

final disclaimer rules have been before Congress for 30 legislative days pursuant to 2 U.S.C. 438(d). The disclaimer rules were transmitted to Congress on Oct. 2, 1995.

FOR FURTHER INFORMATION CONTACT:

Ms. Susan E. Propper, Assistant General Counsel, 999 E Street NW., Washington, DC 20463, (202) 219-3690 or (800) 424-9530.

SUPPLEMENTARY INFORMATION: The Federal Election Campaign Act (the "Act") at 2 U.S.C. 441d(a) requires a disclaimer on communications by any person that expressly advocate the election or defeat of a clearly identified federal candidate, or solicit contributions, through any form of general public political advertising. On Oct. 5, 1995, the Commission published in the Federal Register revisions to the implementing regulations, which are found at 11 CFR 110.11. 60 FR 52069.

In the discussion before adopting these revisions, the Commission considered including phone banks in the list of communications that require a disclaimer, but could not reach a majority decision to do so by the required four affirmative votes. See 2 U.S.C. 437c(c). Consequently, this proposal was not included in the final rules.

Accordingly, the term "phone bank" does not appear anywhere in the text of the final rules. 60 FR 52072. Also, the Explanation and Justification ("E&J") that accompanied the final rules correctly explained the Commission's action both in its discussion of phone banks (60 FR 52070) and in the discussion of so-called "push poll" activity. 60 FR 52071-72. (The term "push poll" is generally used to refer to phone bank activities or written surveys that provide false or misleading information about a candidate under the guise of conducting a legitimate poll.)

However, the E&J's discussion of new disclaimer requirements for certain "exempt activities," that is, activities by a candidate or political party committee that are exempt from the Act's contribution and expenditure limits under 11 CFR 100.8(b)(10), (16), (17), or (18), inadvertently retained a statement from an earlier document to the effect that exempt phone banks would require a disclaimer. The Commission is deleting this language from the E&J to insure that no one is misled by this inconsistency.

Correction of Publication

Accordingly, the publication of final regulations on October 5, 1995 (60 FR 52069), which were the subject of FR Doc. 95-24749, is corrected as follows:

Explanation and Justification (Preamble) (Corrected)

On p. 52070, in the third column, in the second full paragraph, in lines 14 and 15, "phone banks and" should be removed.

Danny Lee McDonald,
Chairman, Federal Election Commission.
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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Part 902

50 CFR Part 641

[Docket No. 950810206-5268-03; 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: Final rule.

SUMMARY: NMFS issues this final rule to implement certain provisions of Amendment 8 to the Fishery Management Plan for the Reef Fish Fishery of the Gulf of Mexico (FMP). Amendment 8 initiates 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 will receive shares of the commercial quota of red snapper based on specified criteria. The percentage shares of the commercial quota equate to individual transferable quotas (ITQs). In addition, NMFS clarifies the regulations regarding commercial permit requirements, and informs the public of the approval by the Office of Management and Budget (OMB) of the collection-of-information requirements contained in this 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.

EFFECTIVE DATE: April 1, 1996; except that the amendments to 15 CFR part 902 and 50 CFR 641.2, 641.7(s), 641.24(g), and the additions 50 CFR 641.7(ee) and 641.10 heading and paragraph (c), are effective November 24, 1995.

ADDRESSES: Requests for copies of the final regulatory flexibility analysis

(FRFA) should be sent to Robert Sadler, Southeast Regional Office, NMFS, 9721 Executive Center Drive N., St. Petersburg, FL 33702.

Comments regarding the collection-of-information requirements contained in this 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, 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 Fishery Conservation and Management Act (Magnuson Act).

Based on a preliminary evaluation of Amendment 8 at the beginning of formal agency review, NMFS disapproved three of its measures after determining that they were inconsistent with the provisions of the Magnuson Act and other applicable law. NMFS published a proposed rule to implement the remaining measures of Amendment 8 and to clarify existing regulations regarding commercial permit requirements (60 FR 44825, August 29, 1995). The rationale for the remaining measures of Amendment 8 and for the clarification of existing regulations, as well as the reasons for the disapproval of the three Amendment 8 measures at the beginning of formal agency review, are contained in the preamble of the proposed rule and are not repeated here. On October 13, 1995, NMFS approved the remaining measures of Amendment 8; this final rule implements those approved measures.

Comments and Responses

A minority report signed by three Council members was submitted with Amendment 8. In addition, written comments during the comment period were received from 34 entities, including individual representatives of four commercial seafood associations (fishing associations), two state government agencies, and 28 members of the public. Seventeen of the comments supported the proposed rule and/or Amendment 8, including 12 from persons holding red snapper endorsements on their reef fish vessel permits. Sixteen of the comments opposed the proposed rule and/or Amendment 8, including three from endorsement holders. Three of the

comments opposing the proposed rule were identical in content. Specific responses follow each comment, and are separated by general category.

Information Used in Amendment 8

Comment: The minority report claimed that an ITQ program is unnecessary, because the fishery conditions that the program proposes to correct do not actually exist. The report argues that both recreational and commercial user groups have concluded that the scientific stock assessment is flawed, because it is based on allegedly erroneous information and that the stock is in the best condition they can recall in their fishing experience. The report also stated that the authors have no confidence in the reliability of the recreational landings data collected under the Marine Recreational Fishery Statistical Survey.

Response: The NMFS stock assessment has undergone extensive peer review and was found by the Southeast Fisheries Science Center (Center) to be based on the best available scientific information. The Center also reviewed Amendment 8 and concluded that the amendment is based on the best available scientific information. The stock assessment does indicate some recovery of the red snapper stock condition during the period under Federal management; however, the assessment also indicates that the stock is still overfished and that continuing harvest restrictions are required for the FMP's long-term stock rebuilding program.

NMFS agrees, however, with the need to continually update the stock assessment database used in formulating management decisions. Appropriate updates to the database will be made as data become available.

Comment: A fishing association representative noted that the Council's Scientific and Statistical Committee (SSC) previously had voted for no new regulatory actions (i.e., discontinuance of the current red snapper permit endorsement program at the end of 1995 and no ITQ program beginning in 1996) based on the lack of a feasibility study at that time. The commenter questioned the need for an ITQ program after noting the SSC position. The commenter did acknowledge that the SSC had subsequently concluded that sufficient evaluation had been completed for the Council to select one of the identified management program alternatives (i.e., ITQs, license limitations, or no new regulatory action).

Response: NMFS does not dispute the comment, but notes that the SSC vote

for no regulatory action was based on an earlier version of Amendment 8.

Comment: The minority report and one commenter stated that the erroneous information created an unfair and inequitable commercial/recreational allocation ratio of 51/49 for red snapper. These commenters also objected to the FMP's provision that requires closure of the annual commercial fishery for the rest of the fishing year once the annual commercial quota is projected to be met, while potentially allowing recreational fishermen to exceed their allocation. The commenters claim that this penalizes the commercial sector to the benefit of the recreational sector and stated that Amendment 8 would continue this inequitable distribution of the allocation, particularly when the stock is recovered and total allowable catch (TAC) may safely be increased.

Response: The FMP provides for a commercial/recreational allocation ratio of 51/49 for red snapper, and has a requirement that the commercial sector be closed for the remainder of the year once the annual commercial quota is met or is projected to be met. These measures were found to be fair and equitable and consistent with the national standards based on the best available information, as originally set forth in Amendment 1. These provisions are not modified under Amendment 8 or its implementing regulations. Changes to either the allocation ratio or closure provision, therefore, are not actions within the scope of Amendment 8 and would require an additional FMP amendment.

Comment: One of the commenters stated that Amendment 8 violates National Standard 2, since NMFS did not use available social assessments, and the Council and NMFS did not adequately consider the "human factor," or social and economic effects.

Response: NMFS does not agree. The Council conducted extensive analyses and used all available data sources in developing Amendment 8, including the most current landings data, economic, social, and biological information. Amendment 8 includes a social impact assessment, and also references extensive Council deliberations on avoiding social impacts.

Comment: The minority report also stated that the ITQ program is based on the NMFS concept that such a program will improve the economic conditions of the industry.

Response: The Council selected ITQs as the preferred option, principally because it should result in the largest increase in net economic benefits, achieve optimum yield (OY), and address many of the major problems in

the fishery. In particular, the approved measures of the Amendment 8 ITQ program are expected to resolve the problems of a harvest capability that is larger than necessary to produce the commercial quota in an economically efficient manner. The ITQ program also is expected to resolve the problems associated with the derby fishery, including depressed prices, fishing in dangerous weather conditions, and increased total costs of production. In approving Amendment 8, NMFS agreed with the Council's rationale and objectives for the ITQ program.

Historical Captains

Comment: A representative of a commercial fishing association expressed concern regarding historical captains being included as initial shareholders. The commenter recommended that only persons who qualified for red snapper permit endorsements should be initial recipients of ITQ shares and noted that vessel owners provide the vessels and have the principal legal responsibility for their operation.

Response: Initial shareholders in the ITQ system include vessel owners or operators, depending on whose earned income qualified for the reef fish permit, and historical captains. The Council concluded that the unique status of historical captains as independent contractors who operated vessels under share agreements warranted their inclusion as initial shareholders. Unlike earned income qualifying operators, however, the initial share of a historical captain is divided with the vessel owner, based on the terms of the share agreement. NMFS finds no basis for disapproval of the Council's allocation of initial shares to historical captains.

Additional Issues Related to National Standards

Comment: The minority report and three of the commenters claimed that the ITQ system was unfair and inequitable because initially entitled fishery participants would be allocated excessive shares or because allocated shares would not be issued to all historical participants or in appropriate allocation ratios. One of the commenters stated that the ITQ system was unfair and inequitable, but did not provide specific rationale as the basis for this comment.

Response: Amendment 8 addresses the allocation issues raised by these comments. For example, Amendment 8 lists the factors that the Council took into account in establishing the ITQ system to limit access to the fishery and to achieve optimum yield (OY)

including: Present participation in the fishery; historical fishing practices in, and dependence on, the fishery; the economics of the fishery; the capability of fishing vessels used in the fishery to engage in other fisheries; and the cultural and social framework relevant to the fishery.

The ITQ system provides for issuance of initial shares that more closely track the actual harvest during the qualifying years than the current endorsement system. For example, the endorsement provisions established a trip limit of 2,000 lb (907 kg) for fishermen with endorsements on their permits (i.e., caught at least 5,000 lb (2,268 kg) in any 2 of the 3 years between 1990–1992). Vessels without an endorsement were limited to a 200 lb (91 kg) trip limit. In effect, the endorsement system provided only two levels of harvest based on applicants meeting a minimum threshold. Persons who landed substantively more than the threshold were not provided a larger trip limit than those who landed only 5,000 lb (2,268 kg). This system resulted in inequities, as stated in several of the comments.

In contrast, the initial ITQ shares to be issued under Amendment 8 will correspond to the actual harvests accepted by NMFS under Amendment 9 during the qualifying period for shares. Moreover, the overall benefits of the ITQ system to the economic integrity of the fishery are expected to accrue over time. For example, the allowance for ITQ share transfers to any U.S. citizen or permanent resident alien starting October 1, 1997, will provide access to those ineligible for an initial share. This should result in significantly increased flexibility regarding who may participate in the fishery.

Amendment 8 explicitly reflects the requirements of NMFS' Guidelines for Fishery Management Plans; Subpart B—National Standards (National Standard Guidelines) regarding the application of National Standard 4 (allocation of fishing privileges) (see 50 CFR 602.14(c)(3)(i)). Specifically, Amendment 8 states that to be "fair and equitable," an allocation should be rationally connected with the achievement of OY or with the furtherance of an FMP objective; otherwise, the inherent advantaging of one group to the detriment of another would be without adequate justification. Also, Amendment 8 indicates that an allocation of fishing privileges may impose hardship on one group if this hardship is outweighed by the total benefits received by another group. Although the ITQ program will not prevent any person who is a U.S. citizen

or permanent resident alien from entering the red snapper fishery, those persons who receive an initial allocation of harvesting privileges (initial shares) will have a competitive advantage over subsequent participants by not having to pay for those privileges. Any such competitive advantage would be constrained by the mandatory 4-year evaluation period, which the Council believes was necessary to minimize windfall profit and speculation.

According to the National Standard Guidelines, an allocation of fishing privileges must be designed to avoid creating conditions that foster the acquisition by any person of an inordinate share of fishing privileges or control by buyers and sellers that would not otherwise exist (see 50 CFR 602.14(c)(3)(iii)). Although the National Standard Guidelines do not specifically define an "excessive share," they imply conditions of monopoly or oligopoly. The Council does not believe that a monopoly will occur and expects that owners/operators will remain the dominant entities in the fishery. Therefore, the Council recommended no limit on ownership of ITQ shares. It is anticipated that this will not lead to overall market control of the fishery. Also, the Council can recommend, and NMFS approve and implement, a different allocation scheme by FMP amendment at any time if it meets the requirements of the Magnuson Fishery Conservation and Management Act and other applicable law.

NMFS acknowledges the Amendment 8 discussion of these allocation issues and agrees with the Council that the ITQ program is consistent with National Standard 4 requirements that allocations of fishing privileges be fair and equitable and be carried out in such manner that no particular individual, corporation, or other entity acquires an excessive share.

Effects of ITQ System on Red Snapper Resource Status

Comment: The minority report states that the ITQ system does not promote conservation. One commenter opposed the ITQ system indicating that it may contribute to overfishing. Another commenter stated that he would benefit from a relatively high ITQ share, but that he opposed the ITQ system because possible unlawful and unreported landings (landings without ITQ coupons) would result in exceeding the red snapper annual quota because these landings would go unrecorded. He argued that these circumstances would cause overfishing of the red snapper resource and undermine the long-term rebuilding of this overfished species.

Response: NMFS disagrees with these comments. The current red snapper management program provision for an automatic commercial fishery closure once the commercial quota is met was intended to ensure that the quota is not exceeded, thereby ensuring the recovery of the overfished red snapper resource under its rebuilding program. However, red snapper discarded during closed fishery periods are not counted against the commercial quota; some of these closed fishery periods have been considerably long such as the one that occurred after the April 15, 1995, fishery closure. Since the ITQ program is expected to minimize closed fishery periods, it should correspondingly reduce unaccounted for incidental catch mortality of red snapper. Reducing the magnitude of this fishing morality during fishery closures is expected to allow a larger proportion of the red snapper harvested to be retained and counted against the commercial quota that occurs currently. Accordingly, the ITQ program should both reduce the total fishing mortality of red snapper as well as provide a more accurate estimate of it. The slower-paced fishery that is anticipated under the ITQ program will be easier for NMFS to monitor, particularly with fewer fishermen operating over a longer season. Also, ITQ program participants will have an interest in ensuring the continued viability of the fishery and the ITQ program, and are expected to assist in reported illegal activities or under-reporting. Overall, these ITQ program results should significantly enhance conservation benefits.

Industry Opinions on Amendment 8

Comment: Two representatives of fishing associations noted that most public comments at the Council meetings opposed ITQs. One of these commenters noted the various votes of the Council's Red Snapper and Reef Fish Advisory Panels against ITQs. The minority report and one fishing association representative stated that the majority of the red snapper industry opposes Amendment 8. They argued that approval of Amendment 8 and its implementing rule is inconsistent with what they perceive to be NMFS' policy that no proposed ITQ program would be implemented over industry objections.

Response: NMFS disagrees with these comments and believes that a majority of the fishing industry participants supports the ITQ program. As with any controversial action, some commenters opposed Amendment 8. However, the ITQ system appears to be supported by a majority of the fishery participants as providing for better red snapper fishery

management including ensuring more reliable monitoring of catches with regards to quotas, avoiding increasingly short fishing seasons and low ex-vessel prices, and improving the enforceability of the management measures. Public commenters that expressed an opinion at area hearings held by the Council in December 1994 supported, in general, the ITQ program (23 in favor, 19 opposed). A stronger majority opinion (15 in favor, 9 opposed) was evidenced at the hearings by commenters who hold a red snapper endorsement on their reef fish vessel permit and who have caught the bulk of the commercial harvest since 1993, when the endorsement provisions were implemented. More recent indications of industry views on the Amendment 8 ITQ program were reflected in the public comments received on the proposed rule that supported the program by a slight margin (17-16), with a much larger margin of support (12 to 3) among commenters with a red snapper endorsement on their reef fish vessel permit. Public support for the ITQ program is expected to increase as more participants become familiar with it and with the benefits to the fishery expected to result from its implementation. Those benefits are expected to accrue over time. Finally, NMFS has not issued a policy regarding the approval and implementation of limited entry programs, including ITQ systems, except for guidance to the Regional Fishery Management Councils contained in the National Standard Guidelines at 50 CFR part 602 regarding the consistency of management measures assigning fishing privileges with National Standard 4. However, NMFS has indicated to the Councils that it is their responsibility to develop and recommend controlled access systems only if there is considerable support from the industries involved. NMFS believes that the controlled access system under Amendment 8 does have this considerable support from the affected industries.

Enforcement Issues

Comment: The minority report and five of the comments cited enforcement concerns. These comments stated that, with current NMFS enforcement capability and recent budget cuts, the ITQ system would be unenforceable.

Response: NMFS does not agree that the ITQ program will be unenforceable. First, NMFS anticipates cooperation from all the Gulf coastal states who have indicated that they will implement regulations for their waters consistent with those in the exclusive economic zone. Specifically, Texas and Florida

provided comments in support of Amendment 8 and indicated a capability to enact compatible regulations in waters under their jurisdiction. Alabama, Louisiana, and Mississippi provided similar comments that were received after the end of the comment period, but before NMFS took final action to approve the remaining measures of Amendment 8. Thus, in making its decision to approve and implement the remaining measures of Amendment 8, NMFS obtained reasonable assurance from all the affected states that they will be able to issue compatible state regulations effective on or about the time that Amendment 8 is fully implemented (April 1, 1996). This cooperation will greatly enhance enforcement of the regulations. NMFS also has committed the resources for additional Federal enforcement agents.

Second, the Council and NMFS believe that the ITQ system will be more self-policing than the current management system (permit endorsements with trip limits) because ITQ holders will have a vested interest in seeing that all red snapper landings conform with the ITQ program requirements. ITQ shares will have a value to the holder proportionate to the size of the total commercial quota. Fishermen who hold ITQ shares will have a greater incentive to report to enforcement officials (NMFS Enforcement, the Coast Guard, or state enforcement agencies) any illegal/unreported landings outside the ITQ program (e.g., landings without use of ITQ share coupons), since such landings would eventually result in adverse effects on the stock condition with the likely result of quota reductions.

Comment: Two of the commenters indicated that fishermen may illegally sell red snapper to restaurants without using their ITQ shares, thus allowing them to catch large quantities of red snapper outside of the ITQ program.

Response: NMFS acknowledges that illegal activity is possible with or without ITQs. Nevertheless, NMFS has determined that such activity can be kept to a minimum with compatible state regulations, which will greatly increase the probability of any fisherman being detected landing fish illegally and thereby risking his/her right to participate in the ITQ program.

Comment: One of the commenters stated that ITQ shareholders have an interest in helping the ITQ system succeed and, therefore, may report violations and keep enforcement costs down. That commenter stated that the additional requirement of ITQ coupons

should help enforcement officers to detect chronic violators.

Response: NMFS agrees.

Use of Qualifying Years (1990-92)

Comment: Another commenter stated that the qualifying years (1990-92) were atypical of his historic dependence on the fishery, as he stopped fishing due to the derby fishery during that time.

Response: The collection of past landings data under Amendment 9 covers all red snapper landings information for the period when data were readily available (i.e., 1990 through 1992). Data were not readily available before 1990, and the vessel permit endorsement provisions, including trip limits, were implemented in 1993. As a result, the years 1990-92 constitute the best available qualifying period for determining eligibility for the ITQ system. The Council, after extensive deliberations and consideration of longer qualifying periods, determined that the 1990-92 period was the most appropriate for determining historical dependence on the fishery. No reliable information or data were provided at Council-held public hearings or during NMFS-held comment periods on Amendment 8 and the proposed rule that convinced the Council or NMFS that this qualifying period was unfair or inappropriate. Based on these considerations, NMFS agreed with the Council's decision about the qualifying period in approving certain measures of both Amendments 8 and 9.

Comment: One of the commenters stated that the Amendment 8 proposed rule is inconsistent with the National Standards because it denies access to the red snapper fishery by those who did not have red snapper catches during the years 1990-92; those fishermen will not receive an initial allocation.

Response: The rationale for selecting the 1990-92 qualifying period was discussed above. Regarding access to the red snapper resource, a major feature of the ITQ program is allowance of new entrants to participate by buying existing ITQ shares. Hence, the program allows wider participation than the permit endorsement system it will replace.

The choice of the eligibility period (1990-92) to determine access also is consistent with the Council's established control date for the fishery. The published notice of the control date stated that anyone entering the Gulf of Mexico commercial reef fish fishery after November 7, 1989, could not be assured of future access to the reef fish fishery if a management regime were developed and implemented that

limited the number of participants in the fishery.

Comment: One of the commenters requested that NMFS further review all landings data submitted for the ITQ program-qualifying period.

Response: NMFS does not agree that the additional review of qualifying landings data, as requested by the commenter, is necessary. The red snapper landings data for the 1990–92 qualifying period submitted to NMFS by the cutoff date (established under Amendment 9) were carefully reviewed by NMFS before being accepted as a basis for calculating individual percentage shares of the commercial quota. Persons submitting data showing landings during the 1990–92 eligibility period were given an opportunity to review NMFS' landings figures. Finally, Amendment 8 establishes a Council advisory panel to consider written requests from persons who contest their tentative allocations of shares or determinations of historical captain status.

Congressional Action and User Fees

Comment: The minority report and two fishing association representatives stated that Amendment 8 should not be approved because it would be "in defiance of the Congressional mandate to develop appropriate guidelines for ITQs." The minority report also stated that Amendment 8 should not be approved, since the user fee schedule currently being considered in a proposed amendment to the Magnuson Act is unknown. According to the minority report, the user fee issue would have a bearing on industry's evaluation of the effects of the proposed rule.

Response: NMFS acknowledges the possibility that an amendment to the Magnuson Act or other Congressional action could affect continuation of the ITQ system under Amendment 8. NMFS also acknowledges the potential importance of user fees to persons involved in fishery business decisions. However, what final action Congress will take in amending the Magnuson Act regarding the establishment of ITQ programs or the application of user fees in fisheries management is unknown. Until such time as the Magnuson Act is amended, it authorizes the development and implementation of ITQ programs for fisheries under Federal management.

Costs of Implementing the ITQ System

Comment: Four of the commenters, including a representative of a fishing association, complained about the high costs of implementing and enforcing the ITQ system. One comment indicated

that costs should be one of the factors considered before implementing ITQs.

Response: The regulatory impact review (RIR) prepared by the Council estimates that Amendment 8 will increase annual administration and enforcement costs on a continuing basis between \$659,000 and \$1,749,000, depending on the level of law enforcement efforts. However, it further indicates that annual benefits include increased revenues of \$2.5 to \$4.1 million and a decrease in the total cost of harvesting. While the RIR clearly points out that costs of the ITQ system are higher than for other management systems considered, the ITQ system should provide the largest increase in net economic benefits to the fishery of any of the management options for red snapper considered by the Council.

Duration of Implementing Regulations

Comment: One of the commenters supported the ITQ system and the 4-year evaluation period, noting that an evaluation might give the Council an opportunity to develop a more comprehensive ITQ system after the 4-year period. Another commenter supported the ITQ system and a 4-year evaluation as a flexible approach that will benefit the fishery in terms of achieving the goals of Amendment 8. That commenter stated that 4 years was an appropriate time period for monitoring and evaluation, without imposing an unnecessarily long time period that encourages windfall profits.

Response: NMFS agrees with these comments and has approved the Council's proposed measure to evaluate the ITQ system no later than 4 years after initial implementation.

Comment: The minority report stated that the proposed 4-year evaluation period would preclude the industry from making business decisions. One of the commenters stated that the time limitation creates uncertainty in the ITQ system. Another commenter stated that the mandatory evaluation is not needed, because the Council already has the authority to evaluate the ITQ system and make changes as appropriate. Another commenter expressed a preference for an indefinite duration for the ITQ program.

Response: The 4-year evaluation period was selected by the Council after consideration of various time periods. The Council was aware of the potential that fewer economic benefits might result from having an ITQ program with a fixed time period compared to a system of indefinite duration, but decided that a 4-year evaluation period was necessary to minimize windfall profits and speculation while still

allowing a sufficiently long period to test the effectiveness of the program.

NMFS agrees with the Council's decision to select a 4-year ITQ program period with an evaluation of its effectiveness at that time. This approach will allow the Council and NMFS to terminate the program at that time if it does not produce the expected benefits. The mandatory evaluation, while unavoidably creating a degree of uncertainty in the industry, is needed in order that the Council may identify and propose necessary changes to the ITQ program for achieving the greatest possible level of benefits.

Comment: One of the commenters also objected to treating fish as private property, and stated that the ITQ program is a bad idea and should not be approved.

Response: NMFS disagrees. The ITQ system will remain in effect for 4 years from the date the system is implemented, while the effectiveness of the system is monitored and evaluated. Based on the evaluation, the system will be modified, or terminated. This temporary harvest privilege is not a transfer of the resource, but a revocable license to take a specified amount of the resource. There are no private property rights to wild fish before they have been reduced to one's possession.

Comment: One commenter suggested that each permit holder be issued transferable ITQ coupons in an allotted percentage based on their previous records of red snapper landings, and be given 1 year to use their coupons.

Response: This suggestion is already provided for by the provisions of the ITQ program. The Regional Director will provide each shareholder with ITQ coupons in various denominations on an annual basis, the total of which equals his or her ITQ share.

Comment: Two of the commenters responded to the request in the proposed rule for specific comments on the possibility of a quota overrun if the states do not enact compatible regulations. Those two comments indicated that each state should enact specific compatible regulations for waters under their jurisdiction, since large quantities of landings are made from state waters off Texas and Louisiana.

Response: NMFS shares the concerns expressed by these comments about the adverse effects of a quota overrun and a fishery closure before all ITQ coupons are used, if compatible state regulations are not enacted to prevent catch by non-permitted vessels in state waters. As noted above, NMFS has received reasonable assurance that all Gulf coastal states will enact or have in place

in a timely manner regulations to require that vessels landing red snapper possess a Federal permit, no matter where the red snapper are harvested or possessed. This should preclude any non-ITQ harvest.

Comment: One of the commenters suggested that a rule allowing permitted vessels without ITQ shares to sell red snapper harvested in state waters would encourage violations of the ITQ program.

Response: NMFS agrees. The implementing regulations specify that red snapper in or from the EEZ, or on board a permitted reef fish vessel, may not be possessed without sufficient ITQ coupons on board. One of the permit conditions is that permitted vessels comply with the ITQ provisions, no matter where the red snapper are harvested or possessed. This would minimize violations, since the states have provided assurance that they will require that red snapper landings be from federally permitted vessels only.

A federally permitted reef fish dealer would be allowed to receive red snapper only from a permitted vessel with ITQ coupons on board, regardless of where the red snapper were harvested. These provisions are intended to encourage effective monitoring and enforcement of the ITQ system.

Comment: One of the commenters questioned the meaning of "excessive effort capacity" in the proposed rule. Another commenter indicated that the ITQ system would force him to discharge two or three of his three to four employees from his vessel. The ITQ system, therefore, would be economically disadvantageous, particularly in areas with high unemployment and when fishermen are ineligible for unemployment benefits.

Response: The term "excessive effort capacity" indicates the ability of red snapper fishermen to catch the annual quota in increasingly shorter time periods, resulting in fewer net economic benefits. Regarding the comment, NMFS acknowledges that some decrease in employment is expected to result from a reduction of effort capacity that optimizes net economic benefits of the fishery. While this may disadvantage some sectors, as stated in the comment, the net benefits to the entire fishery are increased.

Comments in Support of the Proposed Rule

Comment: Seventeen of the commenters supported the ITQ system. Eleven supported the ITQ system because of problems with vessel crew safety and the short season due to the endorsement system. Seven also

supported the ITQ system to avoid other problems associated with a derby fishery, such as low ex-vessel prices, and one noted that the commercial fishery is unable to achieve OY under the existing endorsement provisions. That commenter opposed the views of the minority report and urged NMFS to implement the ITQ system as soon as possible.

Response: NMFS acknowledges these supportive comments and the identified program benefits.

Additional Issues Outside the Scope of the Proposed Rule

Comment: One of the commenters suggested that sale of red snapper harvested in state waters be counted against the recreational harvest, not the commercial quota.

Response: This provision is not currently in the FMP or Amendment 8, and is outside the scope of the proposed rule.

Comment: Three commenters noted that an ITQ system would not help the red snapper fishery, because imports comprise most of the total red snapper market. Another stated that imports should be considered before implementing ITQs.

Response: The Magnuson Act currently does not govern imported fish, which may be legally landed in compliance with the Lacey Act and other applicable Federal laws. Moreover, inclusion of imported red snapper in the ITQ system is outside the scope of the proposed rule.

Comment: One of the comments requested consideration of a small incidental catch of red snapper for boats operating out of Florida ports.

Response: This requested action was not included in Amendment 8 or the proposed rule and, therefore, is outside the scope of this rule.

Comment: One of the commenters stated that the penalty fee schedule should be provided in the proposed rule.

Response: NOAA has made its Civil Administrative Penalty Schedule available (59 FR 19160, April 22, 1994). That schedule is outside the scope of the proposed rule and Amendment 8. The schedule, however, will be revised as any additional regulations are implemented.

Comment: One of the commenters expressed no opinions on the proposed rule but requested that hardship appeals be considered.

Response: The hardship appeals provisions proposed in Amendment 8 were disapproved by NMFS during its preliminary review of the amendment for the reasons stated in the preamble of

the proposed rule. These provisions were not included in the proposed rule and, therefore, are not included in the final rule. Therefore, this comment is considered outside the scope of the proposed rule.

Comment: One of the commenters suggested that, instead of the ITQ program, fishermen be allowed to fish 10 days a month.

Response: A split season was not included in Amendment 8 or the proposed rule. Therefore, this comment is outside the scope of this rule.

Changes From the Proposed Rule

Specific dates are added as follows:

(1) In § 641.10 introductory text, for the termination of the period during which NMFS and the Council will evaluate the ITQ system; (2) in § 641.10(c)(2)(iv), for the submission of requests for transfers of landings records; (3) in § 641.10(c)(4)(iii), for the submission of appeals; and (4) in § 641.10(c)(5), for the initial restrictions regarding transfers of shares.

In § 641.10(a)(3), information is added as to how a person who does not have an ITQ share may obtain a list of shareholders.

The ITQ coupon system is simplified and clarified as follows. Since ITQ coupons will be used on board vessels rather than by individual fishermen, references in the proposed rule to the "Fisherman" part of coupons are changed to "Vessel" part. In § 641.10(b)(3), when a coupon is transferred, the name of the recipient and the signature of the seller are no longer required. In lieu thereof, if the transfer is by sale, the price paid for the coupon must be entered on the coupon. To aid in monitoring the lawful use of coupons, § 641.10(b)(5) is revised to require entry on the "Vessel" part of each coupon of the permit number of the dealer to whom red snapper are transferred. Sections 641.10(b)(6) and (b)(7) are modified to clarify that, after being landed, red snapper must be accompanied by appropriate amounts of properly completed "Fish House" parts of ITQ coupons, even when such red snapper are offloaded at a facility other than a dealer's; for example, when offloaded to a dealer's truck. In § 641.10(b)(7), the requirement to enter the dealer's permit number on the "Fish House" part of a coupon is removed.

Classification

The Director, Southeast Region, NMFS, determined that Amendment 8 is necessary for the conservation and management of the reef fish fishery of the Gulf of Mexico and that it is consistent with the Magnuson Act and

other applicable laws, with the exception of those measures that were disapproved at the beginning of formal agency review based on a preliminary evaluation of Amendment 8. (See the proposed rule (60 FR 44825, August 29, 1995) for a discussion of the disapproved measures.)

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

The Council prepared an initial regulatory flexibility analysis (IRFA) as part of its regulatory impact review of Amendment 8. The IRFA described the impacts that the proposed rule would have on small entities, if adopted. Those impacts were summarized in the proposed rule. NMFS prepared an FRFA, which adopts the IRFA without substantive change. A copy of the FRFA is available (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 Paperwork Reduction Act unless that collection of information displays a currently valid OMB Control Number.

This rule contains 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. These collections of information have been approved by OMB under OMB control numbers 0648-0297, 0648-0298, 0648-0299, and 0648-0301, respectively. The public reporting burdens for these collections of information are estimated to average 90, 0.5, 15, and 15 minutes per response, respectively.

This rule requires permits for dealers who receive red snapper harvested by permitted vessels from state waters adjoining the EEZ in the Gulf of Mexico. Previously, dealer permits were required only for those dealers receiving red snapper harvested in the EEZ. The collection of information for dealer permit applications is currently 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 revision.

This rule also 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**).

The publication of the OMB control numbers for approved collection-of-information requirements at 15 CFR part 902 does not constitute a substantive rule because it does not affect the activities of fishermen. The correction of the definition of "Science and Research Director" at 50 CFR 641.2, the addition of the prohibition at 50 CFR 641.7(s), which complements an existing requirement, and the clarification of the permit requirements at 50 CFR 641.7(ee) and 641.24(g) do not constitute substantive rules because they do not change existing requirements. Thus, pursuant to 5 U.S.C. 553(d), there is no need to delay the effective date of these provisions. The addition to the regulations at 50 CFR 641.10(c) contains administrative procedures necessary for timely implementation of the ITQ system. Each potential initial shareholder in the ITQ system was advised of these procedures in the proposed rule and by letter dated September 14, 1995. Delay in effectiveness of the administrative procedures would unnecessarily delay commencement of the ITQ system. Accordingly, the Assistant Administrator for Fisheries, NOAA, finds that, pursuant to 5 U.S.C. 553(d)(3), good cause exists to waive the 30-day delay in effective date of 50 CFR 641.10(c). To allow time for the determination of initial ITQ shares and for the distribution of ITQ coupons, NMFS makes the provisions of this final rule requiring ITQ coupons for the possession of red snapper in the commercial fishery effective on April 1, 1996.

List of Subjects

15 CFR Part 902

Reporting and recordkeeping requirements.

50 CFR Part 641

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: November 22, 1995.

Nancy Foster,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 15 CFR part 902 and 50 CFR part 641 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 part 902, paragraph (b) table, effective November 24, 1995 in the entries for 50 CFR in the right column, corresponding to entry 641.5 in the left column, the entry "-0013 and -0016." is removed and "-0013, -0016, and -0301." is added in its place; and in the left column, in numerical order "641.10" is added, and in the right column, in corresponding position, the entry "-0297, -0298, and -0299." is added.

50 CFR Chapter VI

PART 641—REEF FISH FISHERY OF THE GULF OF MEXICO

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

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

4. 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.

5. In § 641.2, effective November 24, 1995, 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.

* * * * *

6. 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 harvested by or possessed on board a vessel with a 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 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 transferable 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 transferable quota requirements of § 641.10(b).

7. 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 transferable 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.

* * * * *

8. In § 641.7, effective November 24, 1995, paragraph (s) is revised and paragraph (ee) is added; and, effective April 1, 1996, paragraphs (g), (r), and (bb) are revised and paragraphs (ff) 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) Transfer an ITQ coupon by sale without the sale price 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—

(1) Sign and date the "Vessel" part of ITQ coupons;

(2) Enter on the "Vessel" part the permit number of the dealer to whom red snapper are transferred; or

(3) 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).

9. Effective November 24, 1995, § 641.10 consisting of paragraph (c) is added to subpart A; effective April 1, 1996, the introductory text and paragraphs (a) and (b) are added to read as follows:

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

The ITQ system established by this section will remain in effect through March 31, 2000, 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 are 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 is 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 reissued to shareholders based on their shares as of November 1, after the additional shares become available. If NMFS is required to issue additional shares, 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, the registration of each transfer. The effective date of each transfer is the confirmation date provided by the Regional Director. The confirmation of registration 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 is 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 is specified with each transfer form. The appropriate fee must accompany each transfer 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 transfers as indicated on properly completed transfer forms received through October 31. Updated lists may be obtained at other times, and by persons who are not red snapper shareholders, 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 transfers 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. If the transfer is by sale, the seller must enter the sale price on the coupon.

(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 "Vessel" part of ITQ coupons totaling at least the eviscerated weight of the red snapper on board. An owner or operator of a vessel must separate the "Vessel" part of each such coupon, enter thereon the permit number of the dealer to whom the red snapper are transferred, and submit the "Vessel" parts 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, or the agent or employee of such dealer, in amounts totaling 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, or the agent or employee of a dealer, must receive the "Fish House" part of ITQ coupons totaling at least the eviscerated weight of the red snapper received. Immediately upon receipt of red snapper, the dealer, or the agent or employee of the dealer, must enter the permit number of the vessel received from and date and sign each such "Fish House" part. The dealer must submit all such parts as required by § 641.5(d)(2). A dealer, agent, or employee 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 had a 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, the term "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 are 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 are 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 is 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 are 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 was used to qualify 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 and must be postmarked not later than December 14, 1995. 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 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 panel 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 panel 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, postmarked not later than December 27, 1995, 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 to 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 through September 30, 1996.

(ii) From October 1, 1996, through September 30, 1997, shares may be transferred only to other persons who are initial shareholders and are U.S. citizens or permanent resident aliens.

10. In § 641.24, effective November 24, 1995, paragraph (g) is revised; and, effective April 1, 1996, 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)", and paragraph (a)(2) is added 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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DEPARTMENT OF LABOR

Employment and Training Administration

20 CFR Part 655

Wage and Hour Division

29 CFR Part 508

[RIN 1205-AA88 and RIN 1215-AA]

Attestations by Employers for Off-Campus Work Authorization for Foreign Students (F-1 Nonimmigrants)

AGENCIES: Employment and Training Administration, Labor; and Wage and Hour Division, Employment Standards Administration, Labor.

ACTION: Joint interim final rule.

SUMMARY: The Department of Labor (DOL) amends regulations relating to attestations by employers seeking to use nonimmigrant foreign (F-1) students in off-campus work. Pursuant to a previous