time of landing and their combined wet
weight is less than 5 percent of the
dressed weight of the corresponding
carcass(es).

§ 600.1300–600.1309

Subpart O—Limited Access
Privilege Programs

AUTHORITY: 16 U.S.C. 1801 et seq.

SOURCE: 73 FR 75973, Dec. 15, 2008, unless
otherwise noted.

§§ 600.1300–600.1309 [Reserved]

§ 600.1310 New England and Gulf of
Mexico Individual Fishing Quota
Referenda.

(a) Purpose and scope. This section es-
tablishes procedures and guidelines for
referenda to be conducted on Individual
Fishing Quota (IFQ) program proposals
developed by the New England Fishery
Management Council (NEFMC) and the
Gulf of Mexico Fishery Management
Council (GMFMC). These procedures
and guidelines also apply to IFQ pro-
gram proposals developed by NMFS for
fisheries under the jurisdiction of the
NEFMC or GMFMC, except for certain
provisions that only apply to a fishery
management council. This section pro-
vides guidance on developing voter eli-
gibility and vote weighting, and estab-
lishes general procedures to ensure
referenda are conducted in a fair and
equitable manner.

(b) Initiating IFQ referenda. (1) The
NEFMC and the GMFMC shall not sub-
mit, and the Secretary shall not ap-
prove, an FMP or FMP amendment
that would create an IFQ program
until the IFQ program proposal, as ul-
timately developed, has been approved
by a referendum of eligible voters.
Paragraph (h) of this section provides
criteria for determining the outcome of
IFQ referenda.

(2) To initiate a referendum on a pro-
posed IFQ program:

(i) The relevant Council must have
held public hearings on the FMP or
FMP amendment in which the IFQ pro-
gram is proposed;

(ii) The relevant Council must have
considered public comments on the
proposed IFQ program;

(iii) The relevant Council must have
selected preferred alternatives for the
proposed IFQ program;

(iv) The chair of the Council with ju-
risdiction over such proposed IFQ fish-
ery must request a referendum on the
proposed IFQ program in a letter to the
appropriate NMFS Regional Adminis-
trator;

(v) The letter requesting initiation of
a referendum must recommend voter
eligibility criteria that are consistent
with the applicable requirements of
paragraph (c)(1) of this section and
may also include recommended criteria
for vote weighting. The letter must
provide the rationale supporting the
Council’s recommendation, as well as
such additional information and anal-
yses as needed, consistent with applica-
table law and provisions of this section.
If a Council recommends vote
weighting criteria, the letter should
fully describe the rationale for and the
expected effects of such weighting on
the referendum;

(vi) NEFMC referenda initiation let-
ters must: recommend criteria that are
consistent with paragraph (c)(2)(iii) of
this section for NMFS to use in deter-
mining the eligibility of other fishery
participants to vote in the referendum;
include the minimum percentage of a
crew member’s total income that must
have been earned during the eligibility
periods in the proposed IFQ fishery as
discussed in paragraph (c)(2)(ii) of this
section; and include criteria for “ref-
erendum eligible vessels” as described
in paragraph (c)(2)(i) of this section; and

(vii) GMFMC letters initiating
referenda of multispecies permit hold-
ers in the Gulf of Mexico must include
recommended criteria to be used in
identifying those permit holders who
have substantially fished the species to
be included in the proposed IFQ pro-
gram, along with alternatives to the
recommendation, and supporting anal-
yses. Guidelines for developing such
recommendations are provided at para-
graph (c)(3) of this section.

(3) Following a referendum that has
failed to approve the IFQ proposal, any
request from a Council for a new ref-
erendum in the same fishery must in-
clude an explanation of the substantive
changes to the proposed IFQ program
or the changes of circumstances in the fishery that would warrant initiation of an additional referendum.

(c) Referenda voter eligibility—(1) Permit holders and other fishery participants.
   (i) To be eligible to vote in IFQ referenda, permit holders and other fishery participants must meet voter eligibility criteria.
   (ii) Holders of multispecies permits in the Gulf of Mexico must have substantially fished the species proposed to be included in the IFQ program to be eligible to vote in a referendum on the proposed program.
   (iii) When developing eligibility criteria for permit holders in an IFQ program referendum, the relevant Council or Secretary must consider, but is not limited to considering:
      (A) The full range of entities likely to be eligible to receive initial quota allocation under the proposed IFQ program;
      (B) Current and historical harvest and participation in the fishery; and
      (C) Other factors as may be determined by the Council with jurisdiction over the fishery for which an IFQ program is proposed to be relevant to the fishery and to the proposed IFQ program.

(2) Crew member eligibility in NEFMC IFQ referenda. (i) For the purposes of this section, "referendum-eligible vessel" means a vessel, the permit holder or owner of which has been determined to be eligible to vote in the referendum on the basis of such vessel's history or other characteristics.
   (ii) To be eligible to vote in an IFQ referendum, crew members must meet the following requirements:
      (A) The crew member must have worked aboard a referendum-eligible vessel at sea, during the qualifying period(s), while the vessel was engaged in fishing;
      (B) If requested, the crew member must produce documentary proof of employment or service as a crew member and income during the qualifying periods. Documents that may be required include, but are not limited to, signed crew contracts, records of payment, settlement sheets, income tax records, a signed statement from the permit holder, and other documentary evidence of the period of employment and the vessel upon which the crew member worked;
      (C) During the qualifying period(s), the crew member must have derived a percentage of his/her total income from the fishery under the proposed IFQ program that is equal to or greater than the percentage determined to be significant relative to the economic value and employment practices of the fishery; and
      (D) Any additional eligibility criteria promulgated by the NMFS.
   (iii) When developing criteria for determining whether other fishery participants, including crew members, may participate in a NEFMC IFQ referendum, the Council or Secretary must consider, but is not limited to considering:
      (A) The full range of entities likely to be eligible to receive initial quota under the proposed IFQ program;
      (B) A crew member's current and historical participation in the fishery aboard a referendum-eligible vessel;
      (C) The economic value of the proposed IFQ fishery, employment practices in the proposed IFQ fishery, and other economic and social factors that would bear on a determination of what percentage of a crew member's total income from the fishery should be considered significant for the purposes of this section;
      (D) The availability of documentary proof of employment and income to validate eligibility; and
      (E) Any other factors as may be determined by the Council to be relevant to the fishery and the proposed IFQ program.

(3) GMFMC's substantially fished criterion. When developing criteria for identifying those multispecies permit holders who have substantially fished the species to be included in the IFQ program proposal, the Council or Secretary must consider, but is not limited to considering:
   (i) Current and historical harvest and participation in the fishery;
   (ii) The economic value of and employment practices in the fishery; and
   (iii) Any other factors determined by the Council with jurisdiction over the fishery for which an IFQ program is
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proposed to be relevant to the fishery and the proposed IFQ program.

(d) Council-recommended criteria under paragraph (c) of this section may include, but are not limited to, levels of participation or reliance on the fishery as represented by landings, sales, expenditures, or other considerations. A Council may also apply the same criteria for weighting eligible referendum votes.

(e) Actions by NMFS: Review of Council referendum criteria and Secretarial IFQ plans. (1) NMFS shall determine whether Council recommended referendum criteria will provide for a fair and equitable referendum and will be consistent with national standards and other provisions of the Magnuson-Stevens Act, and other applicable legal standards. The Secretary’s considerations shall include, but shall not be limited to:

(i) Whether the criteria are rationally connected to or further the objectives of the proposed IFQ program;

(ii) Whether the criteria are designed in such a way to prevent any person or single entity from obtaining an excessive share of voting privileges;

(iii) Whether the criteria are reasonable relative to the availability of documentary evidence and the possibility of validating a participant’s eligibility; and

(iv) Whether the referendum can be administered and executed in a fair and equitable manner, in a reasonable time, and without subjecting industry members, the Council, or NMFS to administrative burdens, costs or other requirements that would be considered onerous.

(2) If NMFS determines that referendum criteria would not provide for a fair and equitable referendum; would not be consistent with national standards and other provisions of the Magnuson-Stevens Act, and other applicable legal standards; or, in the case of a referendum request subsequent to a failed referendum in the same fishery, that the Council has not substantively amended the IFQ proposal or circumstances have not changed sufficiently to warrant initiation of a new referendum, NMFS shall inform the Council of the Agency’s decision to deny the referendum request and of the reasons for the decision.

(3) If NMFS determines that referendum criteria would provide for a fair and equitable referendum and would be consistent with national standards and other provisions of the Magnuson-Stevens Act, and other applicable legal standards; then NMFS shall conduct the referendum in accordance with procedures and guidelines provided in paragraph (f) of this section.

(4) In accordance with paragraphs (c)(2) and (3) of this section, NMFS may initiate a referendum and promulgate referendum criteria for any IFQ program proposal advanced through a Secretarial fishery management plan (FMP) or FMP amendment under the authority of section 304(c) of the Magnuson-Stevens Act for a New England or Gulf of Mexico fishery. Such criteria must provide for a fair and equitable referendum and NMFS shall conduct the referendum in accordance with procedures and guidelines provided in paragraph (f) of this section.

(f) Conducting IFQ referenda. (1) NMFS shall promulgate specific referendum procedural requirements, voter eligibility requirements, and any vote weighting criteria through appropriate rulemaking.

(A) Proposed rule. A proposed rule shall seek public comment on the specific schedule, procedures, and other requirements for the referendum process.

(B) Final rule. (A) If NMFS decides to proceed with the referendum after reviewing public comments, NMFS shall publish implementing regulations through a final rule in the Federal Register as soon as practicable after the Council determines the IFQ program proposal and supporting analyses are complete and ready for Secretarial...
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review. Otherwise, NMFS shall publish a notice in the Federal Register to inform the Council and the public of its decision not to conduct the referendum, as proposed, including reasons for the Agency's decision.

(B) Upon implementation of the referendum through a final rule, NMFS shall provide eligible voters referenda ballots and shall make available information about the schedule, procedures, and eligibility requirements for the referendum process and the proposed IFQ program.

(2) NMFS shall notify the public in the region of the subject fishery of the referendum eligibility criteria.

(3) Individuals who wish to vote as other fishery participants in a NEFMC IFQ referendum, based on criteria established by the NEFMC under (c)(2), must contact NMFS and produce all required documentation and certifications to receive a ballot. NMFS shall provide sufficient time in the referendum process to allow for crew members to request, receive, and submit referendum ballots.

(g) Referenda ballots. (1) Ballots shall be composed such that voters will indicate approval or disapproval of the preferred IFQ program proposal.

(2) NMFS may require voters to self-certify on referenda ballots that they meet voter eligibility criteria. To be considered valid, ballots must be signed by the eligible voter.

(3) Referenda ballots shall be numbered serially or otherwise designed to guard against submission of duplicate ballots.

(4) If votes are weighted, the value of weighted votes shall be indicated on the ballot. The weighted vote must be cast as a single unit. Its value may not be split. The full value must be applied to the selection made on the ballot.

(5) NMFS shall allow at least 30 days for eligible voters to receive and return their ballots and shall specify a deadline by which ballots must be received. Ballots received after the deadline shall not be considered valid.

(h) Determining the outcome of an IFQ referendum. (1) NMFS shall tally and announce the results of the referendum within 90 days of the deadline by which completed ballots must be received. NMFS may declare a referendum invalid if the Agency can demonstrate the referendum was not conducted in accordance with the procedures established in the final rule implementing the referendum.

(2) A NEFMC IFQ program referendum shall be considered approved only if more than 2/3 of the votes submitted on valid ballots are in favor of the referendum question.

(3) A GMFMC IFQ program referendum shall be considered approved only if a majority of the votes submitted on valid ballots are in favor of the referendum question.

(i) Council actions. (1) If NMFS notifies a Council that an IFQ program proposal has been approved through a referendum, then the Council may submit the associated FMP or FMP amendment for Secretarial review and implementation.

(2) Any changes that would modify an IFQ program proposal that was reviewed by referenda voters may invalidate the results of the referendum and require the modified program proposal to be approved through a new referendum before it can be submitted to the Secretary for review and implementation.

(3) If NMFS notifies a Council that an IFQ referendum has failed, then the Council may modify its IFQ program proposal and request a new referendum pursuant to paragraph (b) of this section.

Subpart P—Marine Recreational Fisheries of the United States

SOURCE: 73 FR 79717, Dec. 30, 2008, unless otherwise noted.

§600.1400 Definitions.

In addition to the definitions in the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) and in §600.10 of this title, the terms used in this subpart have the following meanings. For purposes of this subpart, if applicable, the terms used in this subpart supersede those used in §600.10.

Anadromous species means the following:

American shad: Alosa sapidissima
Blueback herring: Alosa Diecitrulus
Alewife: Alosa pseudoharengus

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