

papers. As a result of requests from the public, NMFS has determined that it is important for commenters to have additional time to submit their comments on this ANPR. Therefore, NMFS is extending the comment period on the ANPR from August 28 to September 15, 1995.

**Authority:** 16 U.S.C. 1801 *et seq.* and 16 U.S.C. 971 *et seq.*

Dated: August 23, 1995.

**Richard H. Schaefer,**

*Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.*

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## 50 CFR Part 641

[Docket No. 950810206-5206-01; I.D. 071395A]

RIN 0648-AG29

### Reef Fish Fishery of the Gulf of Mexico; Amendment 8

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

**ACTION:** Proposed rule; request for comments.

**SUMMARY:** NMFS issues this proposed rule that would implement certain provisions of Amendment 8 to the Fishery Management Plan for the Reef Fish Fishery of the Gulf of Mexico (FMP). Amendment 8 proposes a limited entry program for the commercial red snapper sector of the reef fish fishery in the Gulf of Mexico. Initial participants in the limited entry program would receive shares of the commercial quota of red snapper based on specified criteria. The percentage shares of the commercial quota would equate to individual transferable quotas (ITQs). NMFS, based on a preliminary evaluation of Amendment 8, has disapproved three of the measures in the amendment because they are inconsistent with the Magnuson Fishery Conservation and Management Act (Magnuson Act) and other applicable laws. The proposed rule would implement the remaining measures in Amendment 8. In addition, NMFS proposes a minor clarification to the existing regulations regarding commercial permit requirements. The intended effect of this rule is to manage the commercial red snapper sector of the reef fish fishery in order to preserve its long-term economic viability.

**DATES:** Written comments must be received on or before October 10, 1995.

**ADDRESSES:** Comments on the proposed rule must be sent to Robert Sadler, Southeast Region, NMFS, 9721 Executive Center Drive N., St. Petersburg, FL 33702.

Requests for copies of Amendment 8, which includes an environmental assessment, a regulatory impact review (RIR), and an initial regulatory flexibility analysis (IRFA), and for copies of a minority report submitted by three members of the Council, should be sent to the Gulf of Mexico Fishery Management Council, 5401 W. Kennedy Boulevard, Suite 331, Tampa, FL 33609.

Comments regarding the collection-of-information requirements contained in this proposed rule should be sent to Edward E. Burgess, Southeast Regional Office, NMFS, 9721 Executive Center Drive N., St. Petersburg, FL 33702, and to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20503 (Attention: NOAA Desk Officer).

**FOR FURTHER INFORMATION CONTACT:** Robert Sadler, 813-570-5305.

**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 641 under the authority of the Magnuson Act.

#### Background and Rationale

The ITQ system proposed in this rule addresses the excessive effort capacity for the commercial red snapper fishery, given current quota levels and effort. This excessive capacity is evidenced by the increasingly short time in which the commercial sector reaches its quota, with a closure of the fishery for the rest of the fishing year.

Beginning in 1993, NMFS implemented a red snapper endorsement system whereby owners or operators of permitted vessels that had historical catches of at least 5,000 lb (2,268 kg) in 2 of the 3 years 1990, 1991, and 1992 were authorized to harvest red snapper under trip limits of 2,000 lb (907 kg), and all other permitted vessels were authorized to harvest under trip limits of 200 lb (91 kg). Nevertheless, the commercial red snapper fishermen continued to reach the commercial quota in increasingly shorter times.

NMFS implemented the existing red snapper endorsement regulations under Amendment 6 to the FMP and extended them under Amendment 9 as an interim measure, pending development of a long-term, comprehensive management system. The endorsement provisions

expire on December 31, 1995, and red snapper management will revert to an open access system unless a long-term effort control system is implemented through Amendment 8.

In anticipation of either a license limitation system or ITQs, the Council proposed, and NMFS implemented, provisions in Amendment 9 whereby data were collected on the vessel landings of red snapper during the period 1990 through 1992 and on the status of certain individuals as "historical captains." These data identify each red snapper landing during the period. Each landing is associated with an owner. Where appropriate, a landing is also associated with an operator whose earned income qualified him or her for the vessel permit at the time of the landing. Finally, where appropriate, a landing is associated with an historical captain. As defined in the final rule to implement Amendment 9 (59 FR 39301, August 2, 1994), historical captain means an operator who: (1) From November 6, 1989 through 1993, fished solely under verbal or written share agreements with an owner, and such agreements provided for the operator to be responsible for hiring the crew, who were paid from the share under his or her control; (2) landed from that vessel at least 5,000 lb (2,268 kg) of red snapper per year in 2 of the 3 years 1990, 1991, and 1992; (3) derived more than 50 percent of his or her earned income from commercial fishing, that is, sale of the catch, in each of the years 1989 through 1993; and (4) landed red snapper prior to November 7, 1989.

The Council explored various alternative management options to preserve and enhance the economic and socioeconomic viability of the fishery in the face of continued incentives for entry and competition. After extensive deliberation and consideration of public comment, the Council selected an ITQ system for management of the red snapper fishery as the most effective means of achieving optimum yield (OY) and addressing the concerns described above.

#### Duration of ITQ System

Under Amendment 8, the proposed ITQ system would remain in effect for 4 years from the date that the system is implemented, during which time NMFS and the Council would evaluate the system. Based on the evaluation, NMFS and the Council would modify, extend, or terminate the system. The Council selected the 4-year period after consideration of alternative time periods. The Council, before its vote for the proposed 4-year duration, was aware

of the potential for reduced economic benefits with a 4-year time period, as compared to a system of indefinite duration. However, public testimony to the Council supported the 4-year period to allow termination of the system if it does not produce the expected benefits, and to keep windfall profit and speculation to a minimum.

Amendment 8 includes an option for a time limit, and alternative time periods were discussed at public hearings. To provide additional public review, NMFS specifically requests comments on the proposed 4-year duration of the ITQ system.

### Initial Eligibility

An initial shareholder under the ITQ system would be either the owner or operator of a vessel with a valid permit on August 29, 1995, provided such owner or operator had the required landing of red snapper during the period 1990 through 1992. If the earned income of an operator was used to qualify for the permit valid on August 29, 1995, such operator would be the initial shareholder rather than the owner. The term "owner" includes a corporation or other legal entity. Additionally, a historical captain could be an initial ITQ shareholder. The Council believes that these criteria for initial ITQ shareholder status encompass both current participation and historical dependence on the fishery and would be consistent with previous measures for red snapper endorsements.

### Initial ITQ Shares

Initial shares would be apportioned based on each shareholder's average of the top 2 years' landings in 1990, 1991, and 1992. However, no initial shareholder would receive an initial percentage share that would equate to less than 100 lb (45.36 kg), whole weight, of red snapper. If the commercial quota remains at the present level of 3.06 million lb (1.39 million kg), each such minimum share would be 0.0033 percent. This minimum share amount would provide a bycatch allowance for those initial shareholders who had minimal historical landings of red snapper during the period 1990 through 1992.

After the minimum shares have been calculated, the remaining percentage shares would be apportioned based on each remaining shareholder's average of the top 2 years' landings in 1990, 1991, and 1992. Landings associated with a historical captain would be apportioned between the owner and historical captain in accordance with the share agreement in effect between the owner

and historical captain at the time of the landings.

### Landings Records

Determinations of landings during the period 1990 through 1992 and historical captain status would be based on the data collected under Amendment 9. However, a red snapper landings record associated solely with an owner during these years may be transferred under the following circumstances. An owner of a vessel with a valid reef fish permit on August 29, 1995, who transferred a vessel permit to another vessel owned by him or her, would retain the red snapper landings record for the previous vessel. Thus, an owner who replaced a vessel that sank or was otherwise removed from the fishery would retain credit for his or her landings.

An owner of a vessel with a valid reef fish permit on August 29, 1995 also would retain the landings record of a permitted vessel if the vessel had a change of ownership without a substantive change in control of the vessel. It would be presumed that there was no substantive change in control of a vessel if a successor in interest received at least a 50 percent interest in the vessel as a result of the change of ownership, whether the change of ownership was: (1) From a closely held corporation to its majority shareholder; (2) from an individual who became the majority shareholder of a closely held corporation receiving the vessel; (3) between closely held corporations with a common majority shareholder; or (4) from one to another of the following: Husband, wife, son, daughter, brother, sister, mother, or father. This provision would recognize, for example, a change of ownership between closely held corporations or from individual to corporate, or vice versa, all with the same person retaining actual control of the vessel.

In another case of permit transfers through change of vessel ownership, an owner of a vessel with a valid reef fish permit on August 29, 1995 would receive credit for the landings record of the vessel before his or her ownership only if there were a legally binding agreement for transfer of the landings record. This provision would account for all other changes of ownership where there is no logical basis for transfer of a landings record but where there may have been an agreement for such transfer between the seller and buyer.

An owner of a permitted vessel who potentially is eligible to be credited with transferred landings records under the criteria described above would be given an opportunity to request transfer of

specific landings records.

Documentation supporting the request may be required by the Director, Southeast Region, NMFS (Regional Director). After considering requests for transfers of landings records, the Regional Director would advise each initial shareholder or applicant of his or her tentative allocation of shares.

### Appeals

The Council will convene a special advisory panel to function as an appeals board, which would consider written requests from persons who contest their tentative allocations of shares or determinations of historical captain status. In addition to considering written requests, the board could allow personal appearances by such persons before the board or a subboard.

The board would be empowered to consider disputed calculations or determinations, based on documentation submitted under Amendment 9 to the FMP, regarding landings of red snapper during the period 1990 through 1992, or transfers of such landings records, or regarding historical captain status. Applicants would be required to submit their appeals in writing to the Regional Director within a time frame specified by the Regional Director and would be required to include documentation that supports allegations of improper calculations or determinations, or other such matters that form the bases for the appeals.

The advisory board would meet as necessary to consider each timely request. Members of the board would provide their individual recommendations in each case to the Council, which would forward its recommendation to the Regional Director. The board and the Council will recommend whether the eligibility criteria, specified in Amendment 8 of the FMP and paragraphs (c)(1) and (c)(2) of 50 CFR § 641.10, were correctly applied in each case, based solely on the available record, including documentation submitted by the applicant. The Council will also base its recommendation on the recommendations of the board members. The Regional Director will decide the appeal based on above criteria and the available record, including documentation submitted by the applicant and the recommendation of the Council. The Regional Director will notify the appellant of his decision and the reason therefor, in writing, normally within 45 days of receiving the Council's recommendation. The Regional Director's decision would

constitute the final administrative action by NMFS on an appeal.

### Hardships

Amendment 8 proposes that (1) the appeals board consider hardship cases and (2) NMFS should set aside up to 3 percent of the initial commercial allocation for resolving hardship cases. NMFS has determined that the hardship appeals criterion in Amendment 8 is too vague and subjective to identify circumstances constituting hardships. This subjectivity, in turn, would invite arbitrary decision-making. In addition, Amendment 8 contains no criteria for allocating the 3 percent set-aside for hardship cases. Moreover, a set-aside is unnecessary, if the board is precluded from considering hardship cases.

Accordingly, the Regional Director has disapproved these provisions, based on his determination that they are inconsistent with the Magnuson Act and Administrative Procedure Act. Accordingly, the hardships appeals section and 3 percent set-aside are not included in this proposed rule. The Regional Director's disapproval of these provisions means the appeals board would not be empowered to consider an application from a person who believes he or she should be eligible because of hardship or other factors.

### Issue and Transfer of Shares

Upon completion of the appeal process, the Regional Director would issue share certificates to initial shareholders. If additional shares become available to NMFS, e.g., through forfeiture pursuant to a rule violation, such shares would be reissued proportionately to shareholders based on their shares as of November 1, after such additional shares become available. If additional shares are required to be issued by NMFS, such as may be required in the resolution of disputes, shares would be proportionately reduced, based on shares as of November 1 after the share reduction took place.

The transfer of shares would be prohibited for the first 6 months after the date that ITQ coupons are required to be carried on board. From 6 months after the date that ITQ coupons are required to be carried on board, to 18 months after such date, shares could be transferred only to persons who are initial shareholders and are U.S. citizens or permanent resident aliens. Thereafter, ITQ participants may transfer all or a portion of their percentage shares to any person who is a U.S. citizen or permanent resident alien. The restrictions on initial transfers of shares are intended to

provide time for NMFS to prepare for that activity and to prevent speculative entry during the beginning phase of the ITQ program while participants adjust to the system.

Amendment 8 proposes to limit share transfers to natural persons who are U.S. citizens or permanent resident aliens. A person includes a corporation, partnership, or other legal entity. However, "natural person," as used in Amendment 8, would preclude transfers of shares to a corporation, partnership, etc. NOAA General Counsel has determined that the rationale for this exclusion is inadequate. Accordingly, the restriction regarding transfers only to "natural persons" is considered to be arbitrary, has been disapproved by the Regional Director, and is not included in this proposed rule.

All transfers of shares would have to be registered with and confirmed by the Regional Director. An administrative fee would be charged for each transaction of shares. Share transactions would not be recorded or confirmed during November and December, each year. During those months, the Regional Director would calculate each shareholder's allocation of the commercial quota for the ensuing fishing year and issue ITQ coupons for that year. The fishing year for reef fish begins on January 1 and ends on December 31.

### ITQ Coupons

Amendment 8 proposes to assign 100 percent of the commercial red snapper quota to the ITQ system. The commercial quota is in terms of whole weight. Since red snapper are typically landed eviscerated, landings in eviscerated weight are converted to whole weight for quota monitoring. Accordingly, each shareholder's ITQ would be the product of the red snapper commercial quota, in whole weight, for the ensuing fishing year, the factor for converting whole weight to eviscerated weight, and each shareholder's percentage share as of November 1 of the preceding year. The factor for converting whole weight to eviscerated weight is .9009. If the commercial quota for red snapper remains 3.06 million lb (1.39 million kg), a shareholder with a 1 percent share would be entitled to ITQ coupons totaling 27,570 lb (12,506 kg) ( $3,060,000 \times .9009 \times .01 = 27,567.54$ , rounded to the nearest 10 lb = 27,570). A shareholder with a minimum share of .0033 percent would be entitled to ITQ coupons totaling 90 lb (41 kg) ( $3,060,000 \times .9009 \times .000033 = 91.0$ , rounded to the nearest 10 lb = 90). Thus, ITQ coupons would be in terms of eviscerated weight of red snapper.

The Regional Director would issue ITQ coupons in various denominations that equal the shareholder's calculated total based on shares owned on November 1. Each coupon would be coded to indicate the initial recipient. Coupons would be transferrable by completing the sale endorsement thereon, including the name of the recipient and the signature of the seller.

### Use of ITQ Coupons

Under the ITQ system, red snapper in or from the exclusive economic zone (EEZ) or on board a vessel with a Federal reef fish permit may not be possessed in an amount, in eviscerated weight, that exceeds the total of ITQ coupons on board.

Each coupon would have separable parts, i.e., a "Fisherman" part and a "Fish House" part. Prior to termination of a trip, the operator's signature in ink and the date signed would be required on the "Fisherman" part of ITQ coupons, which must be in denominations at least equal to the eviscerated weight of the red snapper on board. (The factor for converting whole weight to eviscerated weight is 0.9009.) The "Fisherman" part of each ITQ coupon would be separated from the coupon and submitted with the logbook forms for that fishing trip. An owner or operator of a vessel would be required to make available to an authorized officer all ITQ coupons in his or her possession upon request.

Red snapper harvested in the EEZ or by a permitted vessel would be transferrable only to a dealer who holds a Federal reef fish dealer permit. The permitted vessel operator would give the "Fish House" part of each ITQ coupon to each dealer to whom the red snapper are transferred, which again must be in denominations equal to the eviscerated weight of the red snapper transferred to that dealer.

A Federally permitted dealer would be allowed to receive red snapper only from a vessel that has its reef fish vessel permit and ITQ coupons on board. This restriction on dealers is necessary for effective monitoring and enforcement of the ITQ system. However, this requirement may impose an unreasonable restraint on trade for fishermen on board unpermitted vessels who harvest red snapper solely from state waters. (See below for a related concern regarding the effect of commercial harvests from state waters of red snapper outside the ITQ system.) Public comments on this aspect of Amendment 8 and the proposed rule are specifically solicited.

A Federally permitted dealer would be required to receive the "Fish House"

part of ITQ coupons in denominations at least equal to the eviscerated weight of the red snapper received. The dealer would be required to: (1) Indicate the date received; (2) enter the vessel's and dealer's permit numbers; (3) sign each "Fish House" part; and (4) submit all such parts to the Science and Research Director, Southeast Fisheries Science Center, at monthly intervals, or more frequently if requested by the Science and Research Director. A dealer would be required to make available to an authorized officer all ITQ coupons in his or her possession upon request. A dealer would be required to have signed and dated coupons in amounts at least equalling the pounds of red snapper in his or her possession until such coupons are submitted to the Science and Research Director.

### **Entire Commercial Quota Under ITQ System**

As discussed above, ITQ coupons would be issued for the entire commercial quota for red snapper. The commercial quota includes red snapper harvested from both the EEZ and adjoining state waters of the Gulf of Mexico. Federal jurisdiction, however, does not extend to vessels that do not have Federal reef fish vessel permits and fish only in state waters, or to dealers who do not have Federal dealer permits and purchase reef fish harvested only in state waters. Accordingly, the management measure of Amendment 8 that proposes that 100 percent of the commercial quota of red snapper be under the ITQ system relies on compatible state regulations. Specifically, state regulations should ensure that red snapper harvested from state waters by vessels that do not have Federal permits are not sold or purchased without Federal ITQ coupons.

To the extent that non-compatible state regulations allow red snapper to be harvested outside the ITQ system, the system would be compromised because monitoring and enforcement would be hindered. In addition, the FMP requires that a commercial fishery be closed when its quota is reached. Thus, commercial harvests of red snapper outside the ITQ system would directly impact holders of ITQ coupons. NMFS is concerned with this potential obstacle to an effective ITQ system and is requesting the Gulf of Mexico states to enact compatible regulations. Public comments on this aspect of Amendment 8 and the proposed rule are specifically solicited.

### **Magnuson Act Considerations**

Section 303 of the Magnuson Act provides that a Council may establish a system for limiting access to the fishery in order to achieve OY if, in developing such system, the Council takes into account the following factors: (1) Present participation in the fishery; (2) historical fishing practices in, and dependence on, the fishery; (3) the economics of the fishery; (4) the capability of fishing vessels used in the fishery to engage in other fisheries; (5) the cultural and social framework relevant to the fishery; and (6) any other relevant considerations. The Council's consideration of these factors, as well as additional background and rationale for the management measures comprising the ITQ system, are contained in Amendment 8, the availability of which was announced in the *Federal Register* on July 21, 1995, (60 FR 37624).

### **Partial Disapproval of Amendment 8**

As discussed above, the Regional Director has partially disapproved Amendment 8. The disapproved measures specify that: (1) ITQ share transfers be limited to natural persons; (2) the appeals board consider hardship cases; and (3) up to 3 percent of the initial allocation be set aside for ITQ hardship cases.

### **Minority Report**

A minority report signed by three Council members raised various objections to Amendment 8. Copies of the minority report are available (see **ADDRESSES**). The final rule will respond to the minority report and to comments on the proposed rule received by NMFS during the 45-day comment period.

### **Additional Measure Proposed by NMFS**

The current regulations specify that, as a prerequisite to selling reef fish, an owner or operator of a vessel that fishes in the EEZ must obtain an annual vessel permit (50 CFR 641.4(a)(1)(i)). For clarity, NMFS would reference this requirement in the proposed paragraph that discusses sale of reef fish possessed under the bag limits (50 CFR 641.24(g)) and include a corresponding prohibition in the prohibitions section (50 CFR 641.7).

### **Classification**

Section 304(a)(1)(D) of the Magnuson Act requires NMFS to publish regulations proposed by a Council within 15 days of receipt of an amendment and regulations. At this time, NMFS has not determined that provisions of Amendment 8 not already specifically disapproved as discussed above are consistent with the national

standards, other provisions of the Magnuson Act, and other applicable laws. NMFS, in making that determination with respect to the remaining parts of Amendment 8, will take into account the data, views, and comments received during the comment period.

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

The Council prepared an IRFA as part of the RIR. The IRFA describes the impacts that this proposed rule would have on small entities, if adopted. The impacts are summarized as follows. All participants in the fishery are small entities and an ITQ system will affect a substantial number of them. Significant positive economic benefits will accrue to participants who are initial shareholders in the ITQ system. There will be negative economic effects for those not included as initial shareholders. The negative economic effects may exceed 5 percent of gross revenues depending on the management regime used for comparison, that is, open access or the current red snapper endorsement system. In either case, the overall positive economic benefits significantly exceed the negative economic effects. No small businesses are expected to cease operations as a result of this action, because the system recognizes historical participation in the red snapper fishery. Thus, any fisherman who has fished red snapper so continuously as to be economically dependant upon the fishery, likely will qualify as an initial ITQ shareholder. Furthermore, fishermen who do not have a recent history of catches will be able to enter the fishery through the purchase of red snapper ITQ shares or coupons. A copy of the IRFA is available from the Council (see **ADDRESSES**).

This rule proposes a new, one-time collection of information and three new, continuing collections, namely: (1) The one-time submission of a request for appeal of tentative share allocations and of determinations of historical captain status; (2) the submission by fishermen and dealers of ITQ coupons; (3) requests for transfer of ITQ shares; and (4) monthly dealer reports when red snapper are received. Requests to collect this information have been submitted to OMB for approval. The public reporting burdens for these collections of information are estimated to average 90, 1, 15, and 15 minutes per response, respectively.

This proposed rule would revise the submission of applications for dealer permits by requiring permits for dealers who receive red snapper harvested by

Federally permitted vessels from state waters adjoining the EEZ in the Gulf of Mexico. The collection of information on such applications currently is approved under OMB Control No. 0648-0205. The public reporting burden for this collection was estimated at 5 minutes per response and is unchanged by the proposed revision.

This rule involves the collection of information under Amendment 9 of landings records during the period 1990 through 1992. That collection is currently approved under OMB Control No. 0648-0281 and its public reporting burden is estimated at 2 hours per response.

Each of the above reporting burden estimates includes 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 any of these reporting burden estimates or any other aspects of the collections of information, including suggestions for reducing the burdens, to NMFS and OMB (see ADDRESSES).

**List of Subjects in 50 CFR Part 641**

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: August 22, 1995.

**Gary Matlock,**

*Program Management Officer, National Marine Fisheries Service.*

For the reasons set out in the preamble, 50 CFR part 641 is proposed to be amended as follows:

**PART 641—REEF FISH FISHERY OF THE GULF OF MEXICO**

1. The authority citation for part 641 continues to read as follows:

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

2. In § 641.1, paragraph (b) is revised to read as follows:

**§ 641.1 Purpose and scope.**

(b) This part governs conservation and management of reef fish in the Gulf of Mexico EEZ, except that §§ 641.5 and 641.25 also apply to reef fish from adjoining state waters and § 641.4(a)(2) and (q) also apply in the manner stated therein to red snapper from adjoining state waters. The Gulf of Mexico EEZ extends from the U.S./Mexico border to the intercouncil boundary between the South Atlantic and Gulf of Mexico Fishery Management Councils, as specified at 50 CFR 601.11(c). "EEZ" in this part refers to the EEZ in the Gulf of Mexico, unless the context clearly indicates otherwise.

3. In § 641.2, the definition of "Science and Research Director" is revised to read as follows:

**§ 641.2 Definitions.**

*Science and Research Director* means the Science and Research Director, Southeast Fisheries Science Center, NMFS, 75 Virginia Beach Drive, Miami, FL 33149, telephone: 305-361-5761; or a designee.

4. In § 641.4, the first sentence of paragraph (a)(2) and the third sentence of paragraph (i) are revised, and paragraph (q) is added to read as follows:

**§ 641.4 Permits and fees.**

(a) \* \* \*  
 (2) \* \* \* A dealer who receives from a fishing vessel reef fish harvested from the EEZ, or red snapper from adjoining state waters that are harvested by or possessed on board a vessel with a Federal permit issued under this section, must obtain an annual dealer permit. \* \* \*

(i) \* \* \* In addition, a copy of the dealer's permit must accompany each vehicle that is used to pick up from a fishing vessel reef fish harvested from the EEZ or red snapper from adjoining state waters that are harvested by or possessed on board a vessel with a permit issued under this section. \* \* \*

(q) *Permit conditions.* (1) As a condition of a vessel permit issued under this section, without regard to where red snapper are harvested or possessed, a permitted vessel—

(i) Must comply with the red snapper individual transferrable quota requirements of § 641.10(b).

(ii) May not transfer red snapper at sea or receive red snapper at sea.

(iii) Must maintain red snapper with head and fins intact through landing, and the exceptions to that requirement contained in § 641.21(b)(3) and (b)(4) do not apply to red snapper. Such red snapper may be eviscerated, gilled, and scaled but must otherwise be maintained in a whole condition.

(2) As a condition of a dealer permit issued under this section, without regard to where red snapper are harvested or possessed, a permitted dealer must comply with the red snapper individual transferrable quota requirements of § 641.10(b).

5. In § 641.5, paragraph (d)(3) is redesignated as paragraph (d)(4), paragraph (d)(2) is revised, and paragraph (d)(3) is added to read as follows:

**§ 641.5 Recordkeeping and reporting.**

(d) \* \* \*  
 (2) In any month that a red snapper is received, a dealer must report total poundage of red snapper received during the month, in whole or eviscerated weight, the average monthly price paid for red snapper by market size, and the proportion of total poundage landed by each gear type. The "Fish House" parts of red snapper individual transferrable coupons, received during the month in accordance with § 641.10(b), must be submitted with the report to the Science and Research Director postmarked not later than 5 days after the end of the month.

(3) For reef fish other than red snapper, when requested by the Science and Research Director, a dealer must provide the following information from his/her record of reef fish received: total poundage of each species received during the requested period, average monthly price paid for each species by market size, and proportion of total poundage landed by each gear type.

6. In § 641.7, paragraphs (g), (r), (s), and (bb) are revised and paragraphs (ee) through (kk) are added to read as follows:

**§ 641.7 Prohibitions.**

(g) Possess a finfish without its head and fins intact, as specified in § 641.21(b); or a red snapper without its head and fins intact, as specified in § 641.4(q)(1)(iii).

(r) Transfer reef fish at sea, as specified in § 641.24(f); or transfer or receive red snapper at sea, as specified in § 641.4(q)(1)(ii).

(s) Purchase, barter, trade, or sell, or attempt to purchase, barter, trade, or sell, a reef fish—

(1) Harvested from the EEZ by a vessel that does not have a valid Federal permit, or

(2) Possessed under the bag limits—as specified in § 641.24(g).

(bb) Receive from a fishing vessel, by purchase, trade, or barter, reef fish harvested from the EEZ or red snapper from adjoining state waters harvested by or possessed on board a vessel with a Federal permit, without a dealer permit, as specified in § 641.4(a)(2).

(ee) Falsify information required for administration of the individual transferable quota (ITQ) system specified in § 641.10.

(ff) Possess an ITQ coupon not issued to him or her or, if acquired by transfer, without all required sale endorsements properly completed thereon, as specified in § 641.10(b)(3).

(gg) Possess red snapper in or from the EEZ, or on board a federally permitted vessel, in an amount exceeding the total of the ITQ coupons on board, or without the vessel permit on board, as specified in § 641.10(b)(4).

(hh) Fail to sign and date the "Fisherman" part of ITQ coupons or fail to submit such coupon parts with the logbook forms for that fishing trip, as specified in § 641.10(b)(5).

(ii) Transfer red snapper harvested from the EEZ, or possessed by a permitted vessel, to a dealer who does not have a Federal permit, or fail to give a dealer the "Fish House" part of ITQ coupons, as specified in § 641.10(b)(6).

(jj) As a permitted dealer—

(1) Receive red snapper from a vessel that does not have a reef fish permit;

(2) Fail to receive the "Fish House" part of ITQ coupons in denominations at least equal to the eviscerated weight of red snapper received; or

(3)—Fail to properly complete the "Fish House" parts of ITQ coupons as specified in § 641.10(b)(7).

(kk) Fail to make ITQ coupons available to an authorized officer, as specified in § 641.10(b)(5) and (b)(7).

7. Section 641.10 is added to subpart A to read as follows:

**§ 641.10 Red snapper individual transferable quota (ITQ) system.**

The ITQ system established by this section will remain in effect for 4 years after the date that ITQ coupons must be carried on board, during which time NMFS and the Gulf of Mexico Fishery Management Council (Council) will evaluate the effectiveness of the system. Based on the evaluation, the system may be modified, extended, or terminated.

(a) *Percentage shares.* (1) Initial percentage shares of the annual commercial quota of red snapper will be assigned to persons in accordance with the procedure specified in Amendment 8 to the Fishery Management Plan for the Reef Fish Fishery of the Gulf of Mexico (FMP) and in paragraphs (c)(1) through (c)(4) of this section. Each person will be notified by the Regional Director of his or her initial percentage shares. If additional shares become available to NMFS, such as by forfeiture pursuant to subpart F of 15 CFR part 904 for rule violations, such shares will be proportionately issued to shareholders based on their shares as of November 1 after the additional shares become available. If additional shares are required to be issued by NMFS, such

as may be required in the resolution of disputes, existing shares will be proportionately reduced. This reduction of shares will be based on shares as of November 1 after the required addition of shares.

(2) All or a portion of a person's percentage shares may be transferred to another person who is a U.S. citizen or permanent resident alien. (See paragraph (c)(5) of this section for restrictions on the transfer of shares in the initial months under the ITQ system). Transfer of shares must be reported on a form available from the Regional Director. The Regional Director will confirm, in writing, each transfer. The effective date of each transfer is the confirmation date provided by the Regional Director. The confirmation date will normally be not later than 3 working days after receipt of a properly completed transfer form. However, reports of share transfers received by the Regional Director from November 1 through December 31 will not be recorded or confirmed until after January 1. A fee will be charged for each transfer of percentage shares. The amount of the fee is calculated in accordance with the procedures of the NOAA Finance Handbook for determining the administrative costs of each special product or service provided by NOAA to non-Federal recipients. The fee may not exceed such costs and will be specified with each transaction form. The appropriate fee must accompany each submitted transaction form.

(3) On or about January 1 each year, the Regional Director will provide each red snapper shareholder with a list of all red snapper shareholders and their percentage shares, reflecting share transactions as indicated on properly completed transaction forms received through October 31. Updated lists may be obtained at other times by written request to the Regional Director.

(b) *ITQs.* (1) Annually, as soon after November 15 as the following year's red snapper commercial quota is established, the Regional Director will calculate each red snapper shareholder's ITQ in terms of eviscerated weight. Each ITQ is the product of the red snapper commercial quota, in whole weight, for the ensuing fishing year, the factor for converting whole weight to eviscerated weight, and each red snapper shareholder's percentage share, reflecting share transactions reported on forms received by the Regional Director through October 31.

(2) The Regional Director will provide each red snapper shareholder with ITQ coupons in various denominations, the total of which equals his or her ITQ, and a copy of the calculations used in

determining his or her ITQ. Each coupon will be coded to indicate the initial recipient.

(3) An ITQ coupon may be transferred by completing the sale endorsement thereon, including the name of the recipient and the signature of the seller.

(4) Except when the red snapper bag limit applies, red snapper in or from the EEZ or on board a vessel that has been issued a reef fish permit under § 641.4 may not be possessed in an amount, in eviscerated weight, exceeding the total of ITQ coupons on board. (See § 641.24(a) for applicability of the bag limit.)

(5) Prior to termination of a trip, the operator's signature and the date signed must be written in ink on the "Fisherman" part of ITQ coupons totalling at least the eviscerated weight of the red snapper on board. The "Fisherman" part of each such coupon must be separated from the coupon and submitted with the logbook forms for that fishing trip. An owner or operator of a vessel must make available to an authorized officer all ITQ coupons in his or her possession upon request.

(6) Red snapper harvested from the EEZ or possessed by a vessel with a permit issued under § 641.4 may be transferred only to a dealer with a permit issued under § 641.4. The "Fish House" part of each ITQ coupon must be given to such dealer in amounts totalling at least the eviscerated weight of the red snapper transferred to that dealer.

(7) A dealer with a permit issued under § 641.4 may receive red snapper only from a vessel that has on board a reef fish permit issued under § 641.4. A dealer must receive the "Fish House" part of ITQ coupons totalling at least the eviscerated weight of the red snapper received. The dealer must enter the permit number of the vessel received from, enter the dealer's permit number, date and sign each such "Fish House" part, and submit all such parts as required by § 641.5(d)(2). A dealer must make available to an authorized officer all ITQ coupons in his or her possession upon request.

(c) *Procedures for Implementation—*  
(1) *Initial shareholders.* The following persons are initial shareholders in the red snapper ITQ system:

(i) Either the owner or operator of a vessel with a valid permit on August 29, 1995, provided such owner or operator have landing of red snapper during the period 1990 through 1992. If the earned income of an operator was used to qualify for the permit that is valid on August 29, 1995, such operator is the initial shareholder rather than the owner. In the case of an owner, a person

includes a corporation or other legal entity; and

(ii) A historical captain. A historical captain means an operator who—

(A) From November 6, 1989, through 1993, fished solely under verbal or written share agreements with an owner, and such agreements provided for the operator to be responsible for hiring the crew, who was paid from the share under his or her control;

(B) Landed from that vessel at least 5,000 lb (2,268 kg) of red snapper per year in 2 of the 3 years 1990, 1991, and 1992;

(C) Derived more than 50 percent of his or her earned income from commercial fishing, that is, sale of the catch, in each of the years 1989 through 1993; and

(D) Landed red snapper prior to November 7, 1989.

(2) *Initial shares.* (i) Initial shares will be apportioned to initial shareholders based on each shareholder's average of the top 2 years' landings in 1990, 1991, and 1992. However, no person who is an initial shareholder under paragraph (c)(1) of this section will receive an initial percentage share that will amount to less than 100 lb (45.36 kg), whole weight, of red snapper (90 lb (41 kg), eviscerated weight).

(ii) The percentage shares remaining after the minimum shares have been calculated under paragraph (c)(2)(i) of this section will be apportioned based on each remaining shareholder's average of the top 2 years' landings in 1990, 1991, and 1992. In a case where a landing is associated with an owner and a historical captain, such landing will be apportioned between the owner and historical captain in accordance with the share agreement in effect at the time of the landing.

(iii) The determinations of landings of red snapper during the period 1990 through 1992 and historical captain status will be made in accordance with the data collected under Amendment 9 to the FMP. Those data identify each red snapper landing during the period 1990 through 1992. Each landing is associated with an owner and, when an operator's earned income qualified him or her for the vessel permit at the time of the landing, with such operator. Where appropriate, a landing is also associated with a historical captain. However, a red snapper landings record during that period, that is associated solely with an owner may be retained by that owner or transferred as follows:

(A) An owner of a vessel with a valid reef fish permit on August 29, 1995, who transferred a vessel permit to another vessel owned by him or her will

retain the red snapper landings record for the previous vessel.

(B) An owner of a vessel with a valid reef fish permit on August 29, 1995, will retain the landings record of a permitted vessel if the vessel had a change of ownership to another entity without a substantive change in control of the vessel. It will be presumed that there was no substantive change in control of a vessel if a successor in interest received at least a 50 percent interest in the vessel as a result of the change of ownership whether the change of ownership was—

(1) From a closely held corporation to its majority shareholder;

(2) From an individual who became the majority shareholder of a closely held corporation receiving the vessel;

(3) Between closely held corporations with a common majority shareholder; or

(4) From one to another of the following: Husband, wife, son, daughter, brother, sister, mother, or father.

(C) In other cases of transfer of a permit through change of ownership of a vessel, an owner of a vessel with a valid reef fish permit on August 29, 1995, will receive credit for the landings record of the vessel before his or her ownership only if there is a legally binding agreement for transfer of the landings record.

(iv) Requests for transfers of landings records must be submitted to the Regional Director within 15 days after the date of publication of the final rule to implement the ITQ system. The Regional Director may require documentation supporting such request. After considering requests for transfers of landings records, the Regional Director will advise each initial shareholder or applicant of his or her tentative allocation of shares.

(3) *Notification of status.* The Regional Director will advise each owner, operator, and historical captain for whom NMFS has a record of a red snapper landing during the period 1990 through 1992, including those who submitted such record under Amendment 9 to the FMP, of his or her tentative status as an initial shareholder and the tentative landings record that will be used to calculate his or her initial share.

(4) *Appeals.* (i) A special advisory panel, appointed by the Gulf of Mexico Fishery Management Council to function as an appeals board, will consider written requests from persons who contest their tentative status as an initial shareholder, including historical captain status, or tentative landings record. In addition to considering written requests, the board may allow

personal appearances by such persons before the board.

(ii) The board is only empowered to consider disputed calculations or determinations based on documentation submitted under Amendment 9 to the FMP regarding landings of red snapper during the period 1990 through 1992, including transfers of such landings records, or regarding historical captain status. In addition, the board may consider applications and documentation of landings not submitted under Amendment 9 if, in the board's opinion, there is justification for the late application and documentation. The board is not empowered to consider an application from a person who believes he or she should be eligible because of hardship or other factors.

(iii) A written request for consideration by the board must be submitted to the Regional Director not later than 30 days after the date of publication of the final rule to implement the ITQ system and must contain documentation supporting the allegations that form the basis for the request.

(iv) The board will meet as necessary to consider each request that is submitted in a timely manner. Members of the appeals board will provide their individual recommendations for each appeal to the Council, which will in turn submit its recommendation to the Regional Director. The board and the Council will recommend whether the eligibility criteria, specified in Amendment 8 of the FMP and paragraphs (c)(1) and (c)(2) of this section, were correctly applied in each case, based solely on the available record including documentation submitted by the applicant. The Council will also base its recommendation on the recommendations of the board. The Regional Director will decide the appeal based on the above criteria and the available record, including documentation submitted by the applicant and the recommendation of the Council. The Regional Director will notify the appellant of his decision and the reason therefor, in writing, normally within 45 days of receiving the Council's recommendation. The Regional Director's decision will constitute the final administrative action by NMFS on an appeal.

(v) Upon completion of the appeal process, the Regional Director will issue share certificates to initial shareholders.

(5) *Transfers of shares.* The following restrictions apply to the transfer of shares:

(i) The transfer of shares is prohibited for the first 6 months after the date that

ITQ coupons are required to be carried on board.

(ii) From 6 months after the date that ITQ coupons are required to be carried on board to 18 months after such date, shares may be transferred only to persons who are initial shareholders and are U.S. citizens or permanent resident aliens.

8. In § 641.24, paragraphs (a)(2) and (a)(3) are redesignated as paragraphs (a)(3) and (a)(4), respectively; in newly redesignated paragraph (a)(4), the reference to "paragraph (a)(2)(ii)(C)" is revised to read "paragraph (a)(1)(ii)(C)"; paragraph (a)(2) is added; and paragraph (g) is revised to read as follows:

**§ 641.24 Bag and possession limits.**

(a) \* \* \*

(2) In addition, the bag limit for red snapper applies to a person on board a vessel with a permit specified in § 641.4 when that vessel does not have ITQ coupons on board.

\* \* \* \* \*

(g) *Sale.* A reef fish harvested in the EEZ by a vessel that does not have a valid permit, as required by § 641.4(a)(1), or possessed under the bag limits specified in paragraph (b) of this section, may not be purchased, bartered, traded, or sold, or attempted to be purchased, bartered, traded, or sold.

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