

NOTICE OF OFFICE OF MANAGEMENT AND BUDGET ACTION

Date 08/06/2008

Department of Commerce
National Oceanic and Atmospheric Administration
FOR CERTIFYING OFFICIAL: Suzanne Hilding
FOR CLEARANCE OFFICER: Diana Hynek

In accordance with the Paperwork Reduction Act, OMB has taken action on your request received 05/15/2008

ACTION REQUESTED: Revision of a currently approved collection
TYPE OF REVIEW REQUESTED: Regular
ICR REFERENCE NUMBER: 200804-0648-015
AGENCY ICR TRACKING NUMBER:
TITLE: Southeast Region Gulf of Mexico Red Snapper IFQ Program
LIST OF INFORMATION COLLECTIONS: See next page

OMB ACTION: Approved without change
OMB CONTROL NUMBER: 0648-0551
The agency is required to display the OMB Control Number and inform respondents of its legal significance in accordance with 5 CFR 1320.5(b).

EXPIRATION DATE: 08/31/2011 DISCONTINUE DATE:

BURDEN:	RESPONSES	HOURS	COSTS
Previous	10,268	1,014	383,764
New	11,685	1,038	383,764
Difference			
Change due to New Statute	0	0	0
Change due to Agency Discretion	1,417	24	0
Change due to Agency Adjustment	0	0	0
Change Due to Potential Violation of the PRA	0	0	0

TERMS OF CLEARANCE:

OMB Authorizing Official: Kevin F. Neyland
Deputy Administrator,
Office Of Information And Regulatory Affairs

List of ICs

IC Title	Form No.	Form Name	CFR Citation
Dealer reporting	NA	Dealer Landing Transaction Record	50 CFR 622.16
Shareholder reporting	NA, NA	Shareholder log in, account update and allocation transfer, Active vessel reporting	50 CFR 622.16
Transfer of share by shareholders/permit holders	NA	Share Transfer	
Fishermen reporting			50 CFR 622.16
IFQ Participant Percent Ownership Information	NA	IFQ shareholder corporate shareholder update	

PAPERWORK REDUCTION ACT SUBMISSION

Please read the instructions before completing this form. For additional forms or assistance in completing this form, contact your agency's Paperwork Clearance Officer. Send two copies of this form, the collection instrument to be reviewed, the supporting statement, and any additional documentation to: Office of Information and Regulatory Affairs, Office of Management and Budget, Docket Library, Room 10102, 725 17th Street NW, Washington, DC 20503.

1. Agency/Subagency originating request	2. OMB control number b. <input type="checkbox"/> None a. _____ - _____
3. Type of information collection (<i>check one</i>) a. <input type="checkbox"/> New Collection b. <input type="checkbox"/> Revision of a currently approved collection c. <input type="checkbox"/> Extension of a currently approved collection d. <input type="checkbox"/> Reinstatement, without change, of a previously approved collection for which approval has expired e. <input type="checkbox"/> Reinstatement, with change, of a previously approved collection for which approval has expired f. <input type="checkbox"/> Existing collection in use without an OMB control number For b-f, note Item A2 of Supporting Statement instructions	4. Type of review requested (<i>check one</i>) a. <input type="checkbox"/> Regular submission b. <input type="checkbox"/> Emergency - Approval requested by _____ / _____ / _____ c. <input type="checkbox"/> Delegated
7. Title	5. Small entities Will this information collection have a significant economic impact on a substantial number of small entities? <input type="checkbox"/> Yes <input type="checkbox"/> No
8. Agency form number(s) (<i>if applicable</i>)	6. Requested expiration date a. <input type="checkbox"/> Three years from approval date b. <input type="checkbox"/> Other Specify: _____ / _____
9. Keywords	10. Abstract
11. Affected public (<i>Mark primary with "P" and all others that apply with "x"</i>) a. ___ Individuals or households d. ___ Farms b. ___ Business or other for-profit e. ___ Federal Government c. ___ Not-for-profit institutions f. ___ State, Local or Tribal Government	12. Obligation to respond (<i>check one</i>) a. <input type="checkbox"/> Voluntary b. <input type="checkbox"/> Required to obtain or retain benefits c. <input type="checkbox"/> Mandatory
13. Annual recordkeeping and reporting burden a. Number of respondents _____ b. Total annual responses _____ 1. Percentage of these responses collected electronically _____ % c. Total annual hours requested _____ d. Current OMB inventory _____ e. Difference _____ f. Explanation of difference 1. Program change _____ 2. Adjustment _____	14. Annual reporting and recordkeeping cost burden (<i>in thousands of dollars</i>) a. Total annualized capital/startup costs _____ b. Total annual costs (O&M) _____ c. Total annualized cost requested _____ d. Current OMB inventory _____ e. Difference _____ f. Explanation of difference 1. Program change _____ 2. Adjustment _____
15. Purpose of information collection (<i>Mark primary with "P" and all others that apply with "X"</i>) a. ___ Application for benefits e. ___ Program planning or management b. ___ Program evaluation f. ___ Research c. ___ General purpose statistics g. ___ Regulatory or compliance d. ___ Audit	16. Frequency of recordkeeping or reporting (<i>check all that apply</i>) a. <input type="checkbox"/> Recordkeeping b. <input type="checkbox"/> Third party disclosure c. <input type="checkbox"/> Reporting 1. <input type="checkbox"/> On occasion 2. <input type="checkbox"/> Weekly 3. <input type="checkbox"/> Monthly 4. <input type="checkbox"/> Quarterly 5. <input type="checkbox"/> Semi-annually 6. <input type="checkbox"/> Annually 7. <input type="checkbox"/> Biennially 8. <input type="checkbox"/> Other (describe) _____
17. Statistical methods Does this information collection employ statistical methods <input type="checkbox"/> Yes <input type="checkbox"/> No	18. Agency Contact (person who can best answer questions regarding the content of this submission) Name: _____ Phone: _____

19. Certification for Paperwork Reduction Act Submissions

On behalf of this Federal Agency, I certify that the collection of information encompassed by this request complies with 5 CFR 1320.9

NOTE: The text of 5 CFR 1320.9, and the related provisions of 5 CFR 1320.8(b)(3), appear at the end of the instructions. *The certification is to be made with reference to those regulatory provisions as set forth in the instructions.*

The following is a summary of the topics, regarding the proposed collection of information, that the certification covers:

- (a) It is necessary for the proper performance of agency functions;
- (b) It avoids unnecessary duplication;
- (c) It reduces burden on small entities;
- (d) It used plain, coherent, and unambiguous terminology that is understandable to respondents;
- (e) Its implementation will be consistent and compatible with current reporting and recordkeeping practices;
- (f) It indicates the retention period for recordkeeping requirements;
- (g) It informs respondents of the information called for under 5 CFR 1320.8(b)(3):
 - (i) Why the information is being collected;
 - (ii) Use of information;
 - (iii) Burden estimate;
 - (iv) Nature of response (voluntary, required for a benefit, mandatory);
 - (v) Nature and extent of confidentiality; and
 - (vi) Need to display currently valid OMB control number;
- (h) It was developed by an office that has planned and allocated resources for the efficient and effective management and use of the information to be collected (see note in Item 19 of instructions);
- (i) It uses effective and efficient statistical survey methodology; and
- (j) It makes appropriate use of information technology.

If you are unable to certify compliance with any of the provisions, identify the item below and explain the reason in Item 18 of the Supporting Statement.

Signature of Senior Official or designee

Date

Agency Certification (signature of Assistant Administrator, Deputy Assistant Administrator, Line Office Chief Information Officer, head of MB staff for L.O.s, or of the Director of a Program or StaffOffice)

Signature

Date

Signature of NOAA Clearance Officer

Signature

Date

**SUPPORTING STATEMENT
SOUTHEAST REGION GULF OF MEXICO RED SNAPPER IFQ PROGRAM
OMB CONTROL NO. 0648-0551**

A. JUSTIFICATION

1. Explain the circumstances that make the collection of information necessary.

Collection of percent ownership in a corporation from Individual Fishing Quota (IFQ) participants is necessary for the red snapper IFQ program. The IFQ program has a cap on share percent ownership of six percent. Without the ability to track corporate shareholder information, National Oceanic and Atmospheric Administration, National Marine Fisheries Service (NOAA Fisheries Service) will be unable to enforce this share ownership cap.

2. Explain how, by whom, how frequently, and for what purpose the information will be used. If the information collected will be disseminated to the public or used to support information that will be disseminated to the public, then explain how the collection complies with all applicable Information Quality Guidelines.

IFQ participants will add the percent corporate ownership online through their IFQ account. Only appropriate NOAA Fisheries Service personnel will have access to this information. This information will be used to track corporate ownership in order to be sure the IFQ share ownership cap is not violated.

After this initial entry, IFQ participants will provide percent ownership information when renewing their applications for the Federal Permit Application for Fishing in the Exclusive Economic Zone, under Office of Management and Budget (OMB) Control No.: 0648-0205. The currently approved Tax Identification Number (TIN) requirement will be maintained on this permit application so that any permit holders who may acquire IFQ by transfer can be identified for cost recovery purposes.

Collection of the TIN is necessary on program fee submission forms to ensure that we are collecting from the person who owes the debt. If the fee submission and payment are not received, the agency must begin collection processes and those collection processes cannot be initiated or accomplished without the TIN. *NOTE: Because the TIN in this instance is collected for NOAA Fisheries Service cost recovery, there is demonstrable practical utility. In addition, cost recovery is mandated by the Magnuson-Stevens Act (16 U.S.C. 1852 et seq.) as amended in 2006, and the collection of TIN in such an instance is supported by 31 U.S.C. Section 7701.*

As explained above, the information gathered has utility. NOAA Fisheries Service retains control over the information and safeguards it from improper access, modification, and destruction, consistent with NOAA standards for confidentiality, privacy, and electronic information. The information collection is designed to yield data that meet all applicable information quality guidelines. Prior to dissemination, the information will be subjected to quality control measure and a pre-dissemination review pursuant to Section 515 of the Public Law 106-554.

3. Describe whether, and to what extent, the collection of information involves the use of automated, electronic, mechanical, or other technological techniques or other forms of information technology.

The IFQ program is the first completely electronic IFQ program in the nation. All information is processed through online access at <https://ifq.sero.nmfs.noaa.gov>.

4. Describe efforts to identify duplication.

The Magnuson-Stevens Act's operational guidelines require each Fishery Management Plan (FMP) to evaluate existing state and federal laws that govern the fisheries in question, and the findings are made part of each FMP. Each Fishery Management Council membership is comprised of state and federal officials responsible for resource management in their area. These two circumstances identify other collections that may be gathering the same or similar information. In addition, each FMP undergoes extensive public comment periods where potential applicants review the proposed permit application requirements. Therefore, NOAA Fisheries Service is confident it is aware of similar collections if they exist. This information is also collected through the Southeast Region Permit Family of Forms (OMB Control No. 0648-0205) to ensure that potential IFQ participants will not violate the share cap if and when they enter the fishery. However, due to the minimal amount of time to complete this information, this duplication is not seen as burdensome.

5. If the collection of information involves small businesses or other small entities, describe the methods used to minimize burden.

Because all applicants are considered small businesses or small entities, separate requirements based on size of business have not been developed. Only the minimum data to meet the current and future needs of NOAA Fisheries Service's fisheries management are requested from the vessel owners.

6. Describe the consequences to the Federal program or policy activities if the collection is not conducted or is conducted less frequently.

If the percent ownership in a corporation is not collected, NOAA Fisheries Service will have no means to track the share cap in the IFQ program.

7. Explain any special circumstances that require the collection to be conducted in a manner inconsistent with OMB guidelines.

There are no special circumstances that require the collection to be conducted in a manner inconsistent with OMB guidelines.

8. Provide information on the PRA Federal Register Notice that solicited public comments on the information collection prior to this submission. Summarize the public comments received in response to that notice and describe the actions taken by the agency in response to those comments. Describe the efforts to consult with persons outside the agency to obtain their views on the availability of data, frequency of collection, the clarity of instructions and recordkeeping, disclosure, or reporting format (if any), and on the data elements to be recorded, disclosed, or reported.

A Federal Register notice published on February 14, 2008 (73 FR 8649) solicited comments on this request; no comments were received. Tracking of corporate shareholder information was also addressed in Final Rule, Regulation Identifier Number (RIN): 0648-AS67 (71 FR 67447), published in the Federal Register on November 22, 2006.

9. Explain any decisions to provide payments or gifts to respondents, other than remuneration of contractors or grantees.

There are no payments or other remunerations to respondents.

10. Describe any assurance of confidentiality provided to respondents and the basis for assurance in statute, regulation, or agency policy.

All data submitted under the proposed collection will be handled as confidential material in accordance with Magnuson-Stevens Fishery Conservation and Management Act (MSFCMA), 16 U.S.C. 1881a, Section 402b, and NOAA Administrative Order 216-100, Protection of Confidential Fishery Statistics.

A Privacy Act System of Records Notice, COMMERCE/NOAA-19, Permits and Registrations for United States Federally Regulated Fisheries, was published in the Federal Register on 04/17/2008. If no comments need to be addressed, it is expected that this System of Records will be effective by the end of May 2008.

11. Provide additional justification for any questions of a sensitive nature, such as sexual behavior and attitudes, religious beliefs, and other matters that are commonly considered private.

No questions of a sensitive nature are asked.

12. Provide an estimate in hours of the burden of the collection of information.

Going onto the IFQ website and adding the percent ownership information on the website is estimated to take one minute. For each respondent to enter this information, this adds 24 hours to the current total: 1,417 responses x 1 minutes/60 minutes = 24 hours. After this information is added initially, respondents would continue to include it, with no burden added, when completing renewals for their federal EEZ permits (the permit form is being revised in a companion request for OMB Control No. 0648-0205).

Thus, the new response and hour totals would be $10,244 + 1,417 = 11,661$ and $1,014 + 24 = 1,038$.

13. Provide an estimate of the total annual cost burden to the respondents or record-keepers resulting from the collection (excluding the value of the burden hours in #12 above).

There is no additional cost for this information collection; the total continues to be \$383,625.

14. Provide estimates of annualized cost to the Federal government.

There is no additional cost.

15. Explain the reasons for any program changes or adjustments reported in Items 13 or 14 of the OMB 83-I.

The requirement to add percent ownership to the permit information is a program change which adds 24 hours total.

16. For collections whose results will be published, outline the plans for tabulation and publication.

These results will not be published.

17. If seeking approval to not display the expiration date for OMB approval of the information collection, explain the reasons why display would be inappropriate.

The OMB Control Number and expiration date will be displayed where appropriate.

18. Explain each exception to the certification statement identified in Item 19 of the OMB 83-I.

There are no exemptions to the certification statement identified in Item 19 of OMB 83-I.

B. COLLECTIONS OF INFORMATION EMPLOYING STATISTICAL METHODS

This collection does not employ statistical methods.

NOAA - NMFS - SERO - IFQ

[Shareholder Home](#) | [Account Info](#) | [Shares](#) | [Allocation](#) | [Landings](#) | [Fleet](#) | [3 Hour Notification](#) | [Messages](#) | [Logout](#)

Individual Fishing Quota - Red Snapper

Account Name

Logged in as:

UserID

Today is Friday
October 26, 2007
10:10 AM ET

You are logged in as
SHAREHOLDER

[Switch Roles](#)

IFQ Shareholder Corporate Shareholder Update

Add a new Corporate Shareholder

If the corporate shareholder is already an IFQ participant, then select the IFQ participant's name from the list. Otherwise, enter the corporate shareholder's full name. Then, enter the percent of share in the corporation, in whole numbers. Repeat these steps for each shareholder within the corporation (the total of all entries should equal 100 percent).

Select an IFQ Shareholder:

Other (enter full name below)
A & B Seafood Inc
A Action Fishing
A C Williams Corporation Inc
A Reel Commocean Charter Inc

OR Enter Corporate Shareholder's

Full Name:

Percent:

[Add Corporate Shareholder](#)

Update/Remove existing Corporate Shareholders

Shareholder Percent

Corporate Shareholder Name 44 [Update %](#) [Remove](#)

* - following name, indicates this shareholder is not an existing IFQ participant

[Cancel](#)

OMB Control No. 0643-0051 Exp. Date 11/30/09



104-297

(9) Conservation and management measures shall, to the extent practicable, (A) minimize bycatch and (B) to the extent bycatch cannot be avoided, minimize the mortality of such bycatch.

104-297

(10) Conservation and management measures shall, to the extent practicable, promote the safety of human life at sea.

97-453

(b) GUIDELINES.—The Secretary shall establish advisory guidelines (which shall not have the force and effect of law), based on the national standards, to assist in the development of fishery management plans.

SEC. 302. REGIONAL FISHERY MANAGEMENT COUNCILS**16 U.S.C. 1852****97-453, 101-627, 104-297**

(a) ESTABLISHMENT.—

(1) There shall be established, within 120 days after the date of the enactment of this Act, eight Regional Fishery Management Councils, as follows:

(A) NEW ENGLAND COUNCIL.—The New England Fishery Management Council shall consist of the States of Maine, New Hampshire, Massachusetts, Rhode Island, and Connecticut and shall have authority over the fisheries in the Atlantic Ocean seaward of such States (except as provided in paragraph (3)). The New England Council shall have 17 voting members, including 11 appointed by the Secretary in accordance with subsection (b)(2) (at least one of whom shall be appointed from each such State).

(B) MID-ATLANTIC COUNCIL.—The Mid-Atlantic Fishery Management Council shall consist of the States of New York, New Jersey, Delaware, Pennsylvania, Maryland, Virginia, and North Carolina and shall have authority over the fisheries in the Atlantic Ocean seaward of such States (except North Carolina, and as provided in paragraph (3)). The Mid-Atlantic Council shall have 21 voting members, including 13 appointed by the Secretary in accordance with subsection (b)(2) (at least one of whom shall be appointed from each such State).

(C) SOUTH ATLANTIC COUNCIL.—The South Atlantic Fishery Management Council shall consist of the States of North Carolina, South Carolina, Georgia, and Florida and shall have authority over the fisheries in the Atlantic Ocean seaward of such States (except as provided in paragraph (3)). The South Atlantic Council shall have 13 voting members, including 8 appointed by the Secretary in accordance with subsection (b)(2) (at least one of whom shall be appointed from each such State).

109-479

(D) CARIBBEAN COUNCIL.—The Caribbean Fishery Management Council shall consist of the Virgin Islands and the Commonwealth of Puerto Rico and shall have authority over the fisheries in the Caribbean Sea and Atlantic Ocean seaward of such States and of commonwealths, territories, and possessions of the United States in the Caribbean Sea (except as provided in paragraph (3)). The Caribbean Council shall have 7 voting members, including 4 appointed by the Secretary in accordance with subsection (b)(2) (at least one of whom shall be appointed from each such State).

(E) GULF COUNCIL.—The Gulf of Mexico Fishery Management Council shall consist of the States of Texas, Louisiana, Mississippi, Alabama, and Florida and shall have authority over the fisheries in the Gulf of Mexico seaward of such States (except as provided in paragraph (3)). The Gulf Council shall have 17 voting members, including 11 appointed by the Secretary in accordance with subsection (b)(2) (at least one of whom shall be appointed from each such State).

(F) PACIFIC COUNCIL.—The Pacific Fishery Management Council shall consist of the States of California, Oregon, Washington, and Idaho and shall have authority over the fisheries in the Pacific Ocean seaward of such States. The Pacific Council shall have 14 voting members, including 8 appointed by the Secretary in accordance with subsection (b)(2) (at least one of whom shall be appointed from each such State), and including one appointed from an Indian tribe with Federally recognized fishing rights from California, Oregon, Washington, or Idaho in accordance with subsection (b)(5).

(G) NORTH PACIFIC COUNCIL.—The North Pacific Fishery Management Council shall consist of the States of Alaska, Washington, and Oregon and shall have authority over the fisheries in the Arctic Ocean, Bering Sea, and Pacific Ocean seaward of Alaska. The North Pacific Council shall have 11 voting members, including 7 appointed by the Secretary in accordance with subsection (b)(2) (5 of whom shall be appointed from the State of Alaska and 2 of whom shall be appointed from the State of Washington).

(H) WESTERN PACIFIC COUNCIL.—The Western Pacific Fishery Management Council shall consist of the States of Hawaii, American Samoa, Guam, and the Northern Mariana Islands and shall have authority over the fisheries in the Pacific Ocean seaward of such States and of the Commonwealths, territories, and possessions of the United States in the Pacific Ocean area. The Western Pacific Council shall have 13 voting members, including 8 appointed by the Secretary in accordance with subsection (b)(2) (at least one of whom shall be appointed from each of the following States: Hawaii, American Samoa, Guam, and the Northern Mariana Islands).

(2) Each Council shall reflect the expertise and interest of the several constituent States in the ocean area over which such Council is granted authority.

(3) The Secretary shall have authority over any highly migratory species fishery that is within the geographical area of authority of more than one of the following Councils: New England Council, Mid-Atlantic Council, South Atlantic Council, Gulf Council, and Caribbean Council.

97-453, 99-659, 101-627, 102-582, 104-297

(b) VOTING MEMBERS.—

(1) The voting members of each Council shall be:

(A) The principal State official with marine fishery management responsibility and expertise in each constituent State, who is designated as such by the Governor of the State, so long as the official continues to hold such position, or the designee of such official.

(B) The regional director of the National Marine Fisheries Service for the geographic area concerned, or his designee, except that if two such directors are within such geographical area, the Secretary shall designate which of such directors shall be the voting member.

(C) The members required to be appointed by the Secretary in accordance with paragraphs (2) and (5).

(2) (A) The members of each Council required to be appointed by the Secretary must be individuals who, by reason of their occupational or other experience, scientific expertise, or training, are knowledgeable regarding the conservation and management, or the commercial or recreational harvest, of the fishery resources of the geographical area concerned. Within nine months after the date of enactment of the Fishery Conservation Amendments of 1990, the Secretary shall, by regulation, prescribe criteria for determining whether an individual satisfies the requirements of this subparagraph.

(B) The Secretary, in making appointments under this section, shall, to the extent practicable, ensure a fair and balanced apportionment, on a rotating or other basis, of the active participants (or their representatives) in the commercial and recreational fisheries under the jurisdiction of the Council. On January 31, 1991, and each year thereafter, the Secretary shall submit to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Merchant Marine and Fisheries of the House of Representatives a report on the actions taken by the Secretary to ensure that such fair and balanced apportionment is achieved. The report shall—

(i) list the fisheries under the jurisdiction of each Council, outlining for each fishery the type and quantity of fish harvested, fishing and processing methods employed, the number of participants, the duration and range of the fishery, and other distinguishing characteristics;

(ii) assess the membership of each Council in terms of the apportionment of the active participants in each such fishery; and

(iii) state the Secretary's plans and schedule for actions to achieve a fair and balanced apportionment on the Council for the active participants in any such fishery.

(C) The Secretary shall appoint the members of each Council from a list of individuals submitted by the Governor of each applicable constituent State. A Governor may not submit the names of individuals to the Secretary for appointment unless the Governor has determined that each such individual is qualified under the requirements of subparagraph (A) and unless the Governor has, to the extent practicable, first consulted with representatives of the commercial and recreational fishing interests of the State regarding those individuals. Each such list shall include the names and pertinent biographical data of not less than three individuals for each applicable vacancy and shall be accompanied by a statement by the Governor explaining how each such individual meets the requirements of subparagraph (A). The Secretary shall review each list submitted by a Governor to ascertain if the individuals on the list are qualified for the vacancy on the basis of such requirements. If the Secretary determines that any individual is not qualified, the Secretary shall notify the appropriate Governor of that determination. The Governor shall then submit a revised list or resubmit the original list with an additional explanation of the qualifications of the individual in question. An individual is not eligible for appointment by the Secretary until that individual complies with the applicable financial disclosure requirements under subsection (k).

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(D)(i) The Governor of a State submitting a list of names of individuals for appointment by the Secretary of Commerce to the Gulf of Mexico Fisheries Management Council under subparagraph (C) shall include—

- (I) at least 1 nominee each from the commercial, recreational, and charter fishing sectors; and
 - (II) at least 1 other individual who is knowledgeable regarding the conservation and management of fisheries resources in the jurisdiction of the Council.
- (ii) Notwithstanding the requirements of subparagraph (C), if the Secretary determines that the list of names submitted by the Governor does not meet the requirements of clause (i) the Secretary shall—
- (I) publish a notice in the Federal Register asking the residents of that State to submit the names and pertinent biographical data of individuals who would meet the requirement not met for appointment to the Council; and
 - (II) add the name of any qualified individual submitted by the public who meets the unmet requirement to the list of names submitted by the Governor.
- (iii) For purposes of clause (i) an individual who owns or operates a fish farm outside of the United States shall not be considered to be a representative of the commercial or recreational fishing sector.
- (iv) The requirements of this subparagraph shall expire at the end of fiscal year 2012.
- (E) Whenever the Secretary makes an appointment to a Council, the Secretary shall make a public announcement of such appointment not less than 45 days before the first day on which the individual is to take office as a member of the Council.

(3) Each voting member appointed to a Council by the Secretary in accordance with paragraphs (2) and (5) shall serve for a term of 3 years; except that the Secretary may designate a shorter term if necessary to provide for balanced expiration to terms of office. No member appointed after January 1, 1986, may serve more than three consecutive terms. Any term in which an individual was appointed to replace a member who left office during the term shall not be counted in determining the number of consecutive terms served by that Council member.

(4) Successors to the voting members of any Council shall be appointed in the same manner as the original voting members. Any individual appointed to fill a vacancy occurring prior to the expiration of any term of office shall be appointed for the remainder of that term.

109-479

(5) (A) The Secretary shall appoint to the Pacific Council one representative of an Indian tribe with Federally recognized fishing rights from California, Oregon, Washington, or Idaho from a list of not less than 3 individuals submitted by the tribal governments. The Secretary, in consultation with the Secretary of the Interior and tribal governments, shall establish by regulation the procedure for submitting a list under this subparagraph.

(B) Representation shall be rotated among the tribes taking into consideration—

- (i) the qualifications of the individuals on the list referred to in subparagraph (A),
- (ii) the various rights of the Indian tribes involved and judicial cases that set forth how those rights are to be exercised, and
- (iii) the geographic area in which the tribe of the representative is located.

(C) A vacancy occurring prior to the expiration of any term shall be filled in the same manner as set out in subparagraphs (A) and (B), except that the Secretary may use the list from which the vacating representative was chosen.

(D) The tribal representative appointed under subparagraph (A) may designate as an alternate, during the period of the representative's term, an individual knowledgeable concerning tribal rights, tribal law, and the fishery resources of the geographical area concerned.

(6) The Secretary may remove for cause any member of a Council required to be appointed by the Secretary in accordance with paragraphs (2) or (5) if—

(A) the Council concerned first recommends removal by not less than two-thirds of the members who are voting members and submits such removal recommendation to the Secretary in writing together with a statement of the basis for the recommendation; or

(B) the member is found by the Secretary, after notice and an opportunity for a hearing in accordance with section 554 of title 5, United States Code, to have committed an act prohibited by section 307(1)(O).

(c) NONVOTING MEMBERS.—

(1) The nonvoting members of each Council shall be:

- (A) The regional or area director of the United States Fish and Wildlife Service for the geographical area concerned, or his designee.
- (B) The commander of the Coast Guard district for the geographical area concerned, or his designee; except that, if two

Coast Guard districts are within such geographical area, the commander designated for such purpose by the commandant of the Coast Guard.

(C) The Executive Director of the Marine Fisheries Commission for the geographical area concerned, if any, or his designee.

(D) One representative of the Department of State designated for such purpose by the Secretary of State, or his designee.

(2) The Pacific Council shall have one additional nonvoting member who shall be appointed by, and serve at the pleasure of, the Governor of Alaska.

96-561, 101-627, 104-297

(d) COMPENSATION AND EXPENSES.—The voting members of each Council who are required to be appointed by the Secretary and who are not employed by the Federal Government or any State or local government, shall receive compensation at the daily rate for GS-15, step 7 of the General Schedule, when engaged in the actual performance of duties for such Council. The voting members of each Council, any nonvoting member described in subsection (c)(1)(C), and the nonvoting member appointed pursuant to subsection (c)(2) shall be reimbursed for actual expenses incurred in the performance of such duties, and other nonvoting members and Council staff members may be reimbursed for actual expenses.

101-627

(e) TRANSACTION OF BUSINESS.—

(1) A majority of the voting members of any Council shall constitute a quorum, but one or more such members designated by the Council may hold hearings. All decisions of any Council shall be by majority vote of the voting members present and voting.

(2) The voting members of each Council shall select a Chairman for such Council from among the voting members.

(3) Each Council shall meet at appropriate times and places in any of the constituent States of the Council at the call of the Chairman or upon the request of a majority of its voting members.

(4) If any voting member of a Council disagrees with respect to any matter which is transmitted to the Secretary by such Council, such member may submit a statement to the Secretary setting forth the reasons for such disagreement. The regional director of the National Marine Fisheries Service serving on the Council, or the regional director's designee, shall submit such a statement, which shall be made available to the public upon request, if the regional director disagrees with any such matter.

(B) If any meeting or portion is closed, the Council concerned shall provide notice by any means that will result in wide publicity in the major fishing ports of the region (and in other major fishing ports having a direct interest in the affected fishery), except that email notification and website postings alone are not sufficient, including in that notification the time and place of the meeting. This subparagraph does not require notification regarding any brief closure of a portion of a meeting in order to discuss employment or other internal administrative matters. Subparagraphs (D) and (F) of paragraph (2) shall not apply to any meeting or portion thereof that is so closed.

(4) Each Council shall establish appropriate procedures applicable to it and to its committee and advisory panels for ensuring confidentiality of the statistics that may be submitted to it by Federal or State authorities, and may be voluntarily submitted to it by private persons; including, but not limited to, procedures for the restriction of Council employee access and the prevention of conflicts of interest; except that such procedures, in the case of statistics submitted to the Council by a State or by the Secretary under section 402(b), must be consistent with the laws and regulations of that State, or with the procedures of the Secretary, as the case may be, concerning the confidentiality of the statistics.

(5) Each Council shall specify those procedures that are necessary or appropriate to ensure that the committees and advisory panels established under subsection (g) are involved, on a continuing basis, in the development and amendment of fishery management plans.

(6) At any time when a Council determines it appropriate to consider new information from a State or Federal agency or from a Council advisory body, the Council shall give comparable consideration to new information offered at that time by interested members of the public. Interested parties shall have a reasonable opportunity to respond to new data or information before the Council takes final action on conservation and management measures.

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(j) DISCLOSURE OF FINANCIAL INTEREST AND RECUSAL.—

104-297

(1) For the purposes of this subsection—

(A) the term “affected individual” means an individual who—

(i) is nominated by the Governor of a State for appointment as a voting member of a Council in accordance with subsection (b)(2); or

(ii) is a voting member of a Council appointed—

(I) under subsection (b)(2); or

(II) under subsection (b)(5) who is not subject to disclosure and recusal requirements under the laws of an Indian tribal government; and

(B) the term “designated official” means a person with expertise in Federal conflict-of-interest requirements who is designated by the Secretary, in consultation with the Council, to attend Council meetings and make determinations under paragraph (7)(B).

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(2) Each affected individual must disclose any financial interest held by—

(A) that individual;

(B) the spouse, minor child, or partner of that individual; and

(C) any organization (other than the Council) in which that individual is serving as an officer, director, trustee, partner, or employee;

in any harvesting, processing, lobbying, advocacy, or marketing activity that is being, or will be, undertaken within any fishery over which the Council concerned has jurisdiction, or with respect to an individual or organization with a financial interest in such activity.

104-297

(3) The disclosure required under paragraph (2) shall be made—

(A) in the case of an affected individual referred to in paragraph (1)(A)(i), before appointment by the Secretary; and

(B) in the case of an affected individual referred to in paragraph (1)(A)(ii), within 45 days of taking office.

104-297

(4) An affected individual referred to in paragraph (1)(A)(ii) must update his or her disclosure form at any time any such financial interest is acquired, or substantially changed, by any person referred to in paragraph (2)(A), (B), or (C).

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(5) The financial interest disclosures required by this subsection shall—

(A) be made on such forms, in accordance with such procedures, and at such times, as the Secretary shall by regulation prescribe;

(B) be kept on file by the Council and made available on the Internet and for public inspection at the Council offices during reasonable hours; and

(C) be kept on file by the Secretary for use in reviewing determinations under paragraph 7(B) and made available for public inspection at reasonable hours.

104-297

(6) The participation by an affected individual referred to in paragraph (1)(A)(ii) in

an action by a Council during any time in which that individual is not in compliance with

the regulations prescribed under paragraph (5) may not be treated as cause for the invalidation of that action.

104-297

(7) (A) After the effective date of regulations promulgated under subparagraph (F) of this paragraph, an affected individual required to disclose a financial interest under paragraph (2) shall not vote on a Council decision which would have a significant and predictable effect on such financial interest. A Council decision shall be considered to have a significant and

predictable effect on a financial interest if there is a close causal link between the Council decision and an expected and substantially disproportionate benefit to the financial interest of the affected individual relative to the financial interests of other participants in the same gear type or sector of the fishery. An affected individual who may not vote may participate in Council deliberations relating to the decision after notifying the Council of the voting recusal and identifying the financial interest that would be affected.

(B) At the request of an affected individual, or upon the initiative of the appropriate designated official, the designated official shall make a determination for the record whether a Council decision would have a significant and predictable effect on a financial interest.

(C) Any Council member may submit a written request to the Secretary to review any determination by the designated official under subparagraph (B) within 10 days of such determination. Such review shall be completed within 30 days of receipt of the request.

(D) Any affected individual who does not vote in a Council decision in accordance with this subsection may state for the record how he or she would have voted on such decision if he or she had voted.

(E) If the Council makes a decision before the Secretary has reviewed a determination under subparagraph (C), the eventual ruling may not be treated as cause for the invalidation or reconsideration by the Secretary of such decision.

(F) The Secretary, in consultation with the Councils and by not later than one year from the date of enactment of the Sustainable Fisheries Act, shall promulgate regulations which prohibit an affected individual from voting in accordance with subparagraph (A), and which allow for the making of determinations under subparagraphs (B) and (C).

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(8) Section 208 of title 18, United States Code, does not apply to an affected individual referred to in paragraph (1)(A)(ii) during any time in which that individual is in compliance with the regulations prescribed under paragraph (5).

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(9) On January 1, 2008, and annually thereafter, the Secretary shall submit a report to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Resources on action taken by the Secretary and the Councils to implement the disclosure of financial interest and recusal requirements of this subsection, including identification of any conflict of interest problems with respect to the Councils and scientific and statistical committees and recommendations for addressing any such problems.

104-297

SEC. 402. INFORMATION COLLECTION

16 U.S.C. 1881a

109-479

(a) COLLECTION PROGRAMS.—

(1) COUNCIL REQUESTS.—If a Council determines that additional information would be beneficial for developing, implementing, or revising a fishery management plan or for determining whether a fishery is in need of management, the Council may request that the Secretary implement an information collection program for the fishery which would provide the types of information specified by the Council. The Secretary shall undertake such an information collection program if he determines that the need is justified, and shall promulgate regulations to implement the program within 60 days after such determination is made. If the Secretary determines that the need for an information collection program is not justified, the Secretary shall inform the Council of the reasons for such determination in writing. The determinations of the Secretary under this paragraph regarding a Council request shall be made within a reasonable period of time after receipt of that request.

(2) SECRETARIAL INITIATION.—If the Secretary determines that additional information is necessary for developing, implementing, revising, or monitoring a fishery management plan, or for determining whether a fishery is in need of management, the Secretary may, by regulation, implement an information collection or observer program requiring submission of such additional information for the fishery.

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(b) CONFIDENTIALITY OF INFORMATION.—

(1) Any information submitted to the Secretary, a State fishery management agency, or a marine fisheries commission by any person in compliance with the requirements of this Act shall be confidential and shall not be disclosed except—

(A) to Federal employees and Council employees who are responsible for fishery management plan development, monitoring, or enforcement;

(B) to State or Marine Fisheries Commission employees as necessary to further the Department's mission, subject to a confidentiality agreement that prohibits public disclosure of the identity of business of any person;

(C) to State employees who are responsible for fishery management plan enforcement, if the States employing those employees have entered into a fishery enforcement agreement with the Secretary and the agreement is in effect;

(D) when required by court order;

(E) when such information is used by State, Council, or Marine Fisheries Commission employees to verify catch under a limited access program, but only to the extent that such use is consistent with subparagraph (B);

(F) when the Secretary has obtained written authorization from the person submitting such information to release such information to persons for reasons not otherwise provided for in this subsection, and such release does not violate other requirements of this Act;

(G) when such information is required to be submitted to the Secretary for any determination under a limited access program; or

(H) in support of homeland and national security activities, including the Coast Guard's homeland security missions as defined in section 888(a)(2) of the Homeland Security Act of 2002 (6 U.S.C. 468(a)(2)).

(2) Any observer information shall be confidential and shall not be disclosed, except in accordance with the requirements of subparagraphs (A) through (H) of paragraph (1), or—

(A) as authorized by a fishery management plan or regulations under the authority of the North Pacific Council to allow disclosure to the public of weekly summary bycatch information identified by vessel or for haul-specific bycatch information without vessel identification;

(B) when such information is necessary in proceedings to adjudicate observer certifications; or

(C) as authorized by any regulations issued under paragraph (3) allowing the collection of observer information, pursuant to a confidentiality agreement between the observers, observer employers, and the Secretary prohibiting disclosure of the information by the observers or observer employers, in order—

(i) to allow the sharing of observer information among observers and between observers and observer employers as necessary to train and prepare observers for deployments on specific vessels; or

(ii) to validate the accuracy of the observer information collected.

(3) The Secretary shall, by regulation, prescribe such procedures as may be necessary to preserve the confidentiality of information submitted in compliance with any requirement or regulation under this Act, except that the Secretary may release or make public any such information in any aggregate or summary form which does not directly or indirectly disclose the identity or business of any person who submits such information. Nothing in this subsection shall be interpreted or construed to prevent the use for conservation and management purposes by the Secretary, or with the approval of the Secretary, the Council, of any information submitted in compliance with any requirement or regulation under this Act or the use, release, or publication of bycatch information pursuant to paragraph (2)(A).

(c) RESTRICTION ON USE OF CERTAIN INFORMATION.—

(1) The Secretary shall promulgate regulations to restrict the use, in civil enforcement or criminal proceedings under this Act, the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361 et seq.), and the Endangered Species Act (16 U.S.C. 1531 et seq.), of information collected by voluntary fishery data collectors, including sea samplers, while aboard any vessel for conservation and management purposes if the presence of such a fishery data collector aboard is not required by any of such Acts or regulations thereunder.

(2) The Secretary may not require the submission of a Federal or State income tax return or statement as a prerequisite for issuance of a permit until such time as the Secretary has promulgated regulations to ensure the confidentiality of information contained in such return or statement, to limit the information submitted to that necessary to achieve a demonstrated conservation and management purpose, and to provide appropriate penalties for violation of such regulations.

From the U.S. Code Online via GPO Access

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[Laws in effect as of January 3, 2005]

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TITLE 31--MONEY AND FINANCE

SUBTITLE V--GENERAL ASSISTANCE ADMINISTRATION CHAPTER 77--ACCESS TO

INFORMATION FOR DEBT COLLECTION Sec. 7701. Taxpayer identifying number

(a) In this section--

(1) ``included Federal loan program '' has the same meaning given that term in section 6103(1)(3)(C) of the Internal Revenue Code of 1986 (26 U.S.C. 6103 (1) (3) (C)) .

(2) ``taxpayer identifying number '' means the identifying number required under section 6109 of the Internal Revenue Code of 1986 (26 U.S.C. 6109).

(b) The head of an agency administering an included Federal loan program shall require a person applying for a loan under the program to provide that person's taxpayer identifying number.

(c)(1) The head of each Federal agency shall require each person doing business with that agency to furnish to that agency such person's taxpayer identifying number.

(2) For purposes of this subsection, a person shall be considered to be doing business with a Federal agency if the person is--

(A) a lender or servicer in a Federal guaranteed or insured loan program administered by the agency;

(B) an applicant for, or recipient of, a Federal license, permit, right-of-way, grant, or benefit payment administered by the agency or insurance administered by the agency;

(C) a contractor of the agency;

(D) assessed a fine, fee, royalty or penalty by the agency; and

(E) in a relationship with the agency that may give rise to a receivable due to that agency, such as a partner of a borrower in or a guarantor of a Federal direct or insured loan administered by the agency.

(3) Each agency shall disclose to a person required to furnish a taxpayer identifying number under this subsection its intent to use such number for purposes of collecting and reporting on any delinquent amounts arising out of such person's relationship with the Government.

(4) For purposes of this subsection, a person shall not be treated as doing business with a Federal agency solely by reason of being a debtor under third party claims of the United States. The preceding sentence shall not apply to a debtor owing claims resulting from petroleum pricing violations or owing claims resulting from Federal loan or loan guarantee/insurance programs.

(d) Notwithstanding section 552a(b) of title 5, United States Code, creditor agencies to which a delinquent claim is owed, and their agents, may match their debtor records with Department of Health and Human Services, and Department of Labor records to obtain names (including names of employees), name controls, names of employers, taxpayer identifying numbers, addresses (including addresses of employers), and dates of birth. The preceding sentence shall apply to the disclosure of taxpayer identifying numbers only if such disclosure is not otherwise prohibited by section 6103 of the Internal Revenue Code of 1986. The Department of Health and Human Services, and the Department of Labor shall release that information to creditor agencies and may charge reasonable fees sufficient to pay the costs associated with that release.

(Added Pub. L. 103-272, Sec. 4(f)(1)(Y)(i), July 5, 1994, 108 Stat. 1363; amended Pub. L. 104-134, title III, Sec. 31001(i)(1), Apr. 26, 1996, 110 Stat. 1321-364.)

References in Text

Section 6103 of the Internal Revenue Code of 1986, referred to in subsecs. (a)(1) and (d), is classified to section 6103 of Title 26, Internal Revenue Code.

Amendments

1996--Subsecs. (c), (d). Pub. L. 104-134 added subsecs. (c) and (d).

SECTION 515 PRE-DISSEMINATION REVIEW & DOCUMENTATION GUIDELINES

Background

Section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (Public Law 106-554, aka the Data Quality Act or Information Quality Act) directed the Office of Management and Budget (OMB) to issue government-wide guidelines that “provide policy and procedural guidance to federal agencies for ensuring and maximizing the quality, objectivity, utility, and integrity of information (including statistical information) disseminated by federal agencies.” OMB complied by issuing guidelines which direct each federal agency to 1) issue its own guidelines; 2) establish administrative mechanisms allowing affected persons to seek and obtain correction of information that does not comply with the OMB 515 Guidelines or the agency guidelines; and 3) report periodically to OMB on the number and nature of complaints received by the agency and how the complaints were handled. The OMB Guidelines can be found at:

<http://www.whitehouse.gov/omb/fedreg/reproducible2.pdf>

The Department of Commerce Guidelines can be found at: <http://www.osec.doc.gov/cio/oipr/iqg.htm>

The NOAA Section 515 Information Quality Guidelines, created with input and reviews from each of the components of NOAA Fisheries, went into effect on October 1, 2002. **The NOAA Information Quality Guidelines are posted on the NOAA home page under “Information Quality.”** <http://www.noaanews.noaa.gov/stories/iq.htm>

The guidelines apply to a wide variety of government information products and all types of media, including printed, electronic, broadcast or other. The guidelines define “Information” as, “any communication or representation of knowledge such as facts or data, in any medium or form, including textual, numerical, graphic, cartographic, narrative, or audiovisual forms.” For example, this definition includes information that an agency disseminates from a web page. The guidelines define “Dissemination” as, “agency initiated or sponsored distribution of information to the public.” Explicitly **not** included within this term is distribution limited to “government employees or agency contractors or grantees; intra- or inter-agency use or sharing of government information; and responses to requests for agency records under the Freedom of Information Act, the Privacy Act, the Federal Advisory Committee Act or other similar law.” It also does not include distribution limited to correspondence with individuals or persons, press releases, archival records, public filings, subpoenas or adjudicative processes. (See the NOAA IQ Guidelines, pgs 5-6).

To assist in Data Quality Act compliance, NOAA Fisheries has established a series of actions that should be completed for each new information product subject to the Data Quality Act. (See “Information Generation and Compliance Documentation” and “Pre-Dissemination Review” below.) **In addition to the information contained in this document, familiarity with the NOAA Section 515 Information Quality Guidelines (<http://www.noaanews.noaa.gov/stories/iq.htm>) is crucial for NOAA Fisheries employees who engage in the generation and dissemination of information.**

Information Generation and Compliance Documentation

- The fundamental step in the process is to create a Sec. 515 Information Quality file for each new information product. To aid in this process, a Section 515 Pre-Dissemination Review and Documentation form has been created. These guidelines are intended to serve as a supplement to the Pre-Dissemination Review and Documentation Form. The basic steps to the documentation process are outlined below.
- Complete general information (e.g., author/responsible office, title/description) section of the form.
- Determine the information category (i.e., original data; synthesized products; interpreted products; hydrometeorological, hazardous chemical spill, and space weather warnings, forecasts, and advisories; experimental products; natural resource plans; corporate and general information). **For most information products, you will only need to check one box.** More complex documents may be an “aggregate” of different categories of information products.
- Generate the information in a way that meets each of the applicable standards for the appropriate information category. See the NOAA Information Quality Guidelines.
- Document how the standards for **utility, integrity and objectivity** are met for each information product, describing what measures were taken to meet each of the applicable standards. Use the 2 page Pre-Dissemination Review & Documentation Form to document compliance with the Utility and Integrity standards contained in NOAA’s Information Quality Guidelines. The Utility and Integrity standards pertain to all categories of information disseminated by NOAA. Use these guidelines (pgs 4-11) to document compliance with the applicable objectivity standards for your information product and attach that documentation to the Pre-Dissemination Review & Documentation Form.
- Maintain the Sec. 515 Information Quality file in a readily accessible place. [Pre-Dissemination Review](#)
- Before information is disseminated, it must be reviewed for compliance with the NOAA Sec. 515 Information Quality Guidelines. This is accomplished by reviewing the information and the Sec. 515 Information Quality file.
- The Pre-Dissemination Review should be conducted during the normal course of clearing the information product for release. The person conducting the Pre-Dissemination Review will sign and date the Pre-Dissemination Review & Documentation Form. The reviewing official must be at least one level above the person generating the information product.
- The Pre-Dissemination Review form and the supporting information quality documentation must accompany the information product through the clearance process and be maintained on file.

Completing the Section 515 Pre-Dissemination Review & Documentation Form

Using the Section 515 Pre-Dissemination Review & Documentation Form and these guidelines, document how the information product meets the

following standards for **Utility, Integrity and Objectivity**. **Please note:** Use the Pre-Dissemination Review & Documentation Form to document how the information product complies with the Utility and Integrity standards that pertain to all categories of information products. The Utility and Integrity standards are presented here for your convenience. Use these guidelines to explain how the information product meets the applicable Objectivity standards for the information product and attach that documentation to the Pre-Dissemination Review & Documentation Form.

I. Utility of Information Product

Utility means that disseminated information is useful to its intended users. "Useful" means that the content of the information is helpful, beneficial, or serviceable to its intended users, or that the information supports the usefulness of other disseminated information by making it more accessible or easier to read, see, understand, obtain or use.

- A. Is the information helpful, beneficial or serviceable to the intended user? Explain.
- B. Who are the intended users of the data or information product? (e.g., the American public; other federal agencies; state and local governments; recreational concerns; national and international organizations). Is this data or information product an improvement over previously available information? Is it more detailed or current? Is it more useful or accessible to the public? Has it been improved based on comments or interactions with users?
- C. What media are used in the dissemination of the information? Printed publications? CD-ROM? Internet?
Is the product made available in a standard data format?
Does it use consistent attribute naming and unit conventions to ensure that the information is accessible to a broad range of users with a variety of operating systems and data needs?

II. Integrity of Information Product

Integrity refers to security - the protection of information from unauthorized access or revision, to ensure that the information is not compromised through corruption or falsification. Prior to dissemination, NOAA information, independent of the specific intended distribution mechanism, is safeguarded from improper access, modification, or destruction, to a degree commensurate with the risk and magnitude of harm that could result from the loss, misuse, or unauthorized access to or modification of such information. **Please note: all electronic information disseminated by NOAA adheres to the standards set forth in paragraph A below. If the information product is disseminated electronically, simply circle paragraph II(A) on the form.** You may also contact your IT Manager for further information.

Explain (circle) how the information product meets the following standards for integrity:

- A. All electronic information disseminated by NOAA adheres to the standards set out in Appendix III, "Security of Automated Information Resources," OMB Circular A-130; the Computer Security Act; and the Government Information Security Reform Act.
- B. If information is confidential, it is safeguarded pursuant to the Privacy Act and Titles 13, 15, and 22 of the U. S. Code (confidentiality of census, business and financial information).
- C. Other/Discussion
(e.g., 50 CFR 600, Subpart E, Confidentiality of Statistics of the Magnuson-Stevens Fishery Conservation and Management Act; NOAA Administrative Order 216-100, Protection of Confidential Fisheries Statistics; 50 CFR 229.11, Confidentiality of information collected under the Marine Mammal Protection Act.)

III. Objectivity of Information Product

(1) Indicate which one of the following categories of information products apply for this product (check one):

- Original Data - go to Section A
- Synthesized Products - go to Section B
- Interpreted Products - go to Section C
- Hydrometeorological, Hazardous Chemical Spill, and Space Weather Warnings, Forecasts, and Advisories - go to Section D
- Experimental Products - go to Section E
- Natural Resource Plans - go to Section F
- Corporate and General Information - go to Section G

(2) Describe how this information product meets the applicable objectivity standards.

General Standard: Information is presented in an accurate, clear, complete, and unbiased manner, and in proper context. The substance of the information is accurate, reliable, and unbiased; in the scientific, financial or statistical context, original and supporting data are generated and the analytical results are developed using sound, commonly accepted scientific and research methods. "Accurate" means that information is within an acceptable degree of imprecision or error appropriate to the particular kind of information at issue and otherwise meets commonly accepted scientific, financial and statistical standards.

If the information is "influential," that is, it is expected to have a genuinely clear and substantial impact on major public policy and private sector decisions, it is noted as such and it is presented with the highest degree of transparency. If influential information constitutes an assessment of risks to human health, safety or the environment, indicate whether the risk assessment was qualitative or quantitative, and describe which SDWA-adapted quality standards at page 9 of NOAA's Section 515 Information Quality Guidelines were applied to the information product.

Use of third party information in the product (information not collected or generated by NOAA) is only done when the information is of known quality and consistent with NOAA's Section 515 Guidelines; any limitations, assumptions, collection methods, or uncertainties concerning the information are taken into account and disclosed.

Specific Standards: Specific objectivity standards for categories of information products disseminated by NOAA are listed below. Document how the general and specific objectivity standards for the particular information product were met.

A. Original Data

Original Data are data in their most basic useful form. These are data from individual times and locations that have not been summarized or processed to higher levels of analysis. While these data are often derived from other direct measurements (e.g., spectral signatures from a chemical analyzer, electronic signals from current meters), they represent properties of the environment. These data can be disseminated in both real time and retrospectively. Examples of original data include buoy data, survey data (e.g., living marine resource and hydrographic surveys), biological and chemical properties, weather observations, and satellite data.

Objectivity of original data is achieved using sound quality control techniques.

Detail how the data collection methods, systems, instruments, training, and/or tools are appropriate to meet the requirements of the intended users.

Were the methods, systems, instruments, etc., validated before use?

Were standard operating procedures (SOPs) followed for time series data collections? If not, document the valid scientific reasons for the deviation.

Document the quality control techniques used, for example:

- Gross error checks for data that fall outside of physically realistic ranges (e.g., a minimum, maximum or maximum change)
- Comparisons made with other independent sources of the same measurement
- Examination of individual time series and statistical summaries
- Application of sensor drift coefficients determined by a comparison of pre- and post-deployment calibrations
- Visual inspection of data

Describe any evolution and/or improvements in survey techniques, instrument performance and/or data processing.

Have metadata record descriptions and explanations of the methods and quality controls to which original data are subjected been included in the disseminated product? If not, they must be made available upon request.

B. Synthesized Products

Synthesized Products are those that have been developed through analysis of original data. This includes analysis through statistical methods; model interpolations, extrapolations, and simulations; and combinations of multiple sets of original data.

While some scientific evaluation and judgment is needed, the methods of analysis are well documented and relatively routine.

Examples of synthesized products include summaries of fisheries landings statistics, weather statistics, model outputs, data display through Geographical Information System techniques, and satellite-derived maps.

The objectivity of synthesized products is achieved by using data of known quality, applying sound analytical techniques, and reviewing the products or processes used to create them before dissemination. For synthesized products, please document the following:

Identify data sources (preferred option) or be prepared to make them available upon request.

Are the data used of known quality or from sources acceptable to the relevant scientific and technical communities?

Are the methods used to create the synthesized product published in standard methods manuals or generally accepted by the relevant scientific and technical communities? Are the methods documented in readily accessible formats by the disseminating office?

Describe the review process used to ensure the validity of the synthesized product or the procedures used to create them, e.g., statistical procedures, models, or other analysis tools.

If the synthesized product is unique or not regularly produced, was this product reviewed by internal and/or external experts?

If this is a routinely produced synthesized product, was the process for developing the product reviewed by internal and/or external experts?

Does the synthesized product include information about the methods used to create the product? If not, the methods must be made available upon request.

C. Interpreted Products

Interpreted Products are those that have been developed through interpretation of original data and synthesized products. In many cases, this information incorporates additional contextual and/or normative data, standards, or information that puts original data and synthesized products into larger spatial, temporal, or issue contexts. This information is subject to scientific interpretation, evaluation, and judgment. Examples of interpreted products include journal articles, scientific papers, technical reports, and production of and contributions to integrated assessments.

Objectivity of interpreted products is achieved by using data of known quality or from sources acceptable to the relevant scientific and technical communities and reliable supporting products, applying sound analytical techniques, presenting the information in the proper context, and reviewing the products before dissemination.

Are all data and information sources identified or properly referenced?

Are the methods used to create the interpreted product generally accepted by the relevant scientific and technical communities?

Is information concerning the quality and limitations of the interpreted product provided to help the user assess the suitability of the product for the user's application?

Describe the review process used to ensure that the product is valid, complete, unbiased, objective and relevant. For example, peer reviews, ranging from internal peer review by staff who were not involved in the development of the product to formal, independent, external peer review. The review should be conducted at a level commensurate with the importance of the interpreted product.

Does the interpreted product include a description of the methods used to create the product? If not, they must be made available upon

request.

D. Hydrometeorological, Hazardous Chemical Spill, and Space Weather

Warnings, Forecasts, and Advisories

Hydrometeorological, Hazardous Chemical Spill, and Space Weather Warnings, Forecasts, and Advisories are time-critical interpretations of original data and synthesized products, prepared under tight time constraints and covering relatively short, discrete time periods. As such, these warnings, forecasts, and advisories represent the best possible information in given circumstances. They are subject to scientific interpretation, evaluation, and judgment. Some products in this category, such as weather forecasts, are routinely prepared. Other products, such as tornado warnings, hazardous chemical spill trajectories, and solar flare alerts, are of an urgent nature and are prepared for unique circumstances.

Objectivity of information in this category is achieved by using reliable data collection methods and sound analytical techniques and systems to ensure the highest possible level of accuracy given the time critical nature of the products.

What is the source of the data or information used in the product? Are the data used of known quality or from sources acceptable to the relevant scientific and technical communities? Are the sources included in the information product? If not, they must be made available upon request. Are the methods used to create the product generally accepted by the relevant scientific and technical communities?

Please note if individual best judgment was used due to the time-critical nature of the product.

What mechanisms were used to evaluate the accuracy of the information product? Statistical analysis may be carried out for a subset of products for verification purposes.

E. Experimental Products

Experimental products are products that are experimental (in the sense that their quality has not yet been fully determined) in nature, or are products that are based in part on experimental capabilities or algorithms. Experimental products fall into two classes.

They are either (1) disseminated for experimental use, evaluation or feedback, or (2) used in cases where, in the view of qualified scientists who are operating in an urgent situation in which the timely flow of vital information is crucial to human health, safety, or the environment, the danger to human health, safety, or the environment will be lessened if every tool available is used. Examples of experimental products include imagery or data from non-NOAA sources, algorithms currently being tested and evaluated, experimental climate forecasts, and satellite imagery processed with developmental algorithms for urgent needs (e.g., wildfire detection).

Objectivity of experimental products is achieved by using the best science and supporting studies available, in accordance with sound and objective scientific practices, evaluated in the relevant scientific and technical communities, and peer-reviewed where feasible.

Describe the science and/or supporting studies used, the evaluation techniques used, and note any peer-review of the experimental product. Were the results of initial tests or evaluations made available where possible? Describe the review, by the appropriate NOAA unit, of the experimental products and capabilities documentation, along with any tests or evaluations.

Are explicit limitations provided concerning the quality of the experimental product? Is the degree of uncertainty indicated?

Describe the testing process used, e.g., the experimental product or capabilities are used only after careful testing, evaluation, and review by NOAA experts, and then are approved for provisional use only by selected field offices or other NOAA components. This process is repeated as needed to ensure an acceptable and reliable level of quality.

F. Natural Resource Plans

Natural Resource Plans are information products that are prescribed by law and have content, structure, and public review processes (where applicable) that will be based upon published standards, e.g., statutory or regulatory guidelines. Examples of such published standards include the National Standard Guidelines (50 CFR Part 600, Subpart D), Essential Fish Habitat Guidelines, and Operational Guidelines - Fishery Management Plan Process, all under the Magnuson-Stevens Fishery Conservation and Management Act; and the National Marine Sanctuary Management Plan Handbook (16 U.S.C. section 1434) under the National Marine Sanctuary Act. These Natural Resource Plans are a composite of several types of information (e.g., scientific, management, stakeholder input, and agency policy) from a variety of internal and external sources. Examples of Natural Resources Plans include fishery, protected resource, and sanctuary management plans and regulations, and natural resource restoration plans.

Objectivity of Natural Resource Plans will be achieved by adhering to published standards, using information of known quality or from sources acceptable to the relevant scientific and technical communities, presenting the information in the proper context, and reviewing the products before dissemination.

What published standard(s) governs the creation of the Natural Resource Plan? Does the Plan adhere to the published standards? (See the NOAA Sec. 515 Information Quality Guidelines, Section II(F) for links to the published standards for the Plans disseminated by NOAA.)

Was the Plan developed using the best information available? Please explain.

Have clear distinctions been drawn between policy choices and the supporting science upon which they are based? Have all supporting materials, information, data and analyses used within the Plan been properly referenced to ensure transparency?

Describe the review process of the Plan by technically qualified individuals to ensure that the Plan is valid, complete, unbiased, objective and relevant. For example, internal review by staff who were not involved in the development of the Plan to formal, independent, external peer review. The level of review should be commensurate with the importance of the Plan and the constraints imposed by legally enforceable deadlines.

G. Corporate and General Information

Corporate or general information includes all non-scientific, non-financial, non-statistical information. Examples include program and organizational descriptions, brochures, pamphlets, education and outreach materials, newsletters, and other general descriptions of NOAA operations and capabilities.

Corporate and general information disseminated by NOAA must be presented in a clear, complete, and unbiased manner, and in a context that enhances usability to the intended audience. To the extent possible, identify the sources of the disseminated information, consistent with confidentiality, privacy and security considerations and protections, and taking into account timely presentation, the medium of dissemination, and the importance of the information, balanced against the resources required and the time available.

Information disseminated by NOAA is reliable and accurate to an acceptable degree of error as determined by factors such as the importance of the information, the intended use, time sensitivity, expected degree of permanence, relation to the primary mission(s) of the disseminating office, and the context of the dissemination, balanced against the resources required and the time available.

For non-scientific, non-statistical information, has the information product been reasonably determined to be factually correct in the view of the disseminating office as of the time of dissemination?

Describe the review process for the information product. Review can be accomplished in a number of ways, including but not limited to combinations of the following:

- Active personal review of information by supervisory and management layers, either by reviewing each individual dissemination, or selected samples, or by any other reasonable method.
- Use of quality check lists, charts, statistics, or other means of tracking quality, completeness, and usefulness.
- Process design and monitoring to ensure that the process itself imposes checks on information quality .
- Review during information preparation.
- Use of management controls.
- Any other method, which serves to enhance the accuracy, reliability and objectivity of the information.

Administrative Management and Executive Secretariat

NAO 216-100

PROTECTION OF CONFIDENTIAL FISHERIES STATISTICS Eff: 7/18/94; Iss: 7/26/94

SECTION 1. PURPOSE.

. 01 This Order:

- a. prescribes policies and procedures for protecting the confidentiality of data submitted to and collected by the National Oceanic and Atmospheric Administration (NOAA)/National Marine Fisheries Service (NMFS) as authorized or required by law;
- b. informs authorized users of their obligations for maintaining the confidentiality of data received by NMFS;
- c. provides for operational safeguards to maintain the security of data; and
- d. states the penalties provided by law for disclosure of confidential data.

SECTION 2. SCOPE.

This Order covers all confidential data received, collected, maintained, or used by NMFS.

SECTION 3. DEFINITIONS.

. 01 **Access to data** means the freedom or ability to use data, conditioned by a statement of nondisclosure and penalties for unauthorized use.

. 02 **Aggregate or summary form** means data structured so that the identity of the submitter cannot be determined either from the present release of the data or in combination with other releases.

. 03 **Agreement** refers to all binding forms of mutual commitment under a stated set of conditions to achieve a specific objective.

. 04 **Assistant Administrator** means the Assistant Administrator for Fisheries, NOAA, or a designee authorized to have access to confidential data.

. 05 **Authorized Use/User.**

a. **Authorized use** is that specific use authorized under the governing statute, regulation, order, contract or agreement.

b. An **authorized user** is any person who, having the need to collect or use confidential data in the performance of an official activity, has read this Order and has signed a statement of nondisclosure affirming the user's understanding of NMFS obligations with respect to confidential data and the penalties for unauthorized use and disclosure.

. 06 **Confidential data** means data that are identifiable with any person, accepted by the Secretary, and prohibited by law from being disclosed to the public. The term "as used" does not convey data sensitivity for national security purposes [See Executive Order (E.O.) 12356 dated April 2, 1982].

. 07 **Data** refers to information used as a basis for reasoning, discussion, or calculation that a person may submit, either voluntarily or as required by statute or regulation.

. 08 **GC** means the Office of General Counsel, NOAA.

. 09 **Person** means any individual (whether or not a citizen or national of the United States), any corporation, partnership, association, or other entity (whether or not organized or existing under the laws of any State), and any Federal, State, local, or foreign government or any entity of such governments, including Regional Fishery Management Councils (Councils).

. 10 **Public** means any person who is not an authorized user.

. 11 **Region** means NMFS Regional field offices, Fisheries Science Centers, and associated laboratories.

. 12 **Source document** means the document, paper, or electronic format on which data are originally recorded.

. 13 **State employee** means any member of a State agency responsible for developing and monitoring the State's program for fisheries or Marine Mammal Protection Act (MMPA) program.

. 14 **Submitter** means any person or the agent of any person who provides data to NMFS either

voluntarily or as required by statute or regulation.

SECTION 4. POLICY.

For data subject to this Order, it is NMFS policy that:

- a. confidential data shall only be disclosed to the public if required by the Freedom of Information Act (FOIA), 5 U.S.C. 552, the Privacy Act, 5 U.S.C. 552a, or by court order. Disclosure of data pursuant to a subpoena issued by an agency of competent jurisdiction is a lawful disclosure. Disclosure pursuant to a subpoena must be approved by GC;
- b. individual identifiers shall be retained with data, unless the permanent deletion is consistent with the needs of NMFS and good scientific practice [See Section 6.02c]; and
- c. a notice is required on all report forms requesting data and must comply with 5 U.S.C. 552a(e)(3) and Paperwork Reduction Act requirements in NAO 216-8, Information Collections and Requirements Needing Office of Management and Budget Clearance. [See E.O. 12600 of June 23, 1987, for additional information regarding the rights of submitters to designate commercial confidential data at the time of submission.]

SECTION 5. OPERATIONAL RESPONSIBILITIES.

. 01 The Regional Director of each region (or, in the case of headquarters, each Office Director) has the responsibility to maintain the confidentiality of all data collected, maintained, and disclosed by the respective region.

. 02 Each region shall submit to the Assistant Administrator specific procedures governing the collection, maintenance, and disclosure of confidential data. These documents shall be compiled as regional handbooks following the guidelines and standards:

- a. handbooks are to be developed in detail to ensure the maintenance of confidential data on a functional basis in each region; and
- b. handbooks shall be coordinated through the National Data Management Committee (a NMFS group established by the Assistant Administrator to develop data management policies and procedures) and reviewed annually. The regional handbooks will address, at minimum, the contents of Sections 6-7.

SECTION 6. PROCEDURES.

. 01 **Data Collection.** To collect data, the Secretary may use Federal employees, contractor employees, or, pursuant to an agreement, State employees.

a. General Requirements.

1. Personnel authorized to collect Federal data must maintain all documents containing confidential data in secure facilities; and
2. may not disclose confidential data, whether recorded or not, to anyone not authorized to receive and handle such data.

b. Specific Requirements.

1. Each Federal or contractor employee collecting or processing confidential data will be required to read, date, and sign a statement of nondisclosure, that affirms the employee's understanding of NMFS obligations with respect to confidential data and the penalties for unauthorized use and disclosure of the data. Upon signature, the employee's name will be placed on record as an "authorized user," and the employee will be issued certification.
2. Data collected by a contractor must be transferred timely to authorized Federal employees; no copies of these data may be retained by the contractor. NMFS may permit contractors to retain aggregated data. A data return clause shall be included in the agreement. All procedures applicable to Federal employees must be followed by contractor employees collecting data with Federal authority.
3. Under agreements with the State, each State data collector collecting confidential data will sign a statement at least as protective as the one signed by Federal employees, which affirms that the signer understands the applicable procedures and regulations and the penalties for unauthorized disclosure.

.02 Maintenance.

a. Maintenance is defined as the procedures required to keep confidential data secure from the time the source documents are received by NMFS to their ultimate disposition, regardless of format. [See National Institute of Standards and Technology "Computer Security Publications, List 91" for guidance.]

b. Specific procedures in regional handbooks must deal with the following minimum security requirements, as well as any others that may be necessary because of the specific data, equipment, or physical facilities:

1. the establishment of an office or person responsible for evaluating requests for access to data;

2. the identifications of all persons certified as authorized users. These lists shall be kept current and reviewed on an annual basis;
 3. the issuance of employee security rules that emphasize the confidential status of certain data and the consequences of unauthorized removal or disclosure;
 4. the description of the security procedures used to prevent unauthorized access to and/or removal of confidential data;
 5. the development of a catalog/inventory system of all confidential data received including: the type of source document; the authority under which each item of data was collected; any statutory or regulatory restriction(s) which may apply; and routing from the time of receipt until final disposition; and
 6. The development of an appropriate coding system for each set of confidential data so that access to data that identifies, or could be used to identify, the person or business of the submitter is controlled by the use of one or more coding system(s). Lists that contain the codes shall be kept secure.
- c. The permanent deletion of individual identifiers from a database shall be addressed on a case-by-case basis. Identifiers may only be deleted after:
1. future uses of data have thoroughly been evaluated, e.g., the need for individual landings records for allocating shares under an individual transferable quota program;
 2. consultation with the agency(s) collecting data (if other than NMFS), the relevant Council(s), and NMFS Senior Scientist; and
 3. concurrence by the Assistant Administrator has been received prior to deletion.

.03 Access to Data Subject to This Order.

- a. **General Requirements.** In determining whether to grant a request for access to confidential data, the following information shall be taken into consideration:

1. the specific types of data required;
2. the relevance of the data to the intended uses;
3. whether access will be continuous, infrequent, or one-time;
4. an evaluation of the requester's statement of why aggregate or nonconfidential summaries of data would not satisfy the requested needs; and
5. the legal framework for the disclosure, in accordance with GC and this Order.

- b. **Within NMFS.** NMFS employees requesting confidential data must have certification as being authorized users for the particular type of data requested.

- b. **Councils.** Upon written request by the Council Executive Director:

1. "authorized user" status for confidential data collected under the Magnuson Fishery Conservation and Management Act (Magnuson Act) may be granted to a Council for use by the Council for conservation and management purposes consistent with the approval of the Assistant Administrator as described in 50 CFR 603.5;
2. "authorized user" status for confidential data, collected under the Magnuson Act and MMPA, will be granted to Council employees who are responsible for Fishery Management Plan development and monitoring; and
3. Councils that request access to confidential data must submit, on an annual basis, a copy of their procedures for ensuring the confidentiality of data to the region, or in the case of intercouncil fisheries, regions. The procedures will be evaluated for their effectiveness and, if necessary, changes may be recommended. As part of this procedure, an updated statement of nondisclosure will be included for each employee and member who requires access to confidential data.

d. **States.**

1. Requests from States for confidential data shall be directed in writing to the NMFS office that maintains the source data.
2. Each request will be processed in accordance with any agreement NMFS may have with the State:
 - (a) confidential data collected **solely** under Federal authority will be provided to a State by NMFS only if the Assistant Administrator finds that the State has authority to protect the confidentiality of the data comparable to, or more stringent than, NMFS' requirements; and
 - (b) the State will exercise its authority to limit subsequent access and use of the data to those uses allowed by authorities under which the data was collected.

3. If the State has no agreement with NMFS for the collection and exchange of confidential data, the request shall be treated as a public request and disclosure may be denied subject to FOIA or the Privacy Act.

4. Where a State has entered into a cooperative exchange agreement with another State(s), NMFS will facilitate transfer or exchange of State collected data in its possession if:

- (a) NMFS has written authorization for data transfer from the head of the collecting State agency; and
- (b) the collecting State has provided NMFS a list of authorized users in the recipient State(s); and
- (c) the collecting State agrees to hold the United States Government harmless for any suit that may arise from the misuse of the data.

e. Contractors.

1. Pursuant to an agreement with NMFS, a NMFS contractor (including universities, Sea Grant investigators, etc.) may be granted "authorized user" status consistent with this Order if the use furthers the mission of NMFS.

2. The region will notify the contractor of its decision on access in writing within 30 calendar days after receipt of the request.

3. Contingent upon approval, the contractor will be provided with details regarding conditions of data access, any costs involved, formats, timing, and security procedures. If the request is denied, the reason(s) for denial will be given by the NMFS office involved. The denial will not preclude NMFS consideration of future requests from the contractor.

4. If access is granted, language in the agreement specifically dealing with confidentiality of data will be required. The language shall include all of the relevant portions of this Order and shall prohibit the further disclosure of the data. No data may be retained beyond the termination date of the agreement; and any disclosure of data derived from the accessed confidential data must be approved by NMFS.

5. Each agreement shall be reviewed by GC prior to its execution, and shall, to the extent possible, be consistent with the model agreement contained in Appendix D (Not included --WebEd).

f. Submitters. The Privacy Act allows for data to be released back to the submitter upon receipt and verification of a written request stating the data required.

04. Requests for Confidential Data. NMFS is authorized to collect data under various statutes [See Appendix A (Not include --WebEd)]. Two types of statutes govern the disclosure of confidential data collected by the Federal Government, those that contain specific and non-discretionary language within the Act, and those that provide overall guidance to the Federal Government. Sections of these Acts that deal with exceptions to disclosure may be found in Appendix B (Not included -- WebEd).

a. Magnuson Act and MMPA.

1. Data collected under 16 U.S.C. 1853 (a) or (b), and 16 U.S.C. 1383a (c),(d),(e),(f),or (h) will be handled in the following manner:

(a) data will only be disclosed to Federal employees and Council employees who are responsible for management plan development and monitoring; State employees pursuant to an agreement with the Secretary that prevents public disclosure of the identity or business of any person; a Council for conservation and management purposes [not applicable for MMPA data] or when required by court order. [See 50 CFR 229.10 and part 603];

(b) Council advisory groups are not permitted access to such confidential data [See 50 CFR 601.27(b)];

(c) requests from States that do not have an agreement with the Secretary will be processed in accordance with the Privacy Act or FOIA; and

(d) data collected by an observer under 16 U.S.C. 1853 (a) or (b) are not considered to have been "submitted to the Secretary by any person," and therefore are not confidential under Section 6.04.a of this Order. Data collected by an observer may be withheld from disclosure under the Privacy Act, or subsections (b)(3),(4),(5),(6), or (7) of FOIA.

2. Confidential data submitted to the Secretary under other Sections of the Magnuson Act or MMPA may only be disclosed in accordance with the Privacy Act or FOIA. Types of data and the collection authority may include among others:

(a) Processed Product Data -- 16 U.S.C. 1854(e);

(b) Fish Meal and Oil, Monthly -- 16 U.S.C. 1854(e);

(c) Data Collected Under State Authority and Provided to NMFS -- 16 U.S.C. 1854(e); and

(d) Tuna-Dolphin Observer Program -- 16 U.S.C. 1361 et seq.

b. **South Pacific Tuna Act.** Data collected under South Pacific Tuna Act 16 U.S.C. 973j is protected from disclosure to the public in accordance with section 973j(b).

c. **Other Statutes.** Confidential data collected under other NMFS programs as authorized by statutes other than South Pacific Tuna Act (16 U.S.C 973j), MMPA (16 U.S.C. 1361 et seq.), and Magnuson Act (16 U.S.C. 1801 et seq.), may only be disclosed to the public in accordance with the Privacy Act and FOIA. Types of data and the collection authority may include among others:

- (1) Monthly Cold Storage Fish Report -- 16 U.S.C. 742(a);
- (2) Market News Data -- 16 U.S.C. 742(a); and
- (3) Seafood Inspection Data -- 7 U.S.C. 1621 et seq.

d. Special Procedures.

1. **Cold Storage Summary Reports.** NMFS publishes monthly cold storage holdings of fishery products. Advance knowledge of the content of these reports could give those who trade in the products an opportunity to gain competitive advantage. Therefore, in addition to the confidential protection provided to individual reports, the monthly summary report will not be disclosed to the public until 3:00 p.m. Eastern Time of the official release date. Release dates for these data are published 1 year in advance in November, and can be obtained from the NMFS Fisheries Statistics Division.

2. **Surplus commodity purchases by USDA.** NMFS and the Department of Agriculture (USDA) have an interagency agreement relating to the purchase of surplus fishery products. NMFS is responsible for providing confidential data and recommendations to the USDA regarding these purchases. Advance knowledge of these data could cause a competitive advantage or disadvantage to the general public, fishing industry, and the program. Therefore, all NMFS personnel engaged in the surplus commodity purchase program will be required to sign a specific "USDA Responsibility Statement." A copy will be maintained in the Office of Trade Services.

3. **Agreements for Disclosure of Confidential Data.** A letter of agreement may authorize the disclosure of confidential data when both the Government and the submitter agree to disclosure of the data. The need to provide security for the data will vary depending on the type of data collected and the form of the disclosure. Disclosure can be undertaken if all the following conditions are met:

- (a) the person has agreed in writing to the disclosure and is aware that disclosure is irrevocable;
- (b) the recipient has been informed in writing of the sensitivity of the data; and
- (c) the wording of the agreement has been approved by GC.

.05 Disposal. NAO 205-1, NOAA Records Management Program, shall govern the disposition of records covered under this Order.

SECTION 7. PENALTIES.

.01 **Civil and Criminal.** Persons who make unauthorized disclosure of confidential data may be subject to civil penalties or criminal prosecution under:

- a. Trade Secrets Act (18 U.S.C. 1905);
- b. Privacy Act (5 U.S.C. 552a(i)(1));
- c. Magnuson Act (16 U.S.C. 1858); and
- d. MMPA (16 U.S.C. 1375).

.02 **Conflict of Interest.** Employees are prohibited by Department of Commerce employee conduct regulations [15 CFR part 0] and by ethics regulations applicable to the Executive Branch [5 CFR 2635.703] from using nonpublic information subject to this Order for personal gain, whether or not there is a disclosure to a third party.

.03 **Disciplinary Action.** Persons may be subject to disciplinary action, including removal, for failure to comply with this Order. Prohibited activities include, but are not limited to, unlawful disclosure or use of the data, and failure to comply with implementing regulations or statutory prohibitions relating to the collection, maintenance, use and disclosure of data covered by this Order.

SECTION 8. EFFECT ON OTHER ISSUANCES. None.

update their own individual information on the internet at <http://www.beaconregistration.noaa.gov>. User ID and user password are set-up with initial Web registration or with a first visit to the Web site.

CONTESTING RECORD PROCEDURES:

Individual beacon owners have access to their database file and have the ability to update or correct information. Other issues are addressed by the system manager who can be contacted at the above address.

RECORD SOURCE CATEGORIES:

The individual on whom the record is maintained provides information to NOAA by either the website or mail. Existing registrations can be updated according to the above processes, by a phone call from the beacon owner, or by rescue coordination center controllers when updated information is collected while processing a case.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

Dated: April 11, 2003.

Brenda Dolan,

Department of Commerce, Freedom of Information/Privacy Act Officer.

[FR Doc. E8-8241 Filed 4-16-08; 8:45 am]

BILLING CODE 3510-HR-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration (NOAA)

[Docket No. 080404520-8522-01]

Privacy Act of 1974; System of Records

AGENCY: Department of Commerce.

ACTION: Notice of a new Privacy Act System of Records: COMMERCE/NOAA-19, Permits and Registrations for United States Federally Regulated Fisheries.

SUMMARY: This notice announces the Department of Commerce's (Department's) proposal for a new system of records under the Privacy Act. NOAA's National Marine Fisheries Service (NMFS) is creating a new system of records for permits and non-permit registrations for use with a variety of fisheries management programs. Information will be collected from individuals under the authority of the Magnuson-Stevens Fishery Conservation and Management Act, the High Seas Fishing Compliance Act, the American Fisheries Act, the Tuna Conventions Act of 1950, the Atlantic Coastal Fisheries Cooperative

Management Act, the Atlantic Tunas Convention Authorization Act, the Northern Pacific Halibut Act, the Antarctic Marine Living Resources Convention Act, International Fisheries Regulations regarding U.S. Vessels Fishing in Colombian Treaty Waters, and the Marine Mammal Protection Act. This new record system is necessary to identify participants in the fisheries and to evaluate the qualifications of the applicants.

DATES: To be considered, written comments must be submitted on or before May 19, 2008. Unless comments are received, the new system of records will become effective as proposed on the date of publication of a subsequent notice in the **Federal Register**.

ADDRESSES: Comments may be mailed to: Ted Hawes, Team Leader, Northeast Permits Team, NOAA's National Marine Fisheries Service, Northeast Regional Office, One Blackburn Drive, Gloucester, MA 01930.

FOR FURTHER INFORMATION CONTACT: Ted Hawes, Team Leader, Northeast Permits Team, NOAA's National Marine Fisheries Service, Northeast Regional Office, One Blackburn Drive, Gloucester, MA 01930.

SUPPLEMENTARY INFORMATION: NMFS is creating a new system of records for permit and non-permit registrations for use with a variety of fisheries management programs. NMFS requires the use of permits or registrations by participants in U.S. federally regulated fisheries. Information collections would be requested from individuals under the authority of the Magnuson-Stevens Fishery Conservation and Management Act, the High Seas Fishing Compliance Act, the American Fisheries Act, the Atlantic Coastal Fisheries Cooperative Management Act, the Tuna Conventions Act of 1950, the Atlantic Tunas Convention Authorization Act, the Northern Pacific Halibut Act, the Antarctic Marine Living Resources Convention Act, and the Marine Mammal Protection Act. The collection of information is necessary to identify participants in these fisheries and to evaluate the qualifications of the applicants. NMFS would collect information from individuals in order to issue, renew, or transfer fishing permits or to make non-permit registrations. The authority for the mandatory collection of the Tax Identification Number (Employer Identification Number or Social Security Number) is the Debt Collection Improvement Act, 31 U.S.C. 7701.

COMMERCE/NOAA-19

SYSTEM NAME:

Permits and Registrations for United States Federally Regulated Fisheries.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATIONS:

NMFS Northeast Region, One Blackburn Drive, Gloucester, MA 01930 (includes Atlantic Highly Migratory Species (HMS) Tuna Dealer permits).

NMFS Southeast Region, 263 13th Avenue South, St. Petersburg, FL 33701 (includes Atlantic HMS International Trade Permit, shark and swordfish vessel permits, shark and swordfish dealer permits).

NMFS Northwest Region, Sustainable Fisheries Division, 7600 Sand Point Way NE., Bldg. #1, Seattle, WA 98115.

NMFS Southwest Region, 501 West Ocean Boulevard, Suite 4200, Long Beach, CA 90802.

NMFS Southwest Fisheries Science Center, 8604 La Jolla Shores Drive, La Jolla, CA 92037 (Pacific Highly Migratory Species database only).

NMFS Pacific Islands Region, 1601 Kapiolani Boulevard, Suite 1110, Honolulu, HI 96814.

NMFS Alaska Region, 709 West Ninth Street, Juneau, AK 99802-1668.

NMFS Office of Science and Technology, 1315 East West Highway, 12th Floor, Silver Spring, MD 20910 (National Saltwater Angler Registry, High Seas Fishing Compliance Act, and Antarctic Marine Living Resources harvesting permit data).

NMFS Office of Sustainable Fisheries, P.O. Drawer 1207, Pascagoula, MS 39567 (Antarctic Marine Living Resources import permit data).

NMFS Office of Sustainable Fisheries, 1315 East West Highway, Room 13130, Silver Spring, MD 20910 (Atlantic HMS Tuna vessel permits, HMS Angling Permit, HMS Charter/headboat permits database).

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Owners or holders of a permit or registration as recognized by NMFS, owner agents, vessel owners and/or operators. Individuals who apply for any permit, permit exception, permit exemption or regulation exemption, registration, dedicated access privilege or fishing quota share either initially, annually, or by transfer. Applicants seeking permission to fish in a manner that would otherwise be prohibited in order to conduct experimental fishing. Owners of processing facilities and/or fish dealers. Permit qualifiers (persons whose incomes are used for permit

qualification). Allocation assignees under a Southeast Region individual fishing quota.

CATEGORIES OF RECORDS IN THE SYSTEM:

THIS INFORMATION IS COLLECTED AND/OR MAINTAINED BY ALL REGIONS AND DIVISIONS:

Current permit number, permit status information, type of application, name of applicant and of other individuals on application (vessel owner(s), owner's agent, operator, dealer, corporation members), and position in company (if applicable), corporation name, date of incorporation and articles of incorporation (if applicable), date of birth, address, telephone numbers (business, cell and/or fax), U.S. Coast Guard Certificate of Documentation number or state vessel registration number and date of expiration, Vessel Monitoring System (VMS) activation certification, vessel name, vessel function, vessel characteristics (length, breadth, external markings, hull or superstructure color), gross and net tonnage, type of construction, fuel capacity and type, horsepower (engine, pump), type of product storage. The Tax Identification Number (TIN) (Employer Identification Number (EIN) or Social Security Number (SSN)) is required for all permits, under the authority of the Debt Collection Improvement Act (DCIA), 31 U.S.C. 7701. The primary purpose for requesting the TIN is for the collection and reporting on any delinquent amounts arising out of such person's relationship with the government pursuant to the DCIA.

It is required in subsection (c)(1) that each person doing business with NMFS is to furnish their taxpayer identifying number. For purposes of administering the various NMFS fisheries permit and registration programs, a person shall be considered to be doing business with a federal agency including but not limited to if the person is an applicant for, or recipient of, a federal license, permit, right-of-way, grant, or benefit payment administered by the agency or insurance administered by the agency pursuant to subsection (c)(2)(B) of the DCIA.

ADDITIONAL INFORMATION IS COLLECTED AND/OR MAINTAINED BY INDIVIDUAL REGIONS AND DIVISIONS:

Northeast Region

For transferable permits: Hair and eye color, height and weight, ID-sized photograph, medical records for resolution of permit dispute, enforcement actions, court and legal documents, and permit sanction notices filed by General Counsel, credit card and/or checking account numbers, cancelled checks, tax returns, internal

permit number specific to each limited entry permit, baseline specifications on limited entry permit, country, captain's license, State and Federal Dealer Numbers (if applicable), coast on which dealer does business, processing sector, facilities where fish received, vessel landing receipts and records, dealer purchase receipts, bills of sale, type of vessel registration, NMFS unique vessel ID, year vessel built, hailing port, hailing port state, principal port, principal state, vessel operations type (catching and/or processing: For at-sea processing permit), fish hold capacity, passenger capacity, VMS status, crew size, fishery type, fishery management plan and category, maximum days at sea, quota allocation and shares, regional fishery management organization, species or species code, type of gear, gear code and rank, buoy and trap/pot color, number of tags assigned to vessel, number of traps, dredge size and number.

Southeast Region

Fee payment information, business e-mail address, Web site, gender, hair and eye color, height and weight, ID-sized photograph, Dunn and Bradstreet Corporation Number, NMFS internal identification number, county, country, marriage certificate, divorce decree, death certificate, trust documents, probated will, enforcement actions, court and legal documents, and permit sanction notices filed by General Counsel, name of vessel permit applicant if not owner, and relationship to owner, type of vessel ownership, captain's license, original permit, permit payment information, name of permit transferor and number of permit before transfer, permit and vessel sale price (for permit transfers), date of permit transfer signature, notarized sale and lease agreement with lease start and end dates if applicable, income or license qualifier for certain fisheries, Income Qualification Affidavit for income qualified fisheries, U.S. importer number, State and Federal Dealer Numbers (if applicable), plant name and operator, hull identification number, hailing port and hailing port state, year vessel built, location where vessel built, fish hold capacity, live well capacity, radio call sign, vessel communication types and numbers, crew size, passenger capacity, fishery type, quota shares, vessel landing receipts and records, bills of sale, processing facility where fish are received, gear type, species/gear endorsements, buoy/trap color code, number of traps, trap tag number series, trap dimensions, trap mesh size, designated fishing zone, aquaculture reports, site description, material

deposited and harvested, value of material, Highly Migratory Species workshop certificate, informational telephone calls recorded with member of public's knowledge, for customer service evaluation and constituent statement records.

Atlantic Highly Migratory Species

Business e-mail, Web site, Dunn and Bradstreet Corporation Number, percent/rank of ownership interest, lease start/end date, income or license qualifier for certain fisheries, U.S. Importer Number (dealers), State and Federal Dealer Numbers (if applicable), processing facility where fish are received, type of vessel registration, hull identification number, passenger capacity, crew size, hailing port, hailing port state, principal port, principal port state, fish hold capacity, year vessel built, fishery type, species or species code, type of fishing gear, gear code.

Northwest Region

Fee payment information, business e-mail address, NMFS internal identification number, ownership rank if applicable, permit payment information, credit card and/or checking account numbers, canceled checks, tax returns, divorce decree, marriage certificate, city and state where married, death certificate, probated will, trust documents, medical records for emergency transfer of certain permits only, enforcement actions, court and legal documents, and permit sanction notices filed by General Counsel, name of permit transferor and number of permit before transfer, period of permit lease, permit price, location where vessel built, fishery type, quota shares, species and gear endorsements, gear code, amount of landed fish or processed fish product, operation as mother ship with start and end date.

Southwest Region

Business e-mail address, applicant's name and relationship to owner or owner manager if not owner or operator, country, Dunn and Bradstreet Corporation Number, other federal, state and commercial licenses held by operator, name of permit transferor and number of permit before transfer, type of vessel (commercial fishing, charter), vessel photograph, hull identification number, hailing port, hailing port state, principal port, principal port state, year vessel built, where vessel built, maximum vessel speed, fish hold capacity, processing equipment, passenger capacity, crew size, international radio call sign, Vessel Monitoring System (VMS) status, dolphin safety gear on board, previous

vessel flag, previous vessel name and effective dates, species/gear endorsements, fishery type, type of fishing gear, gear code, fishing status (active or inactive), intent to make intentional purse seine sets on marine mammals, date, location, and provider of most recent tuna purse seine marine mammal skipper workshop.

Pacific Islands Region

Photograph identification, citizenship, credit card and/or checking account numbers, cancelled checks, owner of checking account from which permit fees paid, enforcement actions, court and legal documents, and permit sanction notices filed by General Counsel, name of permit transferor and number of permit before transfer, International Maritime Organization number, NMFS vessel identification number, international radio call sign, year vessel built, location where vessel built, fishery type, percent of ownership interest, ownership and catch history as basis for exemption eligibility, days at sea allocations, quota shares, vessel landing receipts and records, dealer purchase receipts, bills of sale.

Alaska Region

Business e-mail address, country, NMFS internal identification number, citizenship, reference names, owner beneficiary, death certificate, marriage certificate, divorce decree, trust documents, probated will, medical information for emergency transfer of certain permits only, enforcement actions, court and legal documents, and permit sanction notices filed by General Counsel, credit card and/or bank account numbers, canceled checks, tax returns, name of Alaska Native tribe, community of residence, fishery community organization, community governing body contact person, nonprofit name, community represented by nonprofit, cooperative representative, percent of ownership interest, permit restrictions, quota type, names of other quota holders if affiliated with any cooperative member receiving quota against cap, names and relationship of permit transferor and transferee, transfer eligibility certificate, sector and region before transfer, relationship of transferor and transferee, reason for transfer, broker's name and fee, lien information (if applicable), quota transfer costs, permit financing source, permit fee, sale/lease agreement, period of lease, agreement to return shares (if applicable), for crab rationalization: affidavit that right of first refusal contracts were signed, number of units and pounds of fish transferred, applicable dealer license numbers,

processing plant name and identification, operation type and operator, type of vessel registration, State of Alaska registration number, NMFS vessel identification number, hull identification number, hailing port and hailing port state, numbers of existing permits if applicable to current application, documentation of loss or destruction of a vessel, list of vessels in a vessel cooperative, vessel operations type in terms of catching and/or processing, species/gear endorsements for fisheries requiring vessel monitoring systems, fishery type, species or species code, fishery management plan, days at sea allocations, quota shares, type of fishing gear, gear code, vessel landing receipts and records, bills of sale, delivery receipts, dealer purchase receipts, processing sector and facility where fish are received, statement from processor that there is a market for rockfish received from applicant for entry level harvester permit.

High Seas Fishing Compliance Act

Citizenship, internal identification number, percent/rank of ownership interest, hull identification number, vessel photograph, type of vessel registration, year vessel built, where vessel built, fish hold capacity, hailing port, hailing port state, crew size, international radio call sign, previous vessel flag, previous vessel name, fishery type, fishery management plan, regional fishery management organization, type of fishing gear, gear code.

Antarctic Marine Living Resources

Nationality, type of vessel (commercial fishing, charter), where vessel built, year vessel built, fish hold capacity, International Maritime Organization number (if issued), vessel communication types and serial numbers, details of tamper-proof VMS elements, ice classification, processing equipment, international radio call sign, foreign vessel flag, previous vessel flag, previous vessel name, permit number of supporting foreign vessel, crew size, species code, type of fishing gear, information on the known and anticipated impacts of bottom trawling gear on vulnerable marine ecosystems, and the products to be derived from an anticipated catch of krill.

National Saltwater Angler Registry Program

Name, TIN, address, telephone number, designation as owner or operator of for-hire vessel, vessel name and registration/documentation number and a statement of the region(s) in which the registrant fishes.

AUTHORITIES FOR MAINTENANCE OF THE SYSTEM:

Magnuson-Stevens Fishery Conservation and Management Act, 16 U.S.C. 1801 et seq. (Magnuson-Stevens Act); High Seas Fishing Compliance Act of 1995, 16 U.S.C. 5501 et seq; International Fisheries Regulations: Vessels of the United States Fishing in Colombian Treaty Waters: 50 CFR 300.120; the American Fisheries Act, Title II, Public Law No. 105-277; the Atlantic Coastal Fisheries Cooperative Management Act of 1993, 16 U.S.C. 5101-5108, as amended 1996; the Tuna Conventions Act of 1950, 16 U.S.C. 951-961; the Atlantic Tunas Convention Authorization Act, 16 U.S.C., Chapter 16A; the Northern Pacific Halibut Act of 1982, 16 U.S.C. 773 et seq. (Halibut Act), the Antarctic Marine Living Resources Convention Act of 1984, 16 U.S.C. 2431-2444; the Marine Mammal Protection Act, 16 U.S.C. 1361; and the Debt Collection Improvement Act, 31 U.S.C. 7701.

PURPOSE(S):

This information will allow NMFS to identify owners and holders of permits and non-permit registrations, identify vessel owners and operators, evaluate requests by applicants and current participants, or agency actions, related to the issuance, renewal, transfer, revocation, suspension or modification of a permit or registration.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

These records may be disclosed as follows.

1. In the event that a system of records maintained by the Department to carry out its functions indicates a violation or potential violation of law or contract, whether civil, criminal or regulatory in nature and whether arising by general statute or particular program statute or contract, rule, regulation, or order issued pursuant thereto, or the necessity to protect an interest of the Department, the relevant records in the system of records may be referred to the appropriate agency, whether federal, state, local, or foreign, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute or contract, rule, regulation, or order issued pursuant thereto, or protecting the interest of the Department.

2. A record from this system of records may be disclosed in the course of presenting evidence to a court, magistrate, or administrative tribunal, including disclosures to opposing

counsel in the course of settlement negotiations.

3. A record in this system of records may be disclosed to a Member of Congress submitting a request involving an individual when the individual has requested assistance from the Member with respect to the subject matter of the record.

4. A record in this system of records may be disclosed to the Department of Justice in connection with determining whether the Freedom of Information Act (5 U.S.C. 552) requires disclosure thereof.

5. A record in this system will be disclosed to the Department of Treasury for the purpose of reporting and recouping delinquent debts owed the United States pursuant to the Debt Collection Improvement Act of 1996.

6. A record in this system may be disclosed to the Department of Homeland Security for the purpose of determining the admissibility of certain seafood imports into the United States.

7. A record in this system of records may be disclosed to a contractor of the Department having need for the information in the performance of the contract but not operating a system of records within the meaning of 5 U.S.C. 552a(m).

8. A record in this system of records may be disclosed to approved persons at the state or interstate level within the applicable Marine Fisheries Commission for the purpose of co-managing a fishery or for making determinations about eligibility for permits when state data are all or part of the basis for the permits.

9. A record in this system of records may be disclosed to the applicable Fishery Management Council (Council) staff and contractors tasked with the development of analyses to support Council decisions about Fishery Management Programs.

10. A record in this system of records may be disclosed to the applicable NMFS Observer Program for purpose of identifying current permit owners and vessels and making a random assignment of observers to vessels in a given fishing season.

11. A record in this system of records may be disclosed to the applicable Regional or International Fisheries Management Body for the purpose of identifying current permit owners and vessels pursuant to applicable statutes or regulations and/or conservation and management measures adopted by a Regional or International Fisheries Management Body, such as: the Food and Agriculture Organization of the United Nations, Commission for the Conservation of Antarctic Marine Living

Resources, Inter-American Tropical Tuna Commission, International Pacific Halibut Commission, and International Commission for the Conservation of Atlantic Tunas.

12. A record in this system of records may be disclosed to appropriate agencies, entities, and persons when: (1) It is suspected or confirmed that the security or confidentiality of information in the system of records has been compromised; (2) the Department has determined that, as a result of the suspected or confirmed compromise, there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by the Department or another agency or entity) that rely upon the compromised information; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the Department's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Disclosure to consumer reporting agencies pursuant to 5 U.S.C. 552a(b)(12) may be made from this system to "consumer reporting agencies" as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f)) and the Federal Claims Collection Act of 1966 (31 U.S.C. 3701(a)(3)).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Computerized database; CDs; paper records stored in file folders in locked metal cabinets and/or locked rooms.

RETRIEVABILITY:

Records are organized and retrieved by NMFS internal identification number, name of entity, permit number, vessel name or identification number, or plant name. Records can be accessed by any file element or any combination thereof.

SAFEGUARDS:

The system of records is stored in a building with doors that are locked during and after business hours. Visitors to the facility must register with security guards and must be accompanied by federal personnel at all times. Records are stored in a locked room and/or a locked file cabinet. Electronic records containing Privacy Act information are protected by a user identification/password. The user identification/

password is issued to individuals as authorized by authorized personnel.

All electronic information disseminated by NOAA adheres to the standards set out in Appendix III, Security of Automated Information Resources, OMB Circular A-130; the Computer Security Act (15 U.S.C. 278g-3 and 278g-4); and the Government Information Security Reform Act, Public Law 106-398; and follows NIST SP 800-18, Guide for Developing Security Plans for Federal Information Systems; NIST SP 800-26, Security Self-Assessment Guide for Information Technology Systems; and NIST SP 800-53, Recommended Security Controls for Federal Information Systems.

RETENTION AND DISPOSAL:

All records are retained and disposed of in accordance with National Archive and Records Administration regulations (36 CFR Chapter XII, Subchapter B—Records Management); Departmental directives and comprehensive records schedules; NOAA Administrative Order 205-01; and the NMFS Records Disposition Schedule, Chapter 1500.

SYSTEM MANAGER(S) AND ADDRESSES:

Division Chief, Fisheries Statistics Office, NMFS Northeast Region, NMFS Northeast Region, One Blackburn Drive, Gloucester, MA 01930.

Assistant Regional Administrator for Operations, Management, and Information Services, NMFS Southeast Region, 263 13th Avenue South, St. Petersburg, FL 33701.

Permit Team Leader, NMFS Northwest Region, Sustainable Fisheries Division, 7600 Sand Point Way NE., Bldg. #1, Seattle, WA 98115.

Assistant Regional Administrator and Tuna Dolphin Policy Analyst, NMFS Southwest Region, 501 West Ocean Boulevard, Suite 4200, Long Beach, CA 90802.

Information/Permit Specialist, Sustainable Fisheries Division, NMFS Pacific Islands Region, 1601 Kapiolani Boulevard, Suite 1110, Honolulu, HI 96814.

Regional Administrator, NMFS Alaska Region, 709 West Ninth Street, Juneau, AK 99801.

High Seas Fishing Compliance Act: Fishery Management Specialist, Office of International Affairs (F/IA), NMFS, 1315 East-West Highway, Room 12604, Silver Spring, MD 20910.

AMLR harvesting permits: Foreign Affairs Specialist for International Science, NMFS Office of Science and Technology, 1315 East-West Highway, Room 12350, Silver Spring, MD 20910.

AMLR dealer permits: Import Control Officer, NMFS Office of Sustainable

Fisheries, P.O. Drawer 1207, Pascagoula, MS 39567.

National Saltwater Angler Registry: Fish Biologist, Office of Science and Technology, Fisheries Statistics Division NMFS, 1315 East-West Highway, Room 12423, Silver Spring, MD 20910.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the national or regional Privacy Act Officer:

Privacy Act Officer, NOAA, 1315 East-West Highway, Room 10641, Silver Spring, MD 20910.

Privacy Act Officer, NMFS, 1315 East-West Highway, Room 13706, Silver Spring, MD 20910.

Privacy Act Officer, NMFS Northeast Region, One Blackburn Drive, Gloucester, MA 01930.

Privacy Act Officer, NMFS Southeast Region, 263 13th Avenue South, St. Petersburg, FL 33701.

Privacy Act Officer, NMFS Northwest Region, 7600 Sand Point Way NE., Bldg. #1, Seattle, WA 98115.

Privacy Act Officer, NMFS Southwest Region, 501 West Ocean Boulevard, Suite 4200, Long Beach, CA 90802.

Privacy Act Officer, NMFS Pacific Islands Region, 1601 Kapiolani Boulevard, Suite 1110, Honolulu, HI 96814.

Privacy Act Officer, NMFS Alaska Region, P.O. Box 21668, Juneau, AK 99802, or delivered to the Federal Building, 709 West 9th Street, Juneau, AK 99801.

Written requests must be signed by the requesting individual. Requestor must make the request in writing and provide his/her name, address, and date of the request and record sought. All such requests must comply with the inquiry provisions of the Department's Privacy Act rules which appear at 15 CFR part 4, Appendix A.

RECORD ACCESS PROCEDURES:

Requests for access to records maintained in this system of records should be addressed to the same address given in the Notification section above. **Note:** Complete records for jointly owned permits are made accessible to each owner upon his/her request.

CONTESTING RECORD PROCEDURES:

The Department's rules for access, for contesting contents, and appealing initial determinations by the individual concerned are provided for in 15 CFR part 4, Appendix A.

RECORD SOURCE CATEGORIES:

Information in this system will be collected from individuals applying for a permit or registration or from an entity supplying related documentation regarding an application, permit, or registration.

EXEMPTION CLAIMS FOR SYSTEM:

None.

Dated: April 11, 2008.

Brenda Dolan,

Department of Commerce, Freedom of Information/Privacy Act Officer.

[FR Doc. E8-8257 Filed 4-16-08; 8:45 am]

BILLING CODE 3510-22-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648-XH25

Taking and Importing Marine Mammals; Navy Training and Research, Development, Testing, and Evaluation Activities Conducted Within the Southern California Range Complex

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

ACTION: Notice; receipt of application for letter of authorization; request for comments and information.

SUMMARY: NMFS has received a request from the U.S. Navy (Navy) for authorization to take marine mammals incidental to military readiness training events and research, development, testing and evaluation (RDT&E) to be conducted in the Southern California Range Complex (SOCAL) for the period beginning January 2009 and ending January 2014. Pursuant to the implementing regulations of the Marine Mammal Protection Act (MMPA), NMFS is announcing our receipt of the Navy's request for the development and implementation of regulations governing the incidental taking of marine mammals and inviting information, suggestions, and comments on the Navy's application and request.

DATES: Comments and information must be received no later than May 19, 2008.

ADDRESSES: Comments on the application should be addressed to Michael Payne, Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910-3225. The mailbox address for

providing email comments is PR1.050107L@noaa.gov. NMFS is not responsible for e-mail comments sent to addresses other than the one provided here. Comments sent via e-mail, including all attachments, must not exceed a 10-megabyte file size.

FOR FURTHER INFORMATION CONTACT: Jolie Harrison, Office of Protected Resources, NMFS, (301) 713-2289, ext. 166.

SUPPLEMENTARY INFORMATION:

Availability

A copy of the Navy's application may be obtained by writing to the address specified above (See **ADDRESSES**), telephoning the contact listed above (see **FOR FURTHER INFORMATION CONTACT**), or visiting the internet at: <http://www.nmfs.noaa.gov/pr/permits/incidental.htm>. The Navy's Draft Environmental Impact Statement (DEIS) for SOCAL was made available to the public on April 4, 2008, and may be viewed at <http://www.socalrangecomplexeis.com/>. Because NMFS is participating as a cooperating agency in the development of the Navy's DEIS for SOCAL, NMFS staff will be present at the associated public meetings and prepared to discuss NMFS' participation in the development of the EIS as well as the MMPA process for the issuance of incidental take authorizations. The dates and times of the public meetings may be viewed at: <http://www.socalrangecomplexeis.com/>.

Background

In the case of military readiness activities, sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce (Secretary) to allow, upon request, the incidental, but not intentional taking of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) if certain findings are made and regulations are issued or, if the taking is limited to harassment, notice of a proposed authorization is provided to the public for review.

Authorization for incidental takings may be granted if NMFS finds that the taking will have no more than a negligible impact on the species or stock(s), will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses, and that the permissible methods of taking and requirements pertaining to the mitigation, monitoring and reporting of such taking are set forth.

NMFS has defined "negligible impact" in 50 CFR 216.103 as: an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely

and repetitive inspection intervals specified herein may be multiplied by the 1.2 adjustment factor based on continued mixed operation at lower cabin pressure differentials.

New Requirements of This AD

Additional Inspection of Skins With Alodine-Coated Rivets

(k) For airplanes identified in Figure 9 of the Accomplishment Instructions of Boeing Alert Service Bulletin 747-53A2321, Revision 7, dated October 27, 2005, as requiring additional inspection: Within 150 flight cycles after the effective date of this AD, do the inspection in paragraph (k)(1) or (k)(2) of this AD in accordance with the Accomplishment Instructions of the service bulletin.

(1) Do an external detailed inspection for cracking of Area 1, and repeat the inspection thereafter at intervals not to exceed 150 flight cycles until one of the actions in paragraph (k)(1)(i), (k)(1)(ii), or (k)(1)(iii) is accomplished. Repeat the inspection of Area 1 thereafter in accordance with the requirements of paragraph (f) of this AD.

(i) The inspection in accordance with paragraph (k)(1) of this AD has been done seven times. If this option is used: Within 150 flight cycles after the seventh inspection, do the inspection required by paragraph (k)(2) of this AD.

(ii) The inspection in accordance with paragraph (k)(2) has been accomplished.

(iii) The inspections in accordance with paragraph (f) of this AD has been accomplished once in accordance with Revision 7 of the service bulletin.

(2) Do an external HFEC inspection for cracking of Area 1 in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 747-53A2321, Revision 7, dated October 27, 2005. Repeat the inspection of Area 1 thereafter in accordance with the requirements of paragraph (f) of this AD.

Repair

(l) If any crack is found during any inspection required by this AD: Before further flight, repair in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 747-53A2321, dated October 31, 1989; or Revision 7, dated October 27, 2005. After the effective date of this AD, only Revision 7 of the service bulletin may be used. Where Revision 7 of the service bulletin specifies to contact Boeing for repair instructions: Before further flight, repair using a method approved in accordance with the procedures specified in paragraph (n) of this AD.

Adjustments to Compliance Time: Cabin Differential Pressure

(m) For the purposes of calculating the compliance threshold and repetitive interval for actions required by paragraphs (f), (g), and (k) of this AD, on or after the effective date of this AD: All flight cycles, including the number of flight cycles in which cabin differential pressure is at 2.0 psi or less, must be counted when determining the number of flight cycles that have occurred on the airplane, and a 1.2 adjustment factor may not

be used. However, for airplanes on which the repetitive interval for the actions required by paragraphs (f) and (k) of this AD have been calculated in accordance with paragraph (i) or (j) of this AD by excluding the number of flight cycles in which cabin differential pressure is at 2.0 pounds psi or less, or by using a 1.2 adjustment factor: Continue to adjust the repetitive interval in accordance with paragraph (i) or (j) of this AD until the next inspections required by paragraph (f) or (k) of this AD are accomplished. Thereafter, no adjustment to compliance times based on paragraph (i) or (j) of this AD is allowed.

Alternative Methods of Compliance (AMOCs)

(n)(1) The Manager, Seattle Aircraft Certification Office (ACO), FAA, has the authority to approve AMOCs for this AD, if requested in accordance with the procedures found in 14 CFR 39.19.

(2) Before using any AMOC approved in accordance with § 39.19 on any airplane to which the AMOC applies, notify the appropriate principal inspector in the FAA Flight Standards Certificate Holding District Office.

(3) An AMOC that provides an acceptable level of safety may be used for any repair required by this AD, if it is approved by an Authorized Representative for the Boeing Commercial Airplanes Delegation Option Authorization Organization who has been authorized by the Manager, Seattle ACO, to make those findings. For a repair method to be approved, the repair must meet the certification basis of the airplane.

(4) AMOCs approved previously in accordance with AD 90-26-10 are acceptable for compliance with the requirements of this AD, provided that any alternative terminating action was not based upon inspection results using sliding probe low-frequency eddy current (LFEC), sliding probe HFEC, or mid-frequency eddy current (MFEC) inspection method; and provided that any alternative method future inspections did not incorporate sliding probe LFEC or MFEC inspection method.

Material Incorporated by Reference

(o) You must use Boeing Alert Service Bulletin 747-53A2321, dated October 31, 1989; and Boeing Alert Service Bulletin 747-53A2321, Revision 7, dated October 27, 2005; as applicable; to perform the actions that are required by this AD, unless the AD specifies otherwise. (Only the first page of Boeing Alert Service Bulletin 747-53A2321, dated October 31, 1989, contains the document issue date; no other page of this document contains this information.) The Director of the Federal Register approved the incorporation by reference of these documents in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Contact Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124-2207, for a copy of this service information. You may review copies at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street SW., Room PL-401, Nassif Building, Washington, DC; on the Internet at <http://dms.dot.gov>; or at the National Archives and Records Administration

(NARA). For information on the availability of this material at the NARA, call (202) 741-6030, or go to http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.

Issued in Renton, Washington, on November 8, 2006.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E6-19534 Filed 11-21-06; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Part 902

50 CFR Part 622

[Docket No. 060731206-6280-02; I.D. 072806A]

RIN 0648-AS67

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Reef Fish Fishery of the Gulf of Mexico; Amendment 26

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 26 to the Fishery Management Plan for the Reef Fish Fishery of the Gulf of Mexico (FMP). Amendment 26 establishes an individual fishing quota (IFQ) program for the commercial red snapper sector of the reef fish fishery in the Gulf of Mexico. Initial participants in the IFQ program will receive percentage shares of the commercial quota of red snapper based on specified historical landings criteria. The percentage shares of the commercial quota will equate to annual IFQ allocations. Both shares and IFQ allocations will be transferable. In addition, NMFS informs the public of the approval by the Office of Management and Budget (OMB) of the collection-of-information requirements contained in this final rule and publishes the OMB control numbers for those collections. The intended effect of this rule is to manage the commercial red snapper sector of the reef fish fishery to preserve its long-term economic viability and to achieve optimum yield from the fishery.

DATES: This rule is effective January 1, 2007, except: Amendments to

§ 622.4(p)(4) § 622.7(gg), and (hh) are effective November 22, 2006. The existing stay of § 622.16 is lifted, effective November 22, 2006. The revision of § 622.16(b) is effective November 22, 2006. The new stay of § 622.16, except paragraph (b), is effective November 22, 2006, until January 1, 2007.

ADDRESSES: Copies of the Final Supplemental Environmental Impact Statement (FSEIS), the Final Regulatory Flexibility Analysis (FRFA), and the Record of Decision (ROD) may be obtained from Phil Steele, NMFS, Southeast Regional Office, 263 13th Avenue South, St. Petersburg, FL 33701; telephone 727-824-5305; fax 727-824-5308; e-mail Phil.Steele@noaa.gov.

Comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this final rule may be submitted in writing to Jason Rueter at the Southeast Regional Office address (above) and to David Rostker, Office of Management and Budget (OMB), by e-mail at David_Rostker@omb.eop.gov, or by fax to 202-395-7285.

FOR FURTHER INFORMATION CONTACT: Phil Steele, telephone 727-824-5305; fax 727-824-5308; e-mail Phil.Steele@noaa.gov.

SUPPLEMENTARY INFORMATION: The reef fish fishery of the Gulf of Mexico is managed under the FMP. The FMP was prepared by the Gulf of Mexico Fishery Management Council (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).

On August 2, 2006, NMFS published a notice of availability of Amendment 26 and requested public comments (71 FR 43706). On August 24, 2006, NMFS published the proposed rule to implement Amendment 26 and requested public comments (71 FR 50012). NMFS approved Amendment 26 on October 26, 2006. The rationale for the measures in Amendment 26 is provided in the amendment and in the preamble to the proposed rule and is not repeated here.

Comments and Responses

NMFS received a total of 1,890 comments on the proposed IFQ program, including 1,473 comments in favor of the program, urging NMFS to implement the IFQ program by January 1, 2007. The remaining comment letters opposed the IFQ program for reasons summarized below. Similar comments are consolidated, and each is followed by NMFS' response.

Comment 1: Numerous individuals expressed concern about enforcement of the IFQ program and how it will prevent further illegal harvest of red snapper. Additional concerns included an alleged illegal fishery able to meet or exceed the commercial red snapper quota, inadequate law enforcement presence in the Gulf to curb this illegal harvest, IFQ shares given to commercial fishermen with past fishery violations, and inadequate penalties for fishery violations that do not inhibit potential violators from participating in illegal activities. In addition, some commenters recommended the Secretary of Commerce delay implementation of the IFQ program until the enforcement aspects of this program are reviewed by a Gulf of Mexico law enforcement taskforce.

Response: The IFQ program was designed with full input by Federal and state law enforcement officers. The red snapper IFQ program will be intensely monitored, incorporating a vessel monitoring system (VMS) and pre-departure notification requirement implemented via Amendment 18A to the FMP, a requirement for advance notification of landing information, a dockside monitoring component, and real-time data management to account for all red snapper landed, including a checks-and-balances system matching quota allocations with fish purchased. Law enforcement officers will be able to correlate where fish have been caught, where they were physically landed, and to whom the catch (or portion of the catch) was sold. For individuals found in violation of the IFQ program, fines, loss of IFQ shares, and sanctions to their commercial reef fish permit could be imposed.

Comment 2: Twelve comments were received questioning requirements of the IFQ program, including pre-departure notification, advance notification of landing information, restricted offloading times, security of personal identification numbers (PINs) for landing verification, and the cost recovery program.

Response: The enforcement related requirements mentioned above are essential to the success of the IFQ program. Enforcement of regulations must exist to deter individuals from violating the law. The pre-departure notification requirement is associated with the VMS requirement implemented via Amendment 18A to the FMP, not Amendment 26. Advance notification of landing information is required and is essential for monitoring IFQ landings and ensuring the integrity of the IFQ program. The IFQ program requires allocation holders landing red snapper

and dealers receiving red snapper to enter data for landings/sale transactions. The IFQ share/allocation holder would validate the transaction online by entering his unique PIN number at the point of transaction submittal to ensure validity in landings data, such as total weight and ex-vessel value of landings. The PIN number is protected so the PIN number is not revealed. The Magnuson Stevens Act requires NMFS to establish a fee to assist in recovering the actual costs directly related to the management and enforcement of any IFQ program. Cost recovery fees would be paid by the IFQ share/allocation holder landing red snapper. NMFS expects these costs should be more than offset by increased profits realized under the IFQ program.

Comment 3: One commenter indicated Amendment 26 disregarded requirements of the Magnuson-Stevens Act. The commenter was concerned the IFQ plan accounted for only past participation and not present participation, specifically stating that the landings data from the years 2005 and 2006 were not used to initially calculate IFQ shares. The commenter was also concerned the IFQ plan did not account for dependence on the fishery.

Response: Throughout the development of the IFQ program, the issues of initial eligibility for and initial allocation of IFQ shares have featured prominently in Council deliberations. Both past and present participation played an important role in designing the IFQ program. To take into account present participation in the fishery, only those who own Class 1 or Class 2 licenses at the time this final rule is published in the **Federal Register** would be eligible for initial distribution of IFQ shares. However, past participation, as evidenced through historical landings associated with a reef fish permit, determines the amount of IFQ shares allocated to each eligible participant. Historical landings are deemed to reflect each participant's dependence on the fishery.

The qualifying landings are those made during the period 1990-2004 for Class 1 licenses or 1998-2004 for Class 1 historical captain and Class 2 licenses. The years 1990 and 1998 reflect the beginning years for which landings could be assigned to appropriate licenses. The Council and NMFS recognize that some long-time participants who no longer own Class 1 or Class 2 licenses, as well as some current owners of Class 2 licenses, may not receive initial IFQ shares. However, after receiving input from the public, the Council chose 2004 as the ending year for allocation purposes to deter speculation in the fishery while the

details of the IFQ program were being developed.

Comment 4: Some commenters requested Limited Access Privilege Programs (LAPPs) be developed for other fisheries such as the for-hire sector or the multi-species reef fish fishery. Others supported a commercial buy-out program of red snapper fishermen by the recreational sector.

Response: The amendment did not consider the topics listed in the above comment. Therefore, this comment is beyond the scope of the rule. However, the Council is currently considering implementing a more comprehensive LAPP in the Gulf of Mexico reef fish fishery.

Comment 5: One organization indicated 17 lapsed Class 2 licenses should not be included in the initial allocation to avoid possible challenges from other fishermen with lapsed or otherwise disputed licenses. The number of active permits used in the amendment is inaccurate.

Response: NMFS records and monitors the number of permits and licenses in the Gulf of Mexico commercial red snapper fishery. At the time of final rule publication, owners of Class 1 or Class 2 licenses will be eligible for initial distribution of IFQ shares, with their shares determined by their average landings during select years for the qualifying period of 1990–2004 for Class 1 licenses or 1998–2004 for Class 1 historical captain and Class 2 licenses. These determinations are based on landings history and whether all Class 1 and Class 2 licenses have been validly issued. When the amendment was being developed, the current number of permits was accurately assessed and provided at that time.

Comment 6: Several commenters were opposed to the VMS requirement because a tracking device is a violation of privacy and vessel owners should not be required to have VMS units installed on their vessel. One commenter suggested fishermen who have three convictions or more involving excessive trip limits, closed area harvest, or illegal sales be required to install VMS on their vessel. The commenter also suggested VMS units be installed on randomly selected vessels with the cost of VMS to be paid for by NMFS.

Response: The final rule does not include the VMS requirement for vessels with a commercial Gulf reef fish vessel permit as proposed in Amendment 26. Amendment 26 stated the VMS requirement would be unnecessary if Reef Fish Amendment 18A and the associated VMS requirement were approved by NMFS.

NMFS has implemented the final rule for Amendment 18A (71 FR 45428, August 9, 2006), requiring VMS units be installed on all vessels with a commercial or for-hire reef fish permit. Therefore, there is no need to implement any additional VMS requirements with Amendment 26.

Comment 7: Several commenters indicated the IFQ program marginalizes the recreational sector and the allocation of total allowable catch (TAC) should be shifted more in favor of the recreational fishery.

Response: Amendment 26 does not reallocate TAC between the commercial and recreational fisheries. The commercial quota managed by the IFQ program would be distributed based on the same allocation methodology used for previous years (i.e. 51 percent commercial/49 percent recreational). The primary purpose of the IFQ program is to reduce overcapacity in the commercial red snapper fishery and to eliminate, to the extent possible, the problems associated with derby fishing, in order to assist the Council in achieving optimum yield from the fishery. Reallocating the TAC would need to be addressed in a separate amendment.

Comment 8: One commenter disputed the sentence on page 38 of Amendment 26, which stated, “The rapid growth and overcapitalization of the red snapper fishery have intensified the race for fish.” Another commenter stated the commercial red snapper fishery is not overcapitalized.

Response: The issue of overcapitalization in the commercial red snapper fishery has been analyzed in the amendment and has been extensively discussed during the development of the IFQ program. The harvest capability of the red snapper commercial fishery is larger than needed to harvest the commercial quota in an economically efficient manner, i.e. the fishery is overcapitalized. This overcapacity is evidenced by derby-type conditions. For example, the commercial fishery landed its 3.06 million-lb (1.39 million-kg) annual quota in 71.5 days, on average, from 1992 through 1995, and their 4.65 million-lb (2.11 million-kg) annual quota in 77.2, on average, from 1996 through 2003. The current commercial red snapper management regime continues to constrain the ability to effectively achieve the goals and objectives specified in the FMP and in the Magnuson-Stevens Act’s ten national standards.

Comment 9: Several commenters stated the IFQ program is unfair to crew members and processors, eliminates

jobs, harms coastal economies, and does not protect the historical integrity of coastal fishing towns. One commenter indicated there was no public comment period on the social impacts of the IFQ program, nor was there enough data to properly assess the effects of the program on the ancillary components of the commercial red snapper fishery.

Response: Amendment 26 analyzes the potential effects of the IFQ program on crew members, processors, and coastal fishing communities where they are located. With the potential for consolidation of existing permits and the reduction in overcapacity, crew members may become unemployed with trickle-down effects on fishing communities. This is a collateral consequence that may not be avoided in the process of promoting efficiency in the fishery. Those employed in the fishery, however, can expect a more stable employment opportunity under a more efficient fishery. The IFQ program may also change the dynamics of negotiations in the fishery. With more flexibility in their fishing practices, fishermen may be able to extract some of the profits previously enjoyed by dealers/processors. However, the ex-vessel demand is a derived demand from consumers. Hence, the ability of fishermen to negotiate a better pricing schedule will still be constrained by factors faced by dealers/processors in the wholesale/retail market.

Discussions of the social impacts are more qualitative than quantitative due to data limitations, as recognized in the amendment. However, the socioeconomic information presented in the amendment reflects the best available data. Overall, the IFQ program is expected to produce net social and economic benefits. Public comments have been sought for all aspects of this program, including the social impact analysis, at various public hearings, Council meetings, and during the public comment period for the Draft Environmental Impact Statement (DEIS), the amendment, and proposed rule.

Comment 10: Several commenters responded negatively to the IFQ program because it creates new-found wealth among quota recipients by privatizing a public resource, unequally distributes that wealth among participants, and prohibits new entrants into the fishery because of prohibitively high share costs. Other commenters suggested initial IFQ shares should be distributed equally among Class 1 and Class 2 red snapper license holders instead of being issued based on landings data. These commenters also suggested the Class 1 votes from the referendum were weighted unfairly.

Response: Assigning harvest privileges to a public resource is a controversial issue discussed in the amendment. This issue, however, is not unique to the IFQ program as it also characterizes the current license limitation system. NMFS agrees with the Council in contending that, in addition to effectively addressing overcapitalization and derby conditions in the fishery, the IFQ program can foster stewardship of the resource better than the current system due to the assurance IFQ shareholders have on the amount of fish they have the opportunity to harvest. Further, the Magnuson-Stevens Act makes it clear that IFQ programs do not create, nor can they be construed to create, any right, title, or interest in or to any fish before the fish are harvested. The current license limitation system encourages participants to harvest fish as fast as they can before the quota is reached and the fishery is closed. While an IFQ program may cause some fishermen to feel disenfranchised, an IFQ program will have an overall net benefit to the nation as it helps to achieve optimum yield in the red snapper fishery, as required by the Magnuson-Stevens Act.

Several alternatives were considered regarding the initial distribution of IFQ shares among eligible participants, including equal distribution among eligible Class 1 and Class 2 license holders. The Magnuson-Stevens Act requires consideration of historical participation in distributing IFQ shares among eligible participants. NMFS agrees with the Council that allocation of IFQ shares in proportion to landings is more fair and equitable than an equal distribution of IFQ shares, since landings indicate dependence on and commitment to the fishery. The two red snapper referenda are not part of this final rule, although they were required before the IFQ program could proceed. The weighting of the votes, as specified by the Magnuson-Stevens Act, was based on the proportional harvest under each permit and endorsement between January 1, 1993, and September 1, 1996.

Comment 11: One commenter suggested the development of the IFQ program should not have followed Department of Justice Guidelines relative to market entry. The commenter was also concerned about price fixing by large fish houses that control many of the Class 1 licenses and catch a large portion of the quota. Additionally, the commenter was concerned that the 8-percent ownership cap is too excessive and would allow an entity to acquire excessive shares in the fishery. Finally, the commenter stated the 0.0001 percent minimum share limitation is too low.

Response: Reference to the Department of Justice's Horizontal Merger Guidelines in the proposed rule was made in recognition that some may consider the choice of an ownership cap to be too low. The Guidelines merely describe the analytical process the Department of Justice will employ in determining whether to challenge a horizontal merger. The Council considered several alternatives regarding ownership caps, ranging from no cap to a cap of as low as 2 percent. With input from members of the public, particularly the industry advisory panel, the Council chose an ownership cap equal to the highest allocation an IFQ holder possesses at the time of initial allocation of IFQ shares. If an ownership cap is too high, market power may become too consolidated and produce an unduly anti competitive market. However, setting the limit too low could also have adverse effects on the economic efficiency of the industry. This can happen in cases where it is less costly overall for fewer entities to each catch more fish than it is for many entities to each catch smaller amounts of fish. Aside from considerations of controlling the undue consolidation of market power and maintaining a fair level of competition, Section 303(b)(6) of the Magnuson-Stevens Act requires consideration of several factors in establishing a limited access program such as the red snapper IFQ program. Those factors include, but are not limited to: present participation in the fishery; historical fishing practices in, and dependence on, the fishery; the economics of the fishery; and the cultural and social framework relevant to the fishery and any affected fishing communities. Although the approximately 8-percent cap may not result in consolidation rising to the level of presenting an undue concentration of market power or less competition, a higher cap could result in levels of consolidation producing effects that are problematic under the Magnuson-Stevens Act. Examples would include potentially eliminating numerous small-scale historical participants, adversely affecting the social and cultural framework of the fishery by adversely affecting working conditions and wages for crew, and potentially adversely affecting prices. NMFS solicited comments on appropriateness and magnitude of the proposed ownership cap in the proposed rule. The only comment received suggested the 8-percent cap was too high.

Current information indicates ex-vessel demand for red snapper is elastic, indicating the absence of market power

(and resulting price fixing) despite the presence of some entities owning as many as six Class 1 licenses. Being a derived demand, ex-vessel demand is partly determined by the demand at the wholesale and retail markets. Factors affecting the wholesale and retail markets, in addition to the presence of many substitutes in the ex-vessel market, make it very difficult for a dealer or group of dealers to acquire enough market power to influence the ex-vessel price for red snapper. This is especially true with the presence of an ownership cap of about 8 percent. Currently, there are 17 fleet operations, i.e., entities owning more than one Class 1 license, accounting for as much as 40 percent of total commercial harvest of red snapper. It is fairly reasonable to expect these 17 operations to continue their business under the IFQ program. Even if these 17 operations increase their control of red snapper harvest, it is still very unlikely for any one of them to exercise strong market power to affect price fixing.

The Council provided neither a minimum allocation nor minimum landing requirement for initial eligibility. The 0.0001 percent minimum initial IFQ share distribution is mainly intended to ensure the lowest allocation would be at least a practical minimum amount.

Comment 12: Several commenters suggested the IFQ program limits quota shareholders right to a fair market value because they are limited to only selling their shares to other reef fish fishermen, at least for the first 5 years of the program.

Response: Several alternatives were evaluated concerning who should be eligible to receive transfers of IFQ shares/allocations. These alternatives ranged from allowing everyone to receive transfers to only allowing IFQ share/allocation holders to receive transfers. The preferred alternative, allowing transfers to any valid commercial reef fish permit holder during the first 5 years and, thereafter, any U.S. citizen or permanent resident alien, is believed to be most equitable because it initially favors commercial reef fish fishermen who have invested time and resources into the fishery, but ultimately recognizes red snapper as a public resource.

Comment 13: One commenter stated not enough of the cost to implement the IFQ program would be obtained through the cost recovery program, resulting in a taxpayer burden, and suggested the commercial fishermen cover the entire cost of the IFQ program. Another commenter indicated initial IFQ shares should be allocated through an auction

with the proceeds from the auction used to start the IFQ program.

Response: Section 304(d)(2) of the Magnuson-Stevens Act requires the Secretary of Commerce establish a fee to assist in recovering the actual costs directly related to the management and enforcement of any IFQ program. Section 304(d)(2) states that the fee shall not exceed 3 percent of the ex-vessel value of fish harvested under the IFQ program.

Deciding who should initially be eligible to receive IFQ shares, and how those shares should be allocated are two of the most controversial aspects of designing and implementing an IFQ program. Ideally, IFQ shares should be widely distributed to avoid granting excessive windfall profits to a few fishery participants. Broader initial allocations distribute benefits more equitably and compensate more individuals as IFQ shares are consolidated through transfers. However, eligibility criteria also should consider time and capital invested in developing the fishery as required by § 303(b)(6) of the Magnuson-Stevens Act. Class 1 license holders who own or operate most of the high volume vessels in the commercial red snapper fishery would likely conclude this alternative as unfair because they ventured the capital to create the fishery harvesting capacity.

Comment 14: Without a mandatory sunset policy, NMFS is violating the public trust. The IFQ program should be offered for a limited duration so there is no confusion as to public ownership of the resource, and the public resource should not be leased for the benefit of the individual. A review of the IFQ program every 5 years is inadequate.

Response: Existing United States IFQ programs define IFQs as “revocable privileges” not permanent franchises. All limited entry systems, by definition, restrict the number of participants in the fishery. IFQ programs are a form of limited entry. As such, they are sometimes perceived (both by participants in fisheries and other members of the public) as an attempt to privatize a public resource and are at odds with the idea the public has an inalienable right to free access of public resources. The Magnuson-Stevens Act states that an IFQ is a permit that may be revoked or limited at any time in accordance with the Act. Giving the privilege to catch red snapper, while reducing overcapitalization and eliminating the effects of a derby fishery, will foster stewardship of the resource among IFQ shareholders who could be assured the opportunity to catch their allocation. The current

license limitation system does not foster such a stewardship incentive, but rather encourages participants to compete to harvest the available quota before it is reached and the fishery closed.

A sunset provision (i.e. limiting the duration of the proposed IFQ program to either 5 or 10 years as discussed in the amendment) would adversely affect the marketability of IFQ shares, and, thereby, minimize or negate the effectiveness of the IFQ program in reducing excess fishing capacity and providing associated physical, biological, ecological, social, and economic benefits. Consideration was given to reducing the time for a review of the IFQ program but ultimately a conclusion was reached that 5 years is a more reasonable time for evaluating the effects of the IFQ program.

Comment 15: The IFQ program would completely deplete red snapper in the Gulf of Mexico. The IFQ program would create incentives to discard less economically valuable fish. Species other than red snapper caught as bycatch in the red snapper fishery will be caught more frequently because the IFQ program will allow fishing year round and there no longer is a closed season for red snapper.

Response: The primary purpose of the IFQ program is to reduce overcapacity in the commercial red snapper fishery and to eliminate, to the extent possible the problems associated with derby fishing, in order to achieve optimum yield from the fishery. The IFQ program may increase fishermen’s incentive to discard low value fish in favor of high value fish. However, the overall environmental benefits of the IFQ program to the red snapper stock, its habitat and other non-target species are expected to outweigh the adverse effects of any high grading activity. Additionally, NMFS is currently evaluating alternatives to reduce or eliminate bycatch in a Draft Environmental Impact Statement to Evaluate Alternatives to Set Gulf of Mexico Red Snapper Total Allowable Catch and Reduce Bycatch in the Gulf of Mexico Directed and Shrimp Trawl Fisheries (Red Snapper DEIS). The notice of availability for the Red Snapper DEIS published on October 13, 2006 (71 FR 60509).

Comment 16: Several commenters believe the data collection for the commercial and recreational fishery needs to improve for the IFQ program to work successfully.

Response: Data collection for the commercial fishery would improve under the IFQ program. Landings data will be entered into an online accounting system immediately when

fish are offloaded. This would provide real time accounting of commercial landings. Since the IFQ program is implemented for the commercial fishery, data collection for the recreational fishery is a separate issue and would be addressed in a separate amendment.

Comment 17: Several individuals were concerned the IFQ program is inconsistent with ecosystem-based management and suggested the IFQ program should be opposed in favor of more fair and sustainable alternatives.

Response: The Council and NMFS evaluated a range of alternative IFQ program elements. NMFS believes the IFQ program described by the preferred alternatives in the amendment would be the best means to accomplish the stated objective, which is to reduce overcapacity in the red snapper fishery, while achieving the best socioeconomic outcome for current red snapper commercial fishermen and the best biological outcome for red snapper and other affected species.

Comment 18: One commenter suggested red snapper TAC and regulations remain status quo for at least 2 years and a precise economic study be conducted on the hurricane impacts on the stock as well as the communities, industries, and business directly or indirectly depending on the fishery.

Response: Amendment 26 did not consider the effects of adjusting red snapper TAC as a method of preventing overfishing. This is discussed in the Red Snapper DEIS. Amendment 26 only discussed how IFQ shares and allocations would be adjusted if commercial quota is changed. The Council and NMFS periodically review and adjust TAC in response to new data and information, which generally take the form of new or updated red snapper stock assessments. The IFQ program specifies how resulting adjustments (reductions or increases) to the commercial quota would be distributed among IFQ shareholders. Adjustments in the commercial quota would be allocated proportionately among recognized IFQ shareholders (e.g., those on record at the time of the adjustment) based on the percentage of the commercial quota each holds at the time of the adjustment. Initial shares for 2007 will be based on 51 percent of 5 million lb (2.3 million kg), which is 2.55 million lb (1.16 million kg) of the initial quota, or 51 percent of whatever TAC has been selected as the Preferred Alternative by NMFS or the Council. Any quota share balance resulting from a decision to specify a larger TAC would be distributed after the date of publication

of the final rule setting the new TAC, but no later than July 1, 2007.

Comment 19: One commenter suggested an IFQ program would not meet the goals of Amendment 26 because the IFQ program will shorten the season as the quota is filled faster, will not reduce overcapacity, will not increase safety at sea, and will not decrease bycatch because Class 2 license holders who will lose their license under the initial eligibility criteria of the IFQ program, will no longer be able to land red snapper previously caught as bycatch when fishing for other species.

Response: These issues are analyzed in the amendment and have been thoroughly discussed in the development of the IFQ program. Unlike the current system of closed and open seasons, the IFQ program will allow the fishery to be open all year long and, thus, allow fishermen to properly schedule their fishing activities. Fishermen, therefore, would not be forced to fish during inclement weather or at times when there are vessel safety concerns just to take advantage of the short open season. The IFQ program could result in consolidation of fishing operations to take advantage of cost savings, thus reducing fishing capacity. Under the IFQ program, both Class 1 and Class 2 license holders would be identified as IFQ shareholders. All owners of Class 1 licenses are expected to receive IFQ share allocations. Of the 628 Class 2 licenses, 146 are expected not to receive any allocation because they did not have any red snapper landings during the qualifying period of 1998–2004. Regarding bycatch of red snapper by a non-IFQ shareholder, an owner of a vessel with a commercial vessel permit for Gulf reef fish could obtain, at no cost, a Gulf red snapper IFQ vessel endorsement and purchase allocation from an IFQ shareholder to accommodate landing of red snapper bycatch. Bringing all commercial red snapper landings under the IFQ program allows better tracking of IFQ landings and commercial quotas.

Comment 20: Commercial fishermen have publicly testified they would not change their fishing methods with the IFQ program, but Amendment 26 indicates one of the benefits to the program would be fewer hooks in the water.

Response: The purpose of the IFQ program proposed in the amendment is to reduce overcapacity in the commercial fishery and to end derby fishing. The harvest privileges provided by such a program are intended to eliminate the incentive to over invest in the fishery and race to fish, and to give fishermen a long-term interest in the

health and productivity of the fishery and, thus, an incentive to conserve it for the future. In some cases, the increased flexibility afforded IFQ program participants has improved fishing and handling methods, thereby increasing product quality and reducing bycatch discard mortality. Extending the duration of the fishing season should increase catch efficiency. Subsequent changes in fishing practices would be expected with a fishery that is now open year-round instead of the first 10 days of each month. Over time the IFQ program is expected to attract those fishermen who have the most vested interests in the fishery and are the most efficient fishermen. Increased efficiency would lead to increased catch per unit effort and therefore, less hooks in the water to catch the same amount of fish.

Comment 21: The share allocation provisions in the proposed rule are flawed since the provisions do not consider the allocation of the initial share to small- and entry-level fishermen who are not yet participating in the fishery as required by the Magnuson Stevens Act. Also, the proposed rule does not make provisions for reserving funds for assistance to new entrants.

Response: The primary purpose of the IFQ program is to reduce overcapacity in the commercial red snapper fishery and to eliminate, to the extent possible the problems associated with derby fishing, in order to achieve optimum yield from the fishery. After the initial allocation, there would be a cost to enter the program, as new entrants must purchase shares. Therefore, those interested in entering the fishery who cannot afford to buy shares will be excluded from the program. One of the principal reasons for developing the proposed IFQ program is the fishery is overcapitalized, that is, the collective harvest capacity of fishery vessels and participants is in excess of that required to harvest the TAC. To remedy this problem, by definition the harvest capacity must be reduced. Therefore, loss of employment for some current participants, and negative effects on small communities, are unavoidable adverse effects of the proposed action. However, the overall net social and economic benefits of an IFQ program are expected to be better for the Nation as the program helps the red snapper fishery achieve optimum yield as required by the Magnuson-Stevens Act. The Council and NMFS did consider, during development of Amendment 26, the option of using funds from the cost recovery plan to aid these individuals in purchasing IFQ shares/allocations but elected not to do so at this time.

However, this option may be reconsidered, at the Council's discretion, as the program evolves.

Comment 22: One commenter indicated provisions requiring IFQ holders use the harvest privileges or forfeit them back to the government (i.e. a use it or lose it provision) are unfair. Another commenter indicated this provision was fair.

Response: Although a use it or lose it provision was considered in the amendment, it was not proposed. The IFQ program, as implemented, would not include a use it or lose it provision.

Changes from the Proposed Rule

In § 622.4(a)(2)(ix), language was added to clarify that the IFQ program requirements do not preclude the existing ability of a person aboard a vessel with a commercial vessel permit for Gulf reef fish, nor the ability of a person aboard a vessel with an IFQ vessel endorsement, to fish for red snapper under the bag limit provisions. Those existing bag limit provisions include prohibition of the possession of the bag limit when commercial quantities of Gulf reef fish are possessed on board a vessel and a prohibition on sale or purchase of any Gulf reef fish caught under the bag limit provision.

In § 622.16(c)(3)(i), the advance notice of landing provision, the requirement to report the address of the dealer where IFQ red snapper are to be received has been removed. In some cases, fish are landed at sites other than the dealer's location, and the specific dealer address may not be known at the time of initial offloading. This revision would accommodate that circumstance without jeopardizing enforceability of the program. Also, in this paragraph, the time frame for the advance notice of landing has been revised from "...at least 3 hours in advance of landing..." to "...at least 3 hours, but no more than 12 hours, in advance of landing...". This more specific time frame will provide fishers a reasonable time period to report and will provide a better-defined and more practical time period for enforcement purposes. Finally, in this same paragraph, language has been added to clarify that failure of a vessel owner or operator to comply with the advance notice of landing requirement, will preclude authorization to complete the required landing transaction report and will preclude issuance of the transaction approval code that is required to legally possess IFQ red snapper.

Under NOAA Administrative Order 205–11, dated December 17, 1990, the Under Secretary for Oceans and Administration has delegated authority

to sign material for publication in the **Federal Register** to the Assistant Administrator for Fisheries, NOAA.

Classification

The Administrator, Southeast Region, NMFS, determined that Amendment 26 is necessary for the conservation and management of the Gulf red snapper fishery and is consistent with the Magnuson-Stevens Act and other applicable laws.

This final rule has been determined to be significant for purposes of Executive Order 12866.

NMFS prepared a final supplemental environmental impact statement (FSEIS) for this amendment; a notice of availability was published on August 2, 2006 (71 FR 43706).

NMFS prepared an FRFA, as required by section 604 of the Regulatory Flexibility Act. The FRFA incorporates the initial regulatory flexibility analysis (IRFA), a summary of significant issues raised by public comments, NMFS responses to those comments, and a summary of the analyses completed to support the action. A copy of the full analysis is available from the NMFS (see **ADDRESSES**). A summary of the analysis follows.

Twelve comments were received on issues involving pre-departure and post-landing notifications, restricted offloading times, cost recovery program, and security of personal identification numbers (PINs) for landing verification. Except for cost recovery, all these issues relate to enforcement and monitoring of catches. These requirements are necessitated to effectively track and validate landings on a real-time basis and to enhance the likelihood of a successful IFQ program. The cost recovery program is a Magnuson-Stevens Act requirement mainly designed to shift the cost of the IFQ program to those who would directly benefit from the program. The fee is currently set at the maximum allowable level, 3 percent of ex-vessel value, but may be adjusted downward if the fee exceeds the actual costs directly related to the management and enforcement of the program. NMFS is strongly committed to providing security for PINs and will ensure such information is handled in compliance with existing requirements relevant to confidential information.

One commenter questioned whether the IFQ program considered past and present participation, dependence on the fishery, and potential for excessive share ownership. The commenter was also concerned that 2005 and 2006 landings were not used in calculating initial IFQ shares. The amendment

contains substantial discussions of these issues, in addition to the fact that the Council received many comments from the public on each of these issues. NMFS agrees with the Council that restricting eligibility for initial IFQ distribution and consideration of landings history for calculating IFQ shares reflect past and present participation in the fishery as well as dependence on the fishery. NMFS also agrees with the Council in disallowing 2005 and 2006 landings to deter speculation in the fishery while the details of IFQ program were being developed.

One organization commented that the number of active permits used in the amendment is inaccurate and that 17 lapsed Class 2 licenses should not be included in the initial allocation. NMFS records and monitors Class 1 and Class 2 licenses in the commercial red snapper fishery on a daily basis. The number used in the amendment accounts for all existing Class 1 and Class 2 licenses, regardless of whether they are active or inactive, expired or not. The current regulations allow renewal of a Class 1 or Class 2 license any time after it expires. The amendment only provides that whoever owns a Class 1 or Class 2 license at the time the final rule is published is eligible for initial IFQ allocation, with actual shares determined by landings during the qualifying period of 1990–2004 for Class 1 licenses not issued based on historical captain status, and 1998–2004 for Class 1 licenses issued based on historical captain status and for Class 2 licenses.

One commenter noted the commercial red snapper fishery is not at overcapacity while another one disputed the statement in the Amendment that the rapid growth and overcapitalization of the red snapper fishery have intensified the race for fish. Since the 1990's, the harvest capability of the commercial red snapper fishery has far exceeded the level to harvest the quota in an economically efficient way. This has resulted in a derby-like fishery, with the usual negative results such as seasonally depressed ex-vessel prices due to market gluts and fishing during unfavorable weather conditions, among others. Management responded to these conditions by imposing more restrictive regulatory measures to alleviate the derby effects.

One commenter stated that the IFQ program is unfair to crew members and processors, eliminates jobs, harms coastal economies, and does not protect the historical integrity of coastal fishing towns. The amendment notes that the expected consolidation of operations

which reduce overcapacity would result in some crew members being displaced and this would create trickle-down effects on fishing communities. This is an unavoidable consequence of promoting efficiency in the fishery but could also result in more stable employment for some crew members. The IFQ program may also change the dynamics of negotiating in favor of harvesters, but the extent of such change is still constrained by factors faced by dealers/processors in the wholesale and retail market.

Several commenters suggested distributing IFQ shares equally among Class 1 and Class 2 license holders. Others commented that the program unequally distributes wealth among participants and that the program prohibits new entrants into the fishery due to prohibitive share costs. The Council considered several alternatives on initial distribution of IFQ shares, including equal allocation among Class 1 and Class 2 licenses. NMFS agrees with the Council's decision to allocate IFQ shares in proportion to landings, although this may result in unequal initial distribution of wealth. The reason for this is that proportional allocation is more fair and equitable than equal distribution, because proportional landings are more reflective of historical participation in, dependence on, and commitment to the fishery. Entry into the fishery is actually expected to be less costly under the IFQ program than under the current system, since IFQs can be purchased in lower denominations whereas licenses can only be bought as whole licenses. New entrants can especially benefit from this, because they can first experiment on a limited basis and evaluate their performance before committing more resources into the fishery.

One commenter suggested, in effect, that the ownership cap is too high and raised concern about price fixing by large fish houses owning many Class 1 licenses. The Council considered ownership cap alternatives ranging from 2 percent to no cap. The Council's choice of an ownership cap equal to the highest allocation an IFQ holder receives at the time of initial allocation (about 8 percent) was based on inputs from members of the public, including the industry advisory panel. The Council deemed this level not to result in market power concentration while at the same time it would not penalize the current largest operation. In the absence of market power, price fixing is not likely to happen. In addition, at least the current 17 fleet operations are expected to remain in the fishery under the IFQ programs and, thus, would provide

enough competition to make price fixing very unlikely.

Several commenters suggested the requirement, during the first 5 years of the program, to sell IFQ shares only to a person who has a commercial vessel permit for Gulf reef fish limits shareholders' right to a fair market value. The Council and NMFS recognize this potential side effect. However, the Council and NMFS approved this alternative to ensure, initially, IFQ shares are owned by persons who have a demonstrated dependence on the commercial reef fish fishery.

One commenter stated the IFQ program will shorten the season, will not reduce overcapacity, and will not increase safety at sea. The same commenter also said the program will not reduce bycatch especially for Class 2 license holders ineligible for initial IFQ distribution who will no longer be able land red snapper as bycatch. The amendment discusses at length that under the IFQ program, the fishery will be open year round. This affords more flexibility among fishermen to schedule their harvest to take advantage of stock, market, weather, and other conditions, including vessel safety. Consolidation of operations is an expected result as operations scale down to take advantage of cost efficiencies in production, thus reducing overcapacity. With less effort in the fishery, bycatch is expected to decrease. Class 2 licenses which will not receive allocations are those that reported no landings as bycatch or otherwise.

These and other comments have not resulted in changing the proposed rule, so the economic analysis conducted for the proposed rule has also not changed. The following completes the FRFA summary.

The Magnuson-Stevens Act provides the statutory basis for the final rule. The final rule will establish an IFQ program for the commercial red snapper fishery in the Gulf. Specifics for this IFQ program include the following: (1) no limit on the duration of the program, but a program evaluation is required every 5 years; (2) maximum IFQ share ownership equal to the maximum percentage issued to an initial recipient of IFQ shares; (3) restriction on initial eligibility only to owners of Class 1 or Class 2 license holders; (4) proportionate allocation of initial IFQ shares based on average annual landings for 10 consecutive years during 1990–2004 for Class 1, seven consecutive years during 1998–2004 for Class 1 historical captains, and five years during 1998–2004 for Class 2; (5) establishment of an appeals process and a set-aside of 3 percent of the

commercial quota to resolve appeals; (6) restriction on transfers of IFQ shares/allocations only to those with a valid commercial reef fish permit during the first 5 years and, thereafter, to any U.S. citizen or permanent resident alien; (7) proportionate allocation of commercial quota adjustments based on percentage holdings at the time of the adjustment and phased-in issuance of IFQ allocations for the 2007 season; and, (8) provision for IFQ cost recovery fees to be paid by IFQ holders but collected by registered IFQ dealers/processors. The main objectives of the final rule are to address the excess capacity and derby problems in the commercial red snapper fishery.

The final rule would generally impact two types of businesses in the Gulf reef fish fishery, namely, commercial fishing vessels (including recreational for-hire vessels with commercial reef fish permits) and fish dealers. At present, the Gulf of Mexico (GOM) commercial reef fish permits are under a license limitation program, and licenses are renewable every year. Also, the commercial red snapper fishery is presently under a two-tier license limitation program. A Class 1 license entitles the holder a trip limit of 2,000 lb (907 kg) of red snapper while a Class 2 license affords a lower trip limit of 200 lb (91 kg). Each type of license is allowed only one trip per day. The IFQ program would replace this two-tier license limitation system in the commercial red snapper fishery, but the limited access program for commercial reef fish permits remains.

There are 1,118 active commercial reef fish permits and 91 others that are currently expired but may be renewed within a year. Thus, a total of 1,209 vessels may be considered to comprise the universe of commercial harvest operations in the GOM reef fish fishery. Of the 1,209 commercial permittees, 136 entities hold Class 1 licenses and 628 entities hold Class 2 licenses. Of the 136 Class 1 licenses, seven have been issued on the basis of the historical captain criterion. All original owners of Class 1 historical captain licenses have sold their licenses. Reported average annual gross receipts (in 2004 dollars) of commercial reef fish vessels in the GOM range from \$24,095 for low-volume vertical line vessels to \$116,989 for high-volume longline vessels. The corresponding annual net incomes range from \$4,479 for low-volume vertical line vessels to \$28,466 for high-volume vertical line vessels. Permit records indicate there are 17 Class 1 fleet operations owning 58 licenses. In 2004, the top three fleet operations landed a total of 987,532 lb (447,937 kg) of red

snapper, or an average of 329,177 lb (149,312 kg) per fleet operation. At the 2004 average red snapper ex-vessel price of \$2.83 per pound, the average pounds landed convert to ex-vessel revenues of \$931,571. No fleet information is available for Class 2 licenses, but it is fairly safe to assume that if ever a Class 2 fleet operation exists, it would generate much less revenues than its Class 1 counterparts.

There currently exists a permitting requirement for dealers to buy or sell reef fish, including red snapper, caught in the GOM. This permitting requirement remains under the IFQ program, but in addition, a red snapper endorsement would be required for dealers to buy or sell red snapper. Based on the permits file, there are 227 dealers possessing permits to buy and sell reef fish species. However, based on logbook records, there are 154 reef fish dealers actively buying and selling red snapper. It is possible that some of the 227 dealers may be handling red snapper in one year but not in another. Dealers in Florida purchased about \$1.8 million worth of red snapper, followed by dealers in Louisiana with purchases of \$1.4 million, and dealers in Texas with purchases of \$1.3 million. Dealers in Mississippi purchased \$174 thousand worth of red snapper, and those in Alabama, \$88 thousand. These dealers may hold multiple types of permits and, because we do not know 100 percent of the business revenues, it is not possible to determine what percentage of their business comes from buying and selling red snapper.

Average employment information per reef fish dealer in the GOM is unknown. Although dealers and processors are not synonymous entities, employment for reef fish processors in the Southeast totals approximately 700 individuals, both part- and full-time. It is assumed all processors must be dealers, yet a dealer need not be a processor. Further, processing is a much more labor intensive operation than dealing. Therefore, given the employment estimate for the processing sector, it is likely the average dealer employment would be lower.

The Small Business Administration (SBA) defines a small business as one that is independently owned and operated, is not dominant in its field of operation, and has annual receipts not in excess of \$4.0 million in the case of commercial harvesting entities or \$6.5 million in the case of for-hire entities. In the case of fish processors and fish dealers, rather than a receipts threshold, the SBA specifies employee thresholds of 500 and 100 employees, respectively.

Based on the gross revenue and employment profiles presented above, all permitted commercial reef fish vessels (including fleet operations) and reef fish dealers affected by the final regulations may be classified as small entities.

The final rule introduces additional reporting and record-keeping requirements mainly through the tracking of IFQ shares and the corresponding red snapper landings and ex-vessel values. An electronic reporting system is the approach to track IFQ shares and corresponding red snapper landings. The reporting burden would mainly fall on the dealers. An IFQ dealer endorsement would be required of any dealer purchasing red snapper. The IFQ dealer endorsement would be issued at no cost to those individuals who possess a valid GOM reef fish dealer permit and request the endorsement. Although the current GOM reef fish dealer permit must be renewed annually at a cost of \$100 for the initial permit (\$25 for each additional permit), the IFQ dealer endorsement would remain valid as long as the individual possesses a valid GOM reef fish dealer permit and abides by all reporting and cost recovery requirements of the IFQ program. As an integral part of the electronic monitoring system, an IFQ dealer would be required to have access to a computer and the Internet for inputting, among other data, pounds and value of red snapper purchased by the dealer from an IFQ shareholder. If a dealer does not have current access to computers and the Internet, he or she may have to expend approximately \$1,500 for computer equipment and accessories (one-time cost) and \$300 annual cost for Internet access. Dealers would need some basic computer and Internet skills to input information for all red snapper purchases into the IFQ electronic reporting system. Dealers also have to remit to NMFS on a quarterly basis, the cost recovery fees equivalent to 3 percent of the ex-vessel value of red snapper purchased from IFQ shareholders. Although IFQ shareholders pay this fee, it is the responsibility of dealers to collect and remit these fees to NMFS. In addition to this quarterly remittance, dealers would be required to submit to NMFS a year-end report summarizing all transactions involving the purchase of red snapper. There is currently no available information to determine how many of the 227 reef fish dealers or of the current 154 red snapper dealers have the necessary electronic capability to participate in the IFQ program.

However, demonstration of this capability would be necessary for IFQ program participation by any dealer.

IFQ shareholders also have to use the electronic reporting system to report transfer/assignment of shares and allocation as well as to monitor their outstanding IFQ allocations. Similar skills and equipment needs for dealers also apply to IFQ shareholders. There are 95 IFQ holders based on Class 1 license qualification and as many as 482 IFQ holders based on Class 2 license qualification. Over time under the IFQ program, the number of IFQ shareholders is expected to decline.

As required by the Sustainable Fisheries Act of 1996, two referenda involving qualified commercial red snapper fishery participants have been conducted. Results from both referenda indicate strong support for an IFQ program in the commercial red snapper fishery. No other federal rules have been uncovered that would duplicate, overlap or conflict with the final rule.

The 764 vessels that have Class 1 or Class 2 licenses comprise 64 percent of all vessels with GOM commercial reef fish permits. Also, at least 154, or 68 percent, of the 227 permitted reef fish dealers would be affected. It is clear then the final rule would affect a substantial number of small entities.

Since all affected vessel and dealer operations are small entities, the final rule would not result in disproportional impacts where small entities are placed at a significant competitive disadvantage to large entities. Some vessel operations are relatively larger than others. In particular, 17 fleet operations account for as much as 40 percent of the entire commercial quota for red snapper. These 17 fleet operations and another 78 single vessel operations would initially receive about 90 percent of IFQ shares. The other 482 smaller operations would receive the rest of the IFQ shares. Finally, 146 Class 2 vessel operations would likely not receive any initial IFQ shares, because they have no landings history during the qualifying period of 1998–2004 for these licenses.

The final rule has varying effects on the profitability of the affected vessel operations. Most likely, it has minimal effects on the profits of the 146 Class 2 vessel operations that have no red snapper landings. These vessels would mainly lose their relatively low-cost entry into the red snapper fishery should the need arise. Under the final rule, assuming they already have a Gulf reef fish permit, they have to buy shares/allocations even if they intend to fish only on a limited basis. Some of the 482 Class 2 vessel operations that may

have increasingly relied on red snapper to supplement their overall harvests may receive small IFQ shares. They may either have to buy more shares/allocations to continue fishing for red snapper or sell their shares. Either way, their overall profits may decline, at least initially, although in selling their IFQ shares they would receive some remuneration. The 136 Class 1 vessel operations and some Class 2 vessel operations that have relatively large red snapper landings are expected to benefit most from the IFQ program. An IFQ system is expected to improve the profitability of these vessels. This improvement would generally take time, since fishermen would have to adjust their operations to achieve the most profitable position. Such adjustment may involve consolidation of multiple vessel operations to lower costs, scheduling of harvests to take advantage of market and weather conditions, negotiation with purchasers to strike a long-term deal at relatively stable prices, or some other arrangements that take advantage of a relatively certain share of a season's quota at the start of the season. Some entities may be successful in making adjustments while others may not. For those that cannot, there is always the option to sell their shares. They may leave the red snapper fishery, but would receive some remuneration for doing so.

Imposition of a cost recovery fee would also affect vessel profits. The fee, which is currently set at its allowable maximum of 3 percent of ex-vessel revenues, could potentially result in a bigger percentage reduction in profits, particularly for smaller operations. Larger operations, such as most Class 1 vessels, can absorb this fee because their profits are expected to increase under the IFQ program.

The extent to which the IFQ monitoring system, including the collection and remittance of the cost recovery fees, would affect dealers' profitability cannot be quantified at this time. However, the relatively established dealers, the monetary cost requirement under an electronic monitoring system is probably small, especially if they already have computer systems in place. Smaller operations, however, may totally stay out of the red snapper fishery.

This amendment considered several alternatives to the final rule. An alternative to the IFQ program is the current license limitation system. Under this system, overcapacity and derby effects have substantially constrained the profitability of the commercial harvest industry. The IFQ program is expected to effectively address these

major issues/problems in the fishery. There are two other alternatives with respect to the duration of the IFQ program. One specifies no duration while the other imposes a term limit on the program. The former has similar effects as the final rule, but it does not contain a mandatory evaluation of the program every 5 years. A sunset provision, as in the latter alternative, offers a lower likelihood for the IFQ program to achieve its intended objectives. Also, it would introduce uncertainties into the program due to potential changes in the "rules of the game."

With respect to an ownership cap, two other alternatives were considered. One places no cap on ownership of IFQ shares while the other places a cap ranging from 2 to 15 percent of the commercial quota. The first alternative provides a fertile ground for consolidation of IFQ shares, but it could also lead to concentration of ownership to a select few at the expense of eliminating historically small-scale operations in the fishery. The second alternative may be too liberal (e.g., 15 percent) as to lead to over-consolidation or too restrictive (e.g., 2 percent) as to penalize the more efficient operations. It is worth noting that, as per advice of the Office of Management and Budget, public comment was especially sought on the issue of ownership cap as the proposed rule may be too limiting. The only public comment received on this issue suggested the ownership cap in the proposed rule is too high. The response to this comment discussed the rationale for not changing the final rule.

Two other alternatives were considered on the issue of initially eligible persons. The first one does not specify persons eligible to receive initial IFQ shares, and thus does not provide guidance for initially allocating IFQ shares. The second restricts initial eligibility to Class 1 license holders. This is too restrictive as to disallow at least 482 Class 2 license holders from continued participation in the fishery at the start of the IFQ program.

As to the issue of allocating initial IFQ shares, two other alternatives were considered. The first does not specify a methodology for allocating initial IFQ shares, and thus does not provide guidance for allocating IFQ shares to eligible participants. The second allocates initial IFQ shares equally among all eligible participants. This alternative would penalize the highliners and reward the small-scale operations in the fishery. There are more participants who would benefit from this alternative, but the magnitude

of adverse impacts on at least 136 operations would be relatively large.

Regarding the appeals process, three other alternatives were considered. The first does not establish an appeals process, and thus would not provide fishermen an avenue to contest landings information used by NMFS to determine their IFQ shares. The second establishes an appeals board composed of state directors/designees who would advise the RA on appeals. The third establishes an advisory panel composed of IFQ shareholders. The final rule is simple and more straightforward than any of the alternatives that establish an appeals board, and it also does not pose problems relative to confidentiality of individual landings information.

There are five other alternatives regarding the transfer of IFQ shares/allocations. The first provides no limit on transfer; the second limits transfers only to those with valid commercial reef fish permits; the third limits transfers only to IFQ shareholders; the fourth allows transfers to U.S. citizens and permanent resident aliens; and, the fifth limits transfers only to IFQ shareholders during the first 5 years of the IFQ program and those with valid commercial reef fish permits thereafter. With the exception of the first alternative, all others would tend to limit the price an IFQ seller gets, so the resulting IFQ prices would not capture the true value of the resource. In addition, such limitations would constrain the entry of potentially more efficient producers. The final rule would be less restrictive than these alternatives but still would be more restrictive than the first alternative that does not impose limits on transfer. However, the final rule addresses concerns relative to the preservation of the historical and current participation in the fishery.

Two other alternatives were considered on the issue of minimum landings. Both alternatives impose a minimum landings requirement to retain IFQ shares, and thus would reduce the flexibility of IFQ shareholders to adjust their operations, particularly in the downward direction, from year to year for business or other reasons.

On the issue of allocating adjustments in the commercial quota, three other alternatives were considered. The first does not specify a method for allocating adjustments, so it does not provide adequate guidance for allocating quota changes. The second would allocate quota changes equally among IFQ share holders, and the third would allocate quota changes equally for 50 percent of the change and proportionately for the

other 50 percent. The second alternative would provide smaller operations larger benefits with quota increases and also larger losses with quota decreases. The third alternative would favor smaller operations at the expense of larger operations. Both large and small vessel operations were considered small entities for SBA purposes.

The final rule regarding a cost recovery fee is intended to abide by the Section 304(d)(2) provision of the Magnuson-Stevens Act. One other alternative considered in this respect is not to impose a fee, which would not be in compliance with the noted provision. Another alternative considered is similar to the final rule, except that collection and submission of fees reside on the IFQ shareholders and not on the dealers. Under this alternative and the final rule, a small entity bears the cost of collecting and remitting the fees. The final rule, however, affords a better accounting control for the government.

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 states that, for each rule or group of related rules for which an agency is required to prepare a FRFA, the agency shall publish one or more guides to assist small entities in complying with the final rule, and shall designate such publications as "small entity compliance guides." As part of the rulemaking process, NMFS prepared a fishery bulletin, which also serves as a small entity compliance guide. The fishery bulletin will be sent to all commercial Gulf reef fish vessel permit holders and all dealers with Gulf reef fish dealer permits.

This final rule contains collection-of-information requirements subject to the Paperwork Reduction Act (PRA) and which have been approved by the Office of Management and Budget (OMB) under control number 0648-0551. The collection-of-information requirements and estimated average public reporting burdens, in minutes, are as follows: (1) Dealer account activation--5; (2) Dealer transaction report--7; (3) Shareholder account activation--5; (4) Allocation holder account activation--10; (5) Advance notification of landing--3; (6) Transfer of share--15; and (7) Transfer of allocation--5. These estimates of the average public reporting burdens include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collections of information. Send comments regarding the burden estimates or any other aspect of the collection-of-information requirements, including suggestions for

reducing the burden, to NMFS and to 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.

The addition to the regulations at 50 CFR 622.16(b) contains administrative procedures necessary for timely implementation of the red snapper IFQ program. These necessary advance procedures include and provide for: determination of initial eligibility for an IFQ; calculation of initial IFQ shares and allocations; notification to participants of the requirement for IFQ endorsements and of procedures for obtaining endorsements; shareholder notification regarding landings histories, initial determination of shares and allocations; and instructions for setting up an online IFQ account; notification to dealers regarding endorsement requirements, procedures for obtaining endorsements, and instructions for establishing an online IFQ dealer account; and the opportunity and ability of IFQ participants to review and respond to NMFS' initial determinations regarding landings histories, shares, and allocations and to establish online IFQ accounts and obtain IFQ endorsements that are required as of the beginning of the fishing year, January 1, 2007. A delay in the effective date of these essential administrative procedures would impede IFQ participants' ability to complete required actions prior to the beginning of the fishing year and deny IFQ participants the opportunity to participate in the fishery at the beginning of the fishing year. These procedures are primarily the responsibility of NMFS.

Delay in the effectiveness of these essential administrative procedures would unnecessarily delay implementation of the IFQ program beyond the intended January 1, 2007, start date which is the beginning of the fishing year. These administrative procedures involve numerous actions by NMFS (e.g., initial determinations of eligibility, initial determinations of optimal landings histories, initial determinations of IFQ shares and allocations, and notification to participants via certified mail) that are prerequisites for subsequent response and action by participants (e.g., confirming or contesting NMFS' initial determinations, establishing IFQ accounts, and obtaining required IFQ endorsements) all of which need to occur prior to the beginning of the

fishing year. The addition of the prohibitions at 50 CFR 622.7(gg) and (hh) as of the date of publication of this final rule is necessary to ensure the integrity of information provided as part of the advance administrative procedures. The removal and reserving of 50 CFR 622.4(p)(4) as of the date of publication of this final rule is necessary to: prevent subsequent transfer of Class 1 and Class 2 licenses that determine IFQ eligibility, stabilize the universe of eligible IFQ participants, and allow NMFS to conduct the advance administrative procedures necessary to implement the IFQ program in a timely manner. Therefore, the need to implement these provisions in a timely manner constitutes good cause under 5 U.S.C. 553(d)(3) to waive the 30-day delay in effective date for 50 CFR 622.16(b), 622.7(gg) and (hh), and 622.4(p)(4). Finally, the requirement for prior notice and opportunity for public comment is waived with respect to the revisions to the table of OMB control numbers in 15 CFR 902.1(b) because this action is a rule of agency organization, procedure, or practice under 5 U.S.C. 553(b)(A).

List of Subjects

15 CFR Part 902

Reporting and recordkeeping requirements.

50 CFR Part 622

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

Dated: November 17, 2006.

Samuel D. Rauch III,

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

■ For the reasons set out in the preamble, 15 CFR Chapter IX and 50 CFR Chapter VI are amended as follows:

15 CFR Chapter IX

PART 902—NOAA INFORMATION COLLECTION REQUIREMENTS UNDER THE PAPERWORK REDUCTION ACT: OMB CONTROL NUMBERS

■ 1. The authority citation for part 902 continues to read as follows:

Authority: 44 U.S.C. 3501 *et seq.*

■ 2. In § 902.1, paragraph (b), under “50 CFR”, the entry “622.16” is added in numerical order to read as follows:

§ 902.1 OMB control numbers assigned pursuant to the Paperwork Reduction Act.

* * * * *
(b) * * *

CFR part or section where the information collection requirement is located	Current OMB control number (All numbers begin with 0648–)
* * * *	*
50 CFR * * * *	*
622.16 * * * *	–0551 *

50 CFR Chapter VI

PART 622—FISHERIES OF THE CARIBBEAN, GULF, AND SOUTH ATLANTIC

■ 3. The authority citation for part 622 continues to read as follows:

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

■ 4. In § 622.1, revise paragraph (a), the first sentence of paragraph (b), Table 1 entry “FMP for the Reef Fish Resources of the Gulf of Mexico”, and add footnote 5 to read as follows:

§ 622.1 Purpose and scope.

(a) The purpose of this part is to implement the FMPs prepared under the Magnuson-Stevens Act by the CFMC, GMFMC, and/or SAFMC listed in Table 1 of this section.

(b) This part governs conservation and management of species included in the FMPs in or from the Caribbean, Gulf, Mid-Atlantic, South Atlantic, or Atlantic EEZ, unless otherwise specified, as indicated in Table 1 of this section. * * *

TABLE 1—FMPs IMPLEMENTED UNDER PART 622

FMP title	Responsible fishery management council(s)	Geographical area
* * *	* *	*
FMP for the Reef Fish Resources of the Gulf of Mexico * *	GMFMC * *	Gulf. ⁵ *

⁵Regulated area includes adjoining state waters for Gulf red snapper harvested or possessed by a person aboard a vessel with a Gulf red snapper IFQ vessel endorsement or possessed by a dealer with a Gulf red snapper IFQ dealer endorsement.

■ 5. In § 622.2, definitions of “Actual ex-vessel value” and “IFQ” are added in alphabetical order to read as follows:

§ 622.2 Definitions and acronyms.

* * * * *

Actual ex-vessel value means the total monetary sale amount a fisherman receives for IFQ landings from a registered IFQ dealer.

* * * * *

IFQ means individual fishing quota.

* * * * *

- 6. Section 622.4 is amended by:
 - A. Adding a new sentence after the first sentence of paragraph (a)(2)(v).
 - B. Revising paragraphs (a)(2)(ix), (a)(4), the first sentence of paragraph (d), paragraph (g)(1), and the first sentence of paragraph (h)(1).
 - C. Removing and reserving paragraph (p)(4).
 - D. Removing and reserving paragraphs (p)(i) through (p)(3) and (p)(5) and (p)(6).

The additions and revisions read as follows:

§ 622.4 Permits and fees.

(a) * * *

(2) * * *

(v) * * * See paragraph (a)(2)(ix) of this section regarding an additional IFQ vessel endorsement required to fish for, possess, or land Gulf red snapper. * * *

* * * * *

(ix) *Gulf red snapper IFQ vessel endorsement.* For a person aboard a vessel, for which a commercial vessel permit for Gulf reef fish has been issued, to fish for, possess, or land Gulf red snapper, regardless of where harvested or possessed, a Gulf red snapper IFQ vessel endorsement must have been issued to the vessel and must be on board. As a condition of the IFQ vessel endorsement issued under this paragraph (a)(2)(ix), a person aboard such vessel must comply with the requirements of § 622.16 regardless of where red snapper are harvested or possessed. An owner of a vessel with a commercial vessel permit for Gulf reef fish can download an IFQ vessel endorsement from the NMFS IFQ website at *ifq.sero.nmfs.noaa.gov*. If such owner does not have an IFQ online account, the owner must first contact IFQ Customer Service at 1-866-425-7627 to obtain information necessary to access the IFQ website and establish an IFQ online account. There is no fee for obtaining this endorsement. The vessel endorsement remains valid as long as the vessel permit remains valid and the vessel owner is in compliance with all Gulf reef fish and Gulf red snapper IFQ

reporting requirements, has paid all IFQ fees required under paragraph (c)(2) of this section, and is not subject to sanctions under 15 CFR part 904. The endorsement is not transferable. The provisions of this paragraph do not apply to fishing for or possession of Gulf red snapper under the bag limit specified in § 622.39(b)(1)(iii). See § 622.16 regarding other provisions pertinent to the Gulf red snapper IFQ system.

* * * * *

(4) *Dealer permits, endorsements, and conditions*—(i) *Permits.* For a dealer to receive Gulf reef fish, golden crab harvested from the South Atlantic EEZ, South Atlantic snapper-grouper, rock shrimp harvested from the South Atlantic EEZ, dolphin or wahoo harvested from the Atlantic EEZ, or wreckfish, a dealer permit for Gulf reef fish, golden crab, South Atlantic snapper-grouper, rock shrimp, Atlantic dolphin and wahoo, or wreckfish, respectively, must be issued to the dealer.

(ii) *Gulf red snapper IFQ dealer endorsement.* In addition to the requirement for a dealer permit for Gulf reef fish as specified in paragraph (a)(4)(i) of this section, for a dealer to receive Gulf red snapper subject to the Gulf red snapper IFQ program, as specified in § 622.16(a)(1), or for a person aboard a vessel with a Gulf red snapper IFQ vessel endorsement to sell such red snapper directly to an entity other than a dealer, such persons must also have a Gulf red snapper IFQ dealer endorsement. A dealer with a Gulf reef fish dealer permit can download a Gulf red snapper IFQ dealer endorsement from the NMFS IFQ website at *ifq.sero.nmfs.noaa.gov*. If such persons do not have an IFQ online account, they must first contact IFQ Customer Service at 1-866-425-7627 to obtain information necessary to access the IFQ website and establish an IFQ online account. There is no fee for obtaining this endorsement. The endorsement remains valid as long as the Gulf reef fish dealer permit remains valid and the dealer is in compliance with all Gulf reef fish and Gulf red snapper IFQ reporting requirements, has paid all IFQ fees required under paragraph (c)(2) of this section, and is not subject to sanctions under 15 CFR part 904. The endorsement is not transferable. See § 622.16 regarding other provisions pertinent to the Gulf red snapper IFQ system.

(iii) *State license and facility requirements.* To obtain a dealer permit

or endorsement, the applicant must have a valid state wholesaler’s license in the state(s) where the dealer operates, if required by such state(s), and must have a physical facility at a fixed location in such state(s).

* * * * *

(d) * * * Unless specified otherwise, a fee is charged for each application for a permit, license, or endorsement submitted under this section, for each request for transfer or replacement of such permit, license, or endorsement, and for each fish trap or sea bass pot identification tag required under § 622.6(b)(1)(i)(B). * * *

* * * * *

(g) * * *

(1) *Vessel permits, licenses, and endorsements and dealer permits.* A vessel permit, license, or endorsement or a dealer permit or endorsement issued under this section is not transferable or assignable, except as provided in paragraph (m) of this section for a commercial vessel permit for Gulf reef fish, in paragraph (n) of this section for a fish trap endorsement, in paragraph (o) of this section for a king mackerel gillnet permit, in paragraph (q) of this section for a commercial vessel permit for king mackerel, in paragraph (r) of this section for a charter vessel/headboat permit for Gulf coastal migratory pelagic fish or Gulf reef fish, in paragraph (s) of this section for a commercial vessel moratorium permit for Gulf shrimp, in § 622.17(c) for a commercial vessel permit for golden crab, in § 622.18(e) for a commercial vessel permit for South Atlantic snapper-grouper, or in § 622.19(e) for a commercial vessel permit for South Atlantic rock shrimp. A person who acquires a vessel or dealership who desires to conduct activities for which a permit, license, or endorsement is required must apply for a permit, license, or endorsement in accordance with the provisions of this section and other applicable sections of this part. If the acquired vessel or dealership is currently permitted, the application must be accompanied by the original permit and a copy of a signed bill of sale or equivalent acquisition papers. In those cases where a permit, license, or endorsement is transferable, the seller must sign the back of the permit, license, or endorsement and have the signed transfer document notarized.

* * * * *

(h) * * *

(1) * * * Unless specified otherwise, a vessel owner or dealer who has been issued a permit, license, or endorsement under this section must renew such

permit, license, or endorsement on an annual basis.

* * * * *

■ 7. In § 622.7, paragraphs (gg) and (hh) are added to read as follows:

§ 622.7 Prohibitions.

* * * * *

(gg) Fail to comply with any provision related to the Gulf red snapper IFQ program as specified in § 622.16.

(hh) Falsify any information required to be submitted regarding the Gulf red snapper IFQ program as specified in § 622.16.

■ 8. The stay of § 622.16 is lifted and the section is revised to read as follows:

§ 622.16 Gulf red snapper individual fishing quota (IFQ) program.

(a) *General.* This section establishes an IFQ program for the commercial fishery for Gulf red snapper. Under the IFQ program, the RA initially will assign eligible participants IFQ shares equivalent to a percentage of the annual commercial red snapper quota, based on their applicable historical landings. Shares determine the amount of Gulf red snapper IFQ allocation, in pounds gutted weight, a shareholder is initially authorized to possess, land, or sell in a given calendar year. Shares and annual IFQ allocation are transferable. See § 622.4(a)(2)(ix) regarding a requirement for a vessel landing red snapper subject to this IFQ program to have a Gulf red snapper IFQ vessel endorsement. See § 622.4(a)(4)(ii) regarding a requirement for a Gulf red snapper IFQ dealer endorsement. Details regarding eligibility, applicable landings history, account setup and transaction requirements, constraints on transferability, and other provisions of this IFQ system are provided in the following paragraphs of this section.

(1) *Scope.* The provisions of this section apply to Gulf red snapper in or from the Gulf EEZ and, for a person aboard a vessel with a Gulf red snapper IFQ vessel endorsement as required by § 622.4(a)(2)(ix) or for a person with a Gulf red snapper IFQ dealer endorsement as required by § 622.4(a)(4)(ii), these provisions apply to Gulf red snapper regardless of where harvested or possessed.

(2) *Duration.* The IFQ program established by this section will remain in effect until it is modified or terminated; however, the program will be evaluated by the Gulf of Mexico Fishery Management Council every 5 years.

(3) *Electronic system requirements.* (i) The administrative functions associated with this IFQ program, e.g., registration and account setup, landing transactions,

and transfers, are designed to be accomplished online; therefore, a participant must have access to a computer and Internet access and must set up an appropriate IFQ online account to participate. Assistance with online functions is available from IFQ Customer Service by calling 1-866-425-7627 Monday through Friday between 8 a.m. and 4:30 p.m. eastern time.

(ii) The RA will mail initial shareholders and dealers with Gulf reef fish dealer permits information and instructions pertinent to setting up an IFQ online account. Other eligible persons who desire to become IFQ participants by purchasing IFQ shares or allocation or by obtaining a Gulf red snapper IFQ dealer endorsement must first contact IFQ Customer Service at 1-866-425-7627 to obtain information necessary to set up the required IFQ online account. Each IFQ participant must monitor his/her online account and all associated messages and comply with all IFQ online reporting requirements.

(iii) During catastrophic conditions only, the IFQ program provides for use of paper-based components for basic required functions as a backup. The RA will determine when catastrophic conditions exist, the duration of the catastrophic conditions, and which participants or geographic areas are deemed affected by the catastrophic conditions. The RA will provide timely notice to affected participants via publication of notification in the **Federal Register**, NOAA weather radio, fishery bulletins, and other appropriate means and will authorize the affected participants' use of paper-based components for the duration of the catastrophic conditions. NMFS will provide each IFQ dealer the necessary paper forms, sequentially coded, and instructions for submission of the forms to the RA. The paper forms will also be available from the RA. The program functions available to participants or geographic areas deemed affected by catastrophic conditions will be limited under the paper-based system. There will be no mechanism for transfers of IFQ shares or allocation under the paper-based system in effect during catastrophic conditions. Assistance in complying with the requirements of the paper-based system will be available via IFQ Customer Service 1-866-425-7627 Monday through Friday between 8 a.m. and 4:30 p.m. eastern time.

(b) *Procedures for initial implementation—(1) Determination of eligibility for initial IFQ shares.* To be eligible as an initial IFQ shareholder a person must own a Class 1 or Class 2 Gulf red snapper license as of November

22, 2006. For the purposes of this paragraph, an owner of a license is defined as the person who controls transfer of the license and is listed as the qualifier on the face of the license. NMFS' permit records are the sole basis for determining eligibility based on Class 1 or Class 2 license history. No more than one initial eligibility will be granted based upon a given Class 1 or Class 2 license.

(2) *Calculation of initial IFQ shares and allocation—(i) IFQ shares.* The RA will calculate initial IFQ shares based on the highest average annual landings of Gulf red snapper associated with each shareholder's current Class 1 or Class 2 license during the applicable landings history. The applicable landings history for a Class 1 license owner whose license was not issued based on historical captain status includes any 10 consecutive years of landings data from 1990 through 2004; for a Class 1 license owner whose license was issued on the basis of historical captain status, all years of landings data from 1998 through 2004; and for a Class 2 license holder, any 5 years of landings data from 1998 through 2004. All landings associated with a current Class 1 or Class 2 license for the applicable landings history, including those reported by a person who held the license prior to the current license owner, will be attributed to the current license owner. Only legal landings reported in compliance with applicable state and Federal regulations will be accepted. Each shareholder's initial share is derived by dividing the shareholder's highest average annual landings during the applicable landings history by the sum of the highest average annual landings of all shareholders during the respective applicable landings histories. Initial IFQ shares will not be issued in denominations of less than 0.0001 percent.

(ii) *Initial share set-aside to accommodate resolution of appeals.* During the first year of implementation of this IFQ program only, the RA will reserve a 3-percent IFQ share, prior to the initial distribution of shares, to accommodate resolution of appeals, if necessary. Any portion of the 3-percent share remaining after the appeals process is completed will be distributed as soon as possible among initial shareholders in direct proportion to the percentage share each was initially allocated. If resolution of appeals requires more than a 3-percent share, the shares of all initial shareholders would be reduced accordingly in direct proportion to the percentage share each was initially allocated.

(iii) *IFQ allocation.* IFQ allocation is the amount of Gulf red snapper, in pounds gutted weight, an IFQ shareholder or allocation holder is authorized to possess, land, or sell during a given fishing year. IFQ allocation is derived at the beginning of each year by multiplying a shareholder's IFQ share times the annual commercial quota for Gulf red snapper.

(iv) *Special procedure for initial calculation of 2007 IFQ allocations.* Because of uncertainty regarding the 2007 commercial quota for Gulf red snapper and the timing of its implementation and to avoid the possibility of having to revoke some proportion of initial allocation if the quota was subsequently reduced, the RA may initially calculate the 2007 IFQ allocations based on a proxy commercial quota. If a commercial quota adjustment for Gulf red snapper has not been submitted for review by the Secretary of Commerce in time for calculation of 2007 IFQ allocations, the RA will initially calculate 2007 allocations based on a proxy commercial quota of 2.55 million lb (1.16 million kg). Alternatively, if a commercial quota adjustment for Gulf red snapper has been submitted for review by the Secretary of Commerce in time to allow calculation of 2007 allocations, the RA will base 2007 IFQ allocations on the proposed quota. Under either scenario, as soon as the actual 2007 commercial quota is final, but no later than July 1, 2007, the RA will adjust the 2007 IFQ allocations, as necessary, consistent with the actual quota.

(3) *Shareholder notification regarding landings history, initial determination of IFQ shares and allocations, and IFQ account setup information.* (i) As soon as possible after November 22, 2006, the RA will mail each Class 1 or Class 2 red snapper license owner information pertinent to the IFQ program. This information will include—

(A) Gulf red snapper landings associated with the owner's license during each year of the applicable landings history;

(B) The highest average annual red snapper landings based on the owner's applicable landings history;

(C) The owner's initial IFQ share based on the highest average annual landings associated with the owner's applicable landings history;

(D) The initial IFQ allocation;

(E) Instructions for appeals;

(F) General instructions regarding procedures related to the IFQ online system, including how to set up an online account; and

(G) A user identification number--the personal identification number (PIN) will be provided in a subsequent letter.

(ii) The RA will provide this information, via certified mail return receipt requested, to the license owner's address of record as listed in NMFS' permit files. A license owner who does not receive such notification from the RA by December 22, 2006 must contact the RA to clarify eligibility status and landings and initial share information.

(iii) The initial share information provided by the RA is based on the highest average landings associated with the owner's applicable landings history; however, a license owner may select a different set of years of landings, consistent with the owner's applicable landings history, for the calculation of the initial IFQ share. The license owner must submit that information to the RA postmarked no later than December 22, 2006. If alternative years, consistent with the applicable landings history, are selected, revised information regarding shares and allocations will be posted on the online IFQ accounts no later than January 1, 2007. A license owner who disagrees with the landings or eligibility information provided by the RA may appeal the RA's initial determinations.

(4) *Procedure for appealing IFQ eligibility and/or landings information.* The only items subject to appeal under this IFQ system are initial eligibility for IFQ shares based on ownership of a Class 1 or Class 2 license, the accuracy of the amount of landings, and correct assignment of landings to the license owner. Appeals based on hardship factors will not be considered. Appeals must be submitted to the RA postmarked no later than April 1, 2007 and must contain documentation supporting the basis for the appeal. The RA will review all appeals, render final decisions on the appeals, and advise the appellant of the final decision.

(i) *Eligibility appeals.* NMFS' records of Class 1 and Class 2 licenses are the sole basis for determining ownership of such licenses. A person who believes he/she meets the permit eligibility criteria based on ownership of a vessel under a different name, as may have occurred when ownership has changed from individual to corporate or vice versa, must document his/her continuity of ownership.

(ii) *Landings appeals.* Landings data for 1990 through 1992 are not subject to appeal. Appeals regarding landings data for 1993 through 2004 will be based solely on NMFS' logbook records. If NMFS' logbooks are not available, state landings records or data that were submitted in compliance with applicable Federal and state regulations,

on or before June 30, 2005, can be used. (5) Dealer notification and IFQ account setup information. As soon as possible after November 22, 2006, the RA will mail each dealer with a valid Gulf reef fish dealer permit information pertinent to the IFQ program. Any such dealer is eligible to receive a red snapper IFQ dealer endorsement which can be downloaded from the IFQ website at *ifq.seo.nmfs.noaa.gov* once an IFQ account has been established. The information package will include general information about the IFQ program and instructions for accessing the IFQ website and establishing an IFQ dealer account.

(c) *IFQ operations and requirements—*
(1) *IFQ Landing and transaction requirements.* (i) Gulf red snapper subject to this IFQ program can only be possessed or landed by a vessel with a Gulf red snapper IFQ vessel endorsement. Such red snapper can only be received by a dealer with a Gulf red snapper IFQ dealer endorsement. The person landing the red snapper must hold or be assigned IFQ allocation at least equal to the pounds of red snapper landed, except as provided in paragraph (c)(1)(ii) of this section.

(ii) An IFQ shareholder or his agent or employee assigned to land the shareholder's allocation can legally exceed, by up to 10 percent, the shareholder's allocation remaining on the last fishing trip of the fishing year. Any such overage will be deducted from the shareholder's allocation for the subsequent fishing year.

(iii) The dealer is responsible for completing a landing transaction report for each landing and sale of Gulf red snapper via the IFQ website at *ifq.seo.nmfs.noaa.gov* at the time of the transaction in accordance with reporting form and instructions provided on the website. This report includes, but is not limited to, date, time, and location of transaction; weight and actual ex-vessel value of red snapper landed and sold; and information necessary to identify the fisherman, vessel, and dealer involved in the transaction. The fisherman must validate the dealer transaction report by entering his unique PIN number when the transaction report is submitted. After the dealer submits the report and the information has been verified, the website will send a transaction approval code to the dealer and the allocation holder.

(2) *IFQ cost recovery fees.* As required by section 304(d)(2)(A)(i) of the Magnuson-Stevens Act, the RA will collect a fee to recover the actual costs directly related to the management and enforcement of the Gulf red snapper IFQ

program. The fee cannot exceed 3 percent of the ex-vessel value of Gulf red snapper landed under the IFQ program. Such fees will be deposited in the Limited Access System Administration Fund (LASAF). Initially, the fee will be 3 percent of the actual ex-vessel value of Gulf red snapper landed under the IFQ program, as documented in each landings transaction report. The RA will review the cost recovery fee annually to determine if adjustment is warranted. Factors considered in the review include the catch subject to the IFQ cost recovery, projected ex-vessel value of the catch, costs directly related to the management and enforcement of the IFQ program, the projected IFQ balance in the LASAF, and expected non-payment of fee liabilities. If the RA determines that a fee adjustment is warranted, the RA will publish a notification of the fee adjustment in the **Federal Register**.

(i) *Payment responsibility.* The IFQ allocation holder specified in the documented red snapper IFQ landing transaction report is responsible for payment of the applicable cost recovery fees.

(ii) *Collection and submission responsibility.* A dealer who receives Gulf red snapper subject to the IFQ program is responsible for collecting the applicable cost recovery fee for each IFQ landing from the IFQ allocation holder specified in the IFQ landing transaction report. Such dealer is responsible for submitting all applicable cost recovery fees to NMFS on a quarterly basis. The fees are due and must be submitted, using *pay.gov* via the IFQ system, no later than 30 days after the end of each calendar-year quarter; however, fees may be submitted at any time before that deadline. Fees not received by the deadline are delinquent.

(iii) *Fee payment procedure.* For each IFQ dealer, the IFQ system will post, on individual message boards, an end-of-quarter statement of cost recovery fees that are due. The dealer is responsible for submitting the cost recovery fee payments using *pay.gov* via the IFQ system. Authorized payment methods are credit card, debit card, or automated clearing house (ACH). Payment by check will be authorized only if the RA has determined that the geographical area or an individual(s) is affected by catastrophic conditions.

(iv) *Fee reconciliation process—delinquent fees.* The following procedures apply to an IFQ dealer whose cost recovery fees are delinquent.

(A) On or about the 31st day after the end of each calendar-year quarter, the RA will send the dealer an electronic

message via the IFQ website and official notice via mail indicating the applicable fees are delinquent; the dealer's IFQ account has been suspended pending payment of the applicable fees; and notice of intent to annul the dealer's IFQ endorsement.

(B) On or about the 61st day after the end of each calendar-year quarter, the RA will mail to a dealer whose cost recovery fee payment remains delinquent, official notice documenting the dealer's IFQ endorsement has been annulled.

(C) On or about the 91st day after the end of each calendar-year quarter, the RA will refer any delinquent IFQ dealer cost recovery fees to the appropriate authorities for collection of payment.

(v) *Annual IFQ dealer ex-vessel value report.* The IFQ online system will generate an annual IFQ Dealer Ex-Vessel Value Report for each IFQ dealer. The report will include quarterly and annual information regarding the amount and value of IFQ red snapper received by the dealer, the associated cost recovery fees, and the status of those fees. The dealer's acceptance of this report constitutes compliance with the annual dealer IFQ reporting requirement.

(3) *Measures to enhance IFQ program enforceability—(i) Advance notice of landing.* The owner or operator of a vessel landing IFQ red snapper is responsible for calling NMFS Office of Law Enforcement at 1-866-425-7627 at least 3 hours, but no more than 12 hours, in advance of landing to report the time and location of landing and the name of the IFQ dealer where the red snapper are to be received. Failure to comply with this advance notice of landing requirement will preclude authorization to complete the landing transaction report required in paragraph (b)(5)(iii) of this section and, thus, will preclude issuance of the required transaction approval code.

(ii) *Time restriction on landing and offloading.* IFQ red snapper may be landed and offloaded only between 6 a.m. and 6 p.m., local time.

(iii) *Restrictions on transfer of IFQ red snapper.* At-sea or dockside transfer of IFQ red snapper from one vessel to another vessel is prohibited.

(iv) *Requirement for transaction approval code.* Possession of IFQ red snapper from the time of transfer from a vessel through possession by a dealer is prohibited unless the IFQ red snapper are accompanied by a transaction approval code verifying a legal transaction of the amount of IFQ red snapper in possession.

(4) *Transfer of IFQ shares and allocation.* Through January 1, 2012, IFQ shares and allocations can be

transferred only to a person who holds a valid commercial vessel permit for Gulf reef fish; thereafter, IFQ shares and allocations can be transferred to any U.S. citizen or permanent resident alien. However, a valid commercial permit for Gulf reef fish, a Gulf red snapper IFQ vessel endorsement, and Gulf red snapper IFQ allocation are required to possess, land or sell Gulf red snapper subject to this IFQ program.

(i) *Share transfers.* Share transfers are permanent, i.e., they remain in effect until subsequently transferred. Transfer of shares will result in the corresponding allocation being automatically transferred to the person receiving the transferred share beginning with the fishing year following the year the transfer occurred. However, within the fishing year the share transfer occurs, transfer of shares and associated allocation are independent—unless the associated allocation is transferred separately, it remains with the transferor for the duration of that fishing year. A share transfer transaction that remains in pending status, i.e., has not been completed and verified with a transaction approval code, after 30 days from the date the shareholder initiated the transfer will be cancelled, and the pending shares will be re-credited to the shareholder who initiated the transfer.

(ii) *Share transfer procedures.* A shareholder must initiate the request for the RA to transfer IFQ shares by using the online Gulf red snapper IFQ website at *ifq.sero.nmfs.noaa.gov*. Following the instructions provided on the website, the shareholder must enter pertinent information regarding the transfer request including, but not limited to, amount of shares to be transferred, which must be a minimum of 0.0001 percent; name of the eligible transferee; and the value of the transferred shares. For the first 5 years this IFQ program is in effect, an eligible transferee is a person who has a valid commercial vessel permit for Gulf reef fish; is in compliance with all reporting requirements for the Gulf reef fish fishery and the red snapper IFQ program; is not subject to sanctions under 15 CFR part 904; and who would not be in violation of the share cap as specified in paragraph (c)(6) of this section. Thereafter, share transferee eligibility will be extended to include U.S. citizens and permanent resident aliens who are otherwise in compliance with the provisions of this section. NMFS will evaluate and verify the information entered. If the information is not accepted, NMFS will send the shareholder an electronic message explaining the reason(s). If the

information is accepted, NMFS will send the shareholder an initial transaction approval code and make an application for share transfer available for downloading and printing. The shareholder and eligible transferee must complete the application, have their signatures notarized, and mail the signed application to the RA at least 30 days prior to the date on which the applicant desires to have the transfer effective. The signed application must be received by the RA prior to December 1. See paragraph (c)(4)(v) of this section regarding a prohibition on transfer during December of each year. If the RA approves the application for transfer, the online system will send the shareholder and the transferee an electronic message acknowledging the approval; a transfer is effective upon receipt of the message. The adjusted shares resulting from a transfer may be viewed online by each of the respective shareholders involved in the transaction. If the RA does not approve the transfer application, the RA will return the application to the shareholder with an explanation and instructions for correcting any deficiencies.

(iii) *Allocation transfers.* An allocation transfer is valid only for the remainder of the fishing year in which it occurs; it does not carry over to the subsequent fishing year. Any allocation that is unused at the end of the fishing year is void.

(iv) *Allocation transfer procedures.* Unlike share transfers which require a notarized application for transfer, allocation transfers can be accomplished online via the red snapper IFQ website. An IFQ allocation holder can initiate an allocation transfer by logging on to the red snapper IFQ website at ifq.sero.nmfs.noaa.gov, entering the required information, including but not limited to, name of an eligible transferee and amount of IFQ allocation to be transferred and price, and submitting the transfer electronically. If the transfer is approved, the website will provide a transaction approval code to the transferor and transferee confirming the transaction.

(v) *Prohibition of transfer of shares during December each year.* No IFQ shares may be transferred during December of each year. This period is necessary to provide the RA sufficient time to reconcile IFQ accounts, adjust allocations for the upcoming year if the commercial quota for Gulf red snapper has changed, and update shares and allocations for the upcoming fishing year.

(5) *Fleet management and assignment of IFQ allocation.* An IFQ shareholder or IFQ allocation holder who owns more

than one vessel with a valid Gulf reef fish vessel permit and a valid Gulf red snapper IFQ vessel endorsement may assign IFQ allocation to a person aboard such vessel and provide that person the IFQ account information necessary to conduct landing transactions.

(6) *IFQ share cap.* No person, including a corporation or other entity, may individually or collectively hold IFQ shares in excess of the maximum share initially issued to a person for the 2007 fishing year, as of the date appeals are resolved and shares are adjusted accordingly. For the purposes of considering the share cap, a corporation's total IFQ share is defined as the sum of the IFQ shares held by the corporation and the IFQ shares held by individual shareholders of the corporation. A corporation must identify the shareholders of the corporation and their percent of shares in the corporation.

(7) *Redistribution of shares resulting from permanent permit or endorsement revocation.* If a shareholder's commercial vessel permit for Gulf reef fish or Gulf red snapper IFQ vessel endorsement has been permanently revoked under provisions of 15 CFR part 904, the RA will redistribute the IFQ shares held by that shareholder proportionately among remaining shareholders based upon the amount of shares each held just prior to the redistribution. During December of each year, the RA will determine the amount of revoked shares, if any, to be redistributed, and the shares will be distributed at the beginning of the subsequent fishing year.

(8) *Annual recalculation and notification of IFQ shares and allocation.* On or about January 1 each year, IFQ shareholders will be notified, via the IFQ website at ifq.sero.nmfs.noaa.gov, of their IFQ share and allocation for the upcoming fishing year. These updated share values will reflect the results of applicable share transfers and any redistribution of shares resulting from permanent revocation of applicable permits or endorsements under 15 CFR part 904. Allocation is calculated by multiplying IFQ share times the annual red snapper commercial quota. Updated allocation values will reflect any change in IFQ share, any change in the annual commercial quota for Gulf red snapper, and any debits required as a result of prior fishing year overages as specified in paragraph (c)(1)(ii) of this section. IFQ participants can monitor the status of their shares and allocation throughout the year via the IFQ website.

8A. Section 622.16, with the exception of paragraph (b), is stayed until January 1, 2007.

§ 622.34 [Amended]

■ 9. In § 622.34, paragraph (l) is removed and reserved.

■ 10. In § 622.42, paragraph (a)(1)(i) is revised to read as follows:

§ 622.42 Quotas.

* * * * *

(a) * * *

(1) * * *

(i) *Red snapper*—4.65 million lb (2.11 million kg), round weight.

* * * * *

§ 622.44 [Amended]

■ 11. In § 622.44, paragraph (d) is removed and reserved.

[FR Doc. 06-9342 Filed 11-17-06; 4:47 pm]

BILLING CODE 3510-22-S

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 1

RIN 3038-AC34

Financial Reporting Requirements for Introducing Brokers

AGENCY: Commodity Futures Trading Commission.

ACTION: Final rulemaking.

SUMMARY: The Commodity Futures Trading Commission ("Commission" or "CFTC") is amending Commission regulations to require introducing brokers ("IBs") submitting CFTC financial Forms 1-FR-IB that are certified by independent public accountants to file such financial reports electronically with the National Futures Association ("NFA"). The amendments also require that certified Financial and Operational Combined Uniform Single Reports ("FOCUS" Reports), submitted by IBs registered with the Securities and Exchange Commission ("SEC") as securities brokers or dealers ("B/Ds") in lieu of Form 1-FR-IB, be filed either electronically or in paper form in accordance with the rules of the NFA. The CFTC also is amending Commission regulations to require that, with respect to any such electronic filing, a paper copy including the original signed certification be maintained by the IB in its records for a period of five years in accordance with Commission Regulation 1.31.

DATES: *Effective Date:* December 22, 2006.

FOR FURTHER INFORMATION CONTACT: Thomas J. Smith, Deputy Director and

magnitude of occupational injuries associated with farming operations. The collection combines the childhood and occupational injury studies to reduce the number of contacts on the targeted farm population.

Reports will be generated and information disseminated to all interested parties concerning the finding of this study.

Authority: These data will be collected under the authority of 7 U.S.C. 2204(a). Individually identifiable data collected under this authority are governed by section 1770 of the Food Security Act of 1985, 7 U.S.C. 2276, which requires USDA to afford strict confidentiality to non-aggregated data provided by respondents. This Notice is submitted in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104-13 codified at 44 U.S.C. 3501, et seq.) and Office of Management and Budget regulations at 5 CFR part 1320 (60 FR 44978, August 29, 1995).

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 3 minutes per response for the childhood injury questions and 10 minutes for the combined interview; screen-outs will be allowed early in both instruments if no injuries were incurred.

Respondents: Farm operators.

Estimated Number of Respondents: 50,000.

Estimated Total Annual Burden on Respondents: 5,400 hours.

Copies of this information collection and related instructions can be obtained without charge from the YA NASS Clearance Officer, at (202) 720-2248.

Comments: Comments are invited on:

(a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

All responses to this notice will become a matter of public record and be summarized in the request for OMB approval.

Signed at Washington, DC, January 14, 2008.

Joseph T. Reilly,

Associate Administrator.

[FR Doc. E8-2757 Filed 2-13-08; 8:45 am]

BILLING CODE 3410-20-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Federal Consistency Appeal by AES Sparrows Point LNG, LLC and Mid-Atlantic Express, LLC

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (Commerce).

ACTION: Notice of stay—closure of administrative appeal decision record.

SUMMARY: This announcement provides notice that the Secretary of Commerce has stayed, for a period of 60 days, closure of the decision record in an administrative appeal filed by AES Sparrows Point, LLC and Mid-Atlantic Express, LLC (AES Consistency Appeal).

DATES: The decision record for the AES Consistency Appeal will now close on April 14, 2008.

ADDRESSES: Office of the General Counsel for Ocean Services, National Oceanic and Atmospheric Administration, U.S. Department of Commerce, 1305 East-West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Odin-Smith, Attorney-Advisor, Office of the General Counsel, via e-mail at gcos.inquiries@noaa.gov, or at (301) 713-7392.

SUPPLEMENTARY INFORMATION: In August 2007, AES Sparrows Point, LLC and Mid-Atlantic Express, LLC (AES or Appellant) filed an appeal with the Secretary of Commerce (Secretary) pursuant to section 307(c)(3)(A) of the Coastal Zone Management Act of 1972 (CZMA). The appeal was taken from an objection by the Maryland Department of the Environment (State), relating to AES' proposal to construct and operate a liquefied natural gas terminal in Baltimore County, Maryland, and an associated 88-mile natural gas pipeline.

Under the CZMA, the Secretary must close the decision record in an appeal 160 days after the notice of appeal is published in the **Federal Register**. However, the CZMA authorizes the Secretary to stay closing the decision record for up to 60 days when the Secretary determines it necessary to receive, on an expedited basis, any supplemental information specifically

requested by the Secretary to complete a consistency review or any clarifying information submitted by a party to the proceeding related to information in the consolidated record compiled by the lead Federal permitting agency.

After reviewing the AES Consistency Appeal decision record developed to date, the Secretary has decided to solicit supplemental and clarifying information. In order to allow receipt of this information, the Secretary hereby stays closure of the decision record, currently scheduled to occur on February 14, 2008, until April 14, 2008.

Additional information about the AES Consistency Appeal and the CZMA appeals process is available from the Department of Commerce CZMA appeals Web site <http://www.ogc.doc.gov/czma.htm>.

Dated: February 11, 2008.

Joel La Bissonniere,

Assistant General Counsel for Ocean Services.

[Federal Domestic Assistance Catalog No. 11.419 Coastal Zone Management Program Assistance.]

[FR Doc. E8-2814 Filed 2-13-08; 8:45 am]

BILLING CODE 3510-08-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Proposed Information Collection; Comment Request; Southeast Region Gulf of Mexico Red Snapper IFQ Program

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted on or before April 14, 2008.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at dHynek@doc.gov).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be

directed to Jason Rueter, (727) 824-5350 or jason.rueter@noaa.gov.

SUPPLEMENTARY INFORMATION:

I. Abstract

The National Marine Fisheries Service (NMFS), Alaska Region manages the red snapper fishery in the waters of the Gulf of Mexico under the Reef Fish Fishery Management Plan (FMP). The Gulf of Mexico red snapper fishery is overcapitalized. This overcapitalization has led to derby fishery conditions. The Individual Fishing Quota (IFQ) program reduced overcapacity and eliminated derby "race" fishing conditions in the fishery. As part of this program, the Southeast Regional Office needs to collect percent ownership in a corporation from IFQ participants. The IFQ program has a cap on share percent ownership of six percent. Without the ability to track corporate shareholder information, NOAA Fisheries Service will be unable to enforce this share ownership cap. The regulations implementing the FMP are at 50 CFR part 622.

The recordkeeping and reporting requirements at 50 CFR part 622 form the basis for this collection of information. NMFS Southeast Region requests information from IFQ participants. This information, upon receipt, results in an increasingly more efficient and accurate database for management and monitoring of the red snapper IFQ program in the Gulf of Mexico EEZ.

II. Method of Collection

Paper applications, electronic reports, and telephone calls are required from participants, and methods of submittal include Internet and facsimile transmission of paper forms.

III. Data

OMB Number: 0648-0551.

Form Number: None.

Type of Review: Regular submission.

Affected Public: Not-for-profit

institutions; and business or other for-profit organizations.

Estimated Number of Respondents: 1,417.

Estimated Time per Response: 1 minute.

Estimated Total Annual Burden Hours: 24 (1,039 total).

Estimated Total Annual Cost to Public: \$0.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have

practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: February 8, 2008

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E8-2683 Filed 2-13-08; 8:45 am]

BILLING CODE 3510-22-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Proposed Information Collection; Comment Request; Southeast Region Permit Family of Forms

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted on or before April 14, 2008.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at dHynek@doc.gov).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Jason Rueter, (727) 824-5350 or jason.rueter@noaa.gov.

SUPPLEMENTARY INFORMATION:

I. Abstract

The Sustainable Fisheries Division, Southeast Regional Office, National

Marine Fisheries Service (NMFS), is entrusted with the conservation, management, and protection of marine fishery resources inhabiting federal waters off the southeastern United States from North Carolina through Texas and Puerto Rico and the U.S. Virgin Islands. The Division is the Region's focal point for implementing NMFS's primary legislative authority for fisheries management and research, the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), as amended by the Sustainable Fisheries Act (SFA).

The Division works directly with the Region's three fishery management councils established by Congress to perform the mandates of the Magnuson-Stevens Act. These mandates are accomplished through fishery management plans for marine finfish and crustaceans that support important commercial and recreational fisheries in the Gulf of Mexico, South Atlantic Ocean, and Caribbean Sea and consider conservation and management issues, sociological and economic issues, and regulatory issues. Functions and activities required to fulfill this and other responsibilities as specified in the Magnuson-Stevens Act include: Providing guidance on fisheries management; providing technical assistance and advice in preparing fishery management plans (FMP) in accordance with national standard guidelines and other applicable laws; coordinating public review and compilation of comments; initiating Secretarial review of FMP and amendments; drafting regulations and **Federal Register** notices, as well as reviewing and responding to comments received during rulemaking; FMP implementation; and monitoring.

A major component of fisheries management in the Region is the permit system and the information collected by these permits. The permit/endorsement system has the following uses:

- a. Registration of actual and/or potential fishing vessels/dealers.
- b. Collection of data relevant to the characteristics of both vessels and (potential) fishermen.
- c. Secure compliance (e.g., do not issue permits until unpaid penalties have been collected and reporting requirements are fulfilled).
- d. Provide a mailing list for the dissemination of regulatory information.
- e. Register participants for fisheries with special restrictions/limited access.
- f. Provide sample frames for data collection.
- g. Permit purchase information for fleet economic analyses.