

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](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.*

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## 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](mailto: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](mailto: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](mailto: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. <sup>5</sup> *

<sup>5</sup> Regulated 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](http://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](http://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.

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## 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