and "Regulated substance"

Section 62.1-44.34:13 Levy of fee for Fund maintenance

(B) The regulatory provisions include Virginia Administrative Code, Title 9, Agency 25: State Water Control Board, Chapter 580: Underground Storage Tanks—Technical Standards and Corrective Action Requirements

9 VAC 25-580-10 Definitions, "Underground storage tank" includes heating oil tanks of greater than 5,000 gallon capacity and "Regulated substance"

9 VAC 25-580-130 General requirements for all petroleum and hazardous substance UST systems, heating oil tanks of greater than 5,000 gallon capacity

9 VAC 25-580-290 Corrective action plan (CAP) permit

(2) *Statement of legal authority.* (i) "Attorney General's Statement," signed by the State Attorney General on July 14, 1998, though not incorporated by reference, is referenced as part of the approved underground storage tank program in accordance with Subtitle I of RCRA, 42 U.S.C. 6991 *et seq.*

(ii) Letter from the Attorney General of Virginia to EPA, July 14, 1998, though not incorporated by reference, is referenced as part of the approved underground storage tank program in accordance with Subtitle I of RCRA, 42 U.S.C. 6991 *et seq.*

(3) *Demonstration of procedures for adequate enforcement.* The "Demonstration of Procedures for Adequate Enforcement" submitted as part of the original application on July 15, 1998, though not incorporated by reference, is referenced as part of the approved underground storage tank program in accordance with Subtitle I of RCRA, 42 U.S.C. 6991 *et seq.*

(4) *Program Description.* The program description and any other material submitted as part of the original application on July 15, 1998, though not incorporated by reference, are referenced as part of the approved underground storage tank program in accordance with Subtitle I of RCRA, 42 U.S.C. 6991 *et seq.*

(5) *Memorandum of Agreement.* The Memorandum of Agreement between EPA Region III and the Virginia Department of Environmental Quality, signed by the EPA Regional Administrator on September 17, 1998, though not incorporated by reference, is referenced as part of the approved underground storage tank program in accordance with Subtitle I of RCRA, 42 U.S.C. 6991 *et seq.*

■ 3. Appendix A to Part 282 is amended by adding in alphabetical order "Virginia" and its listing.

Appendix A to Part 282—State Requirements Incorporated by Reference in Part 282 of the Code of Federal Regulations

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Virginia

(a) The statutory provisions include:

(1) Code of Virginia, Title 62.1, Chapter 3.1: State Water Control Law

Article 9: Storage Tanks

Section 62.1-44.34:8 Definitions, except "Aboveground storage tank" and "Regulated substance"

Section 62.1-44.34:9 Powers and duties of Board

Article 10: Petroleum Storage Tank Fund

Section 62.1-44.34:10 Definitions, except "Aboveground storage tank" and "Regulated substance"

Section 62.1–44.34:11 Virginia Petroleum Storage Tank Fund

Section 62.1–44.34:12 Financial responsibility

(b) The regulatory provisions include:

(1) Virginia Administrative Code, Title 9, Agency 25: State Water Control Board, Chapter 580: Underground Storage Tanks—Technical Standards and Corrective Action Requirements

Part I: Definitions, Applicability, and Interim Prohibition

9 VAC 25–580–10 Definitions, except “Underground storage tank” includes heating oil tanks of greater than 5,000 gallon capacity and “Regulated substance”

9 VAC 25–580–20 Applicability

9 VAC 25–580–30 Interim prohibition for deferred UST systems

9 VAC 25–580–40 Permitting and inspection requirements for all UST systems

Part II: UST Systems: Design, Construction, Installation, and Notification

9 VAC 25–580–50 Performance standards for new UST systems

9 VAC 25–580–60 Upgrading of existing UST systems

9 VAC 25–580–70 Notification requirements

9 VAC 25–580–80 Spill and overflow control

9 VAC 25–580–90 Operation and maintenance of corrosion protection

9 VAC 25–580–100 Compatibility

9 VAC 25–580–110 Repairs allowed

Part III: General Operating Requirements

9 VAC 25–580–120 Reporting and recordkeeping

Part IV: Release Detection

9 VAC 25–580–130 General requirements for all petroleum and hazardous substance UST systems, except heating oil tanks of greater than 5,000 gallon capacity

9 VAC 25–580–140 Requirements for petroleum UST systems

9 VAC 25–580–150 Requirements for hazardous substance UST systems

9 VAC 25–580–160 Methods of release detection for tanks

9 VAC 25–580–170 Methods of release detection for piping

9 VAC 25–580–180 Release detection recordkeeping

Part V: Release Reporting, Investigation, and Confirmation

9 VAC 25–580–190 Reporting of suspected releases

9 VAC 25–580–200 Investigation due to off-site impacts

9 VAC 25–580–210 Release investigation and confirmation steps

9 VAC 25–580–220 Reporting and cleanup of spills and overfills

Part VI: Release Response and Corrective Action for UST Systems Containing Petroleum for Hazardous Substances

9 VAC 25–580–230 General

9 VAC 25–580–240 Initial response

9 VAC 25–580–250 Initial abatement measures and site check

9 VAC 25–580–260 Site characterization

9 VAC 25–580–270 Free product removal

9 VAC 25–580–280 Corrective action plan

9 VAC 25–580–300 Public participation

9 VAC 25–580–310 Temporary closure

Part VII: Out-of-Service UST Systems and Closure

9 VAC 25–580–320 Permanent closure and changes-in-service

9 VAC 25–580–330 Assessing the site at closure or change-in-service

9 VAC 25–580–340 Applicability to previously closed UST systems

9 VAC 25–580–350 Closure records

Part VIII: Delegation

9 VAC 25–580–360 Delegation of authority Appendix I: Virginia Underground Storage Tank Notification Forms

Appendix II: Statement for Shipping tickets and Invoices

(2) Virginia Administrative Code, Title 9, Agency 25: State Water Control Board, Chapter 590: Petroleum Underground Storage Tank Financial Responsibility Requirements

9 VAC 25–590–10 Definitions

9 VAC 25–590–20 Applicability

9 VAC 25–590–30 Compliance dates

9 VAC 25–590–40 Amount and scope of financial responsibility requirement

9 VAC 25–590–50 Allowable mechanisms and combinations of mechanisms

9 VAC 25–590–60 Financial test of self-insurance

9 VAC 25–590–70 Guarantee

9 VAC 25–590–80 Insurance and group self-insurance pool coverage

9 VAC 25–590–90 Surety bond

9 VAC 25–590–100 Letter of credit

9 VAC 25–590–110 Trust fund

9 VAC 25–590–120 Standby trust fund

9 VAC 25–590–130 Substitution of financial assurance mechanisms by owner and operator

9 VAC 25–590–140 Cancellation or nonrenewal by a provider of financial assurance

9 VAC 25–590–150 Reporting by owner or operator

9 VAC 25–590–160 Recordkeeping

9 VAC 25–590–170 Drawing on financial assurance mechanism

9 VAC 25–590–180 Release from the requirements

9 VAC 25–590–190 Bankruptcy or other incapacity of owner, operator or provider of financial assurance

9 VAC 25–590–200 Replenishment of guarantees, letters of credit or surety bonds

9 VAC 25–590–210 Virginia Petroleum Storage Tank Fund

9 VAC 25–590–220 Notices to the State Water Control Board

9 VAC 25–590–230 Delegation of authority

9 VAC 25–590–240 Lender liability

9 VAC 25–590–250 Local government financial responsibility demonstration

9 VAC 25–590–260 Word or phrase substitutions

Appendix I: Letter from Chief Financial Officer

Appendix II: Guarantee

Appendix III: Endorsement

Appendix IV: Certificate of Insurance

Appendix V: Performance Bond

Appendix VI: Irrevocable Standby Letter of Credit

Appendix VII: Trust Agreement

Appendix VIII: Certification of Acknowledgment

Appendix IX: Certification of Financial Responsibility

Appendix X: Certification of Valid Claim

Appendix XI: Letter from Chief Financial Officer (short form)

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 040205043–4168–02; I.D. 122303G]

RIN 0648–AP95

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Reef Fish Fishery of the Gulf of Mexico; Red Grouper Rebuilding Plan

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

ACTION: Final rule.

SUMMARY: NMFS issues this final rule to implement Secretarial Amendment 1 to the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico (Secretarial Amendment 1). Secretarial Amendment 1 was prepared by the Secretary of Commerce and the Gulf of Mexico Fishery Management Council (Council) pursuant to the rebuilding requirements of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). This final rule establishes a quota for red grouper, provides for closure of the entire shallow-water grouper fishery when either the shallow-water grouper quota or the red grouper quota is reached, establishes a bag limit of two red grouper per person per day, reduces the shallow-water grouper quota, reduces the deep-water grouper quota, and establishes a quota for tilefishes. In addition, for red grouper in the Gulf of Mexico, Secretarial Amendment 1 establishes a 10-year stock rebuilding plan, biological reference points, and stock status determination criteria consistent with the requirements of the Magnuson-Stevens Act. This final rule is designed to end overfishing and rebuild the red grouper resource.