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1. On October 6, 2003, the Commission released a *Report and Order and Further Notice of Proposed Rulemaking*, 68 FR 66252 (November 25, 2003) in WT Docket No. 00-230, In the Matter of Markets (Secondary Markets Report and Order). A summary of the *Secondary Markets Report and Order* portion of the *Further Notice of Proposed Rulemaking* prescribed that, except for §§ 1.913(a), 1.913(a)(3), 1.948(j), 1.2002(d), 1.2003, 1.9003, 1.9020(e), 1.9030(e), and 1.9035(e) of the Commission's rules, the various rules adopted in the *Secondary Markets Report and Order* were to be effective January 26, 2004.

2. In order to comply with the requirements of the Congressional Review Act under the Contract with America Advancement Act of 1996, *see* 5 U.S.C. 801(a)(3), the effective date of the rules that otherwise currently were to become effective on January 26, 2004 was delayed to February 2, 2004. The effective dates of §§ 1.913(a), 1.913(a)(3), 1.948(j), 1.2002(d), 1.2003, 1.9003, 1.9020(e), 1.9030(e), and 1.9035(e) of the Commission's rules are not affected by this extension of the effective date for all other rules adopted in the *Secondary Markets Report and Order*.

List of Subjects

47 CFR Part 1

Administrative practice and procedure, Communications common carriers, Radio, Reporting and recordkeeping requirements, Telecommunications.

47 CFR Part 27

Communications common carriers, Radio.

Federal Communications Commission.

Katherine M. Harris,
Deputy Division Chief.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 031017264-4034-03; I.D. 100103C]

RIN 0648-AR48

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Reef Fish Fishery of the Gulf of Mexico; Referendum Procedures for a Potential Gulf of Mexico Red Snapper Individual Fishing Quota Program

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

ACTION: Final rule; statement of procedure.

SUMMARY: NMFS issues this final rule to provide information about the schedule, procedures, and eligibility requirements for participating in referendums to determine whether an individual fishing quota (IFQ) program for the Gulf of Mexico commercial red snapper fishery should be prepared and, if so, whether it should subsequently be submitted to the Secretary of Commerce (Secretary) for review. The intended effect of this final rule is to implement the referendums consistent with the requirements of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

DATES: This final rule is effective February 12, 2004.

ADDRESSES: Copies of supporting documentation for this final rule, which includes a regulatory impact review (RIR) and a Regulatory Flexibility Act Analysis (RFAA), are available from NMFS, Southeast Regional Office, 9721 Executive Center Drive N., St. Petersburg, FL 33702. Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this rule may be submitted to Robert Sadler, Southeast Region, NMFS, at the above address, and to David Rostker, Office of Management and Budget (OMB), by e-mail to David_Rostker@omb.eop.gov or by fax to 202-395-7285.

FOR FURTHER INFORMATION CONTACT: Phil Steele, telephone: 727-570-5305, fax: 727-570-5583, e-mail: phil.steele@noaa.gov.

SUPPLEMENTARY INFORMATION: The reef fish fishery in the exclusive economic zone (EEZ) of the Gulf of Mexico is

managed under the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico (FMP). The FMP was prepared by the Gulf of Mexico Fishery Management Council (Council) and is implemented under the authority of the Magnuson-Stevens Act by regulations at 50 CFR part 622.

Background

During the early to mid-1990s, the Council began development of an IFQ program for the commercial red snapper fishery in the Gulf of Mexico. Development of this program involved extensive interaction with the fishing industry, other stakeholders, and the public through numerous workshops, public hearings, and Council meetings. The program was approved by NMFS and was scheduled for implementation in 1996. However, Congressional action in late 1995 prohibited implementation of any new IFQ program in any U.S. fishery, including the Gulf of Mexico red snapper fishery, before October 2000. Subsequent Congressional action, passage of HR5666, incorporated this prohibition and related provisions into the 1996 amendments to the Magnuson-Stevens Act and ultimately extended the prohibition until October 1, 2002. However, HR5666 also provided authority to the Council to develop a profile for any fishery under its jurisdiction that may be considered for a quota management system.

Under section 407(c) of the Magnuson-Stevens Act, the Council is authorized to prepare and submit a plan amendment and regulations to implement an IFQ program for the commercial red snapper fishery, but only if certain conditions are met. First, the preparation of such a plan amendment and regulations must be approved in a referendum. If the result of the referendum is approval, the Council would be responsible for preparing any such plan amendment and regulations through the normal Council and rulemaking processes that would involve extensive opportunities for industry and public review and input at various Council meetings, public hearings, and during public comment periods on the plan amendment and regulations. Second, the submission of the plan amendment and regulations to the Secretary for review and approval or disapproval must be approved in a subsequent referendum. Both referendums must be conducted in accordance with Section 407(c)(2). Section 407(c)(2) also specifies that, "Prior to each referendum, the Secretary, in consultation with the Council, shall: (A) identify and notify all such persons

holding permits with red snapper endorsements and all such vessel captains; and (B) make available to all such persons and vessel captains information about the schedule, procedures, and eligibility requirements for the referendum and the proposed individual fishing quota program.”

On October 27, 2003, NMFS published the original proposed rule to implement the red snapper referendum procedures; comments on the original proposed rule were requested through November 12, 2003 (68 FR 61178). Public comment received on that October 27, 2003, proposed rule expressed concern about the vote-weighting procedure and specifically objected to allowing both a qualified lessor and qualified lessee fully weighted votes resulting in double counting of these permits’ associated landings. In response to those public comments, NMFS issued a second proposed rule (68 FR 75202, December 30, 2003) to include a broader range of potential options for weighting votes; comments on that proposed rule were requested through January 20, 2004.

Comments and Responses

Following are the public comments that NMFS received on the original proposed rule (68 FR 61178, November 12, 2003) and the revised proposed rule (68 FR 75202, December 30, 2003), along with NMFS’ responses.

Comment 1: Eight individuals stated that the proposed vote-weighting criterion that allows one vote per qualifying pound to both the lessor and lessee, resulting in double counting of the qualifying poundage by these permit holders, while the other eligible voters will receive only one vote per qualifying pound, was inequitable. Three additional comments were received that supported adoption of Alternative Five in the revised proposed rule.

Response: In response to public comments on the original proposed rule, NMFS revised the proposed rule to include a broader range of potential options for weighting votes. The additional vote-weighting alternatives were published in the **Federal Register** on December 30, 2003 (68 FR 75202). Comments were accepted through January 20, 2004. Based on consideration of public comments and comments received from the Council on the revised proposed rule, NMFS has modified the vote-weighting criteria that applies to eligible voters to address concerns about double counting. Under the original proposed rule, each eligible lessee and lessor would have received one full vote per applicable pound of red snapper landings. To avoid this

double counting, the final rule specifies that in cases where more than one eligible voter has eligibility tied to a particular license, e.g., lessee and lessor, or a qualifying vessel captain and a license holder, all eligible voters associated with that license will have their vote weighted equally and their combined vote will equal one vote per pound of landings applicable to that license. For example, if a qualifying captain is eligible based on his/her landings under a specific license during the relevant time period, and that license is now held by a license holder who is not involved with lease arrangements with that license, but who is not the same qualifying captain, then each will get one-half of a vote per pound of landings associated with the license. In this example, should the current holder lease the same license, then each participant will have their vote weighted as one-third of a vote per pound, so their combined vote will equal the total number of pounds associated with the license. In cases where only one eligible voter has eligibility tied to a particular license, all applicable landings associated with that license accrue to that voter and the voter will be assigned a vote-weighting factor of one vote per pound.

Comment 2: Two individuals commented that the general public should be allowed to vote in the red snapper IFQ referendums.

Response: Section 407(c) of the Magnuson-Stevens Act states that “The Secretary, at the request of the Gulf Council, shall conduct referendums under this subsection. Only a person who held an annual vessel permit with a red snapper endorsement for such permit on September 1, 1996 (or any person to whom such permit with such endorsement was transferred after such date) and vessel captains who harvested red snapper in a commercial fishery using such endorsement in each red snapper fishing season occurring between January 1, 1993, and such date may vote in a referendum under this subsection. The referendum shall be decided by a majority of the votes cast. The Secretary shall develop a formula to weigh votes based on the proportional harvest under each such permit and endorsement and by each such captain in the fishery between January 1, 1993, and September 1, 1996.” Accordingly, the general public is precluded from voting in the red snapper IFQ referendum program.

Comment 3: Two comments were received regarding the voting eligibility for lessees and lessors. One individual suggested that either the lessor or lessee be allowed to vote in both referendums,

and the other individual stated that lessees of the Class 1 license should not be allowed to vote in the red snapper IFQ referendum. Further, one of these same individuals suggested that the lessor could convey voting rights to the lessee and that a lessee who receives the owner’s (lessor’s) proxy vote must submit written notice to NMFS within 10 days after publication in the **Federal Register** of the final rule implementing referendum procedures for both referendums.

Response: Section 407(c)(2) of the Magnuson-Stevens Act establishes criteria regarding eligibility of persons to vote in the referendums. After careful consideration of those criteria and the practicality and fairness of several possible interpretations, NMFS has determined that the language contained in Section 407(c)(2) of the Magnuson-Stevens Act specifically referring to “any person to whom such permit with such endorsement was transferred,” was intended to include both lessors and lessees as permit holders with regard to voting qualifications, thus allowing both to vote in the referendums.

Comment 4: One individual’s comments were in support of an IFQ program for the Gulf of Mexico red snapper fishery.

Response: NMFS agrees that an IFQ program is necessary to address a number of problems existing in the Gulf of Mexico red snapper fishery (i.e., derby fishing, harvest capacity, safety-at-sea issues, enforcement).

Comment 5: One individual commented that red snapper Class 2 license holders should be able to vote in the referendums. This individual also suggested that Class 2 permit holders may be eliminated from the IFQ process by Class 1 license holders if Class 2 license holders are not allowed to vote in the referendums.

Response: Section 407(c) of the Magnuson-Stevens Act states that “The Secretary, at the request of the Gulf Council, shall conduct referendums under this subsection. Only a person who held an annual vessel permit with a red snapper endorsement for such permit on September 1, 1996 (or any person to whom such permit with such endorsement was transferred after such date) and vessel captains who harvested red snapper in a commercial fishery using such endorsement in each red snapper fishing season occurring between January 1, 1993, and such date may vote in a referendum under this subsection. The referendum shall be decided by a majority of the votes cast. The Secretary shall develop a formula to weigh votes based on the proportional harvest under each such permit and

endorsement and by each such captain in the fishery between January 1, 1993, and September 1, 1996." The Class 1 license holders' original license eligibility was based on their historical participation in the red snapper fishery during the years 1990–1992, during which they landed at least 5,000 lb (2,268 kg) of red snapper. Under this qualifying criterion, these fishermen were issued the original red snapper endorsement that subsequently became the Class 1 license. Accordingly, red snapper Class 2 license holders are precluded from voting in the red snapper IFQ referendum program.

However, it should be noted that the procedures and eligibility criteria used for purposes of conducting the referendums have no bearing on the procedures and eligibility requirements that might be applied in any future IFQ program that may be developed by the Council. The provisions of any proposed IFQ program will be developed independently by the Council through the normal plan amendment and rulemaking processes that will involve extensive opportunities for public review and comment during Council meetings, public hearings, and public comment on any proposed rule. Further, there is no relation between eligibility to vote in the referendums, as described in this final rule, and any eligibility regarding a subsequent IFQ program.

Comment 6: One individual objected to the timing of the public comment period on the original proposed rule and stated that it coincided with the November 1–10, 2003, commercial red snapper fishing season and did not allow fishermen enough time to respond.

Response: On October 27, 2003, NMFS published the original proposed rule that described procedures and eligibility requirements for participating in referendums regarding a potential IFQ program for the Gulf of Mexico commercial red snapper fishery. Comments were requested through November 12, 2003 (68 FR 61178). In response to those public comments, NMFS revised the proposed rule to include a broader range of potential options for weighting votes. The additional vote-weighting alternatives were published in the **Federal Register** on December 30, 2003 (68 FR 75202). Comments were accepted through January 20, 2004. The agency provided these criteria to the general public, especially those fishing communities that may be affected by the proposed alternatives, in as timely a fashion as possible.

Changes from the Proposed Rule

Based on consideration of public comments and comments received from the Council on the proposed rules, NMFS has modified the vote-weighting procedure that applies to eligible voters to address concerns about double counting of landings. Under the proposed rule, each eligible lessee and lessor would have received one full vote per applicable pound of red snapper landings. To avoid this double counting of landings, the final rule specifies that in cases where more than one eligible voter has eligibility tied to a particular license, all eligible voters associated with that license will have their vote weighted equally such that their combined vote will equal one vote per pound of landings applicable to that license. Wording within the section of the final rule entitled "How Will Votes Be Weighted?" has been revised accordingly.

Purpose of this Final Rule and the Referendums

NMFS, in accordance with the provisions of section 407(c) of the Magnuson-Stevens Act, will conduct referendums to determine, based on the majority vote of eligible voters, whether a plan amendment and regulations to implement an IFQ program for the Gulf of Mexico commercial red snapper fishery should be prepared and, if so, whether any subsequently prepared plan amendment and regulations should be submitted to the Secretary for review and approval or disapproval. The primary purpose of this final rule is to notify potential participants in the referendums, and members of the public, of the procedures, schedule, and eligibility requirements that NMFS will use in conducting the referendums. The procedures and eligibility criteria used for purposes of conducting the referendums have no bearing on the procedures and eligibility requirements that might be applied in any future IFQ program that may be developed by the Council. The provisions of any proposed IFQ program would be developed independently by the Council through the normal plan amendment and rulemaking processes that would involve extensive opportunities for public review and comment during Council meetings, public hearings, and public comment on any proposed rule. There is no relation between eligibility to vote in the referendums, as described in this final rule, and any eligibility regarding a subsequent IFQ program.

Referendum Processes

Who Will Be Eligible to Vote in the Referendums?

Section 407(c)(2) of the Magnuson-Stevens Act establishes criteria regarding eligibility of persons to vote in the referendums. Those criteria are subject to various interpretations. After careful consideration of those criteria, the practicality and fairness of several possible interpretations, and public comments, NMFS has determined that the following persons will be eligible to vote in the referendums.

(I) For the initial referendum:

(A) A person who according to NMFS permit records has continuously held their Gulf red snapper endorsement/Class I license from September 1, 1996, through February 12, 2004;

(B) In the case of a Class 1 license that has been transferred through sale since September 1, 1996, the person that according to NMFS' permit records holds such Class 1 license as of February 12, 2004;

(C) In the case of a Class 1 license that has been transferred through lease since September 1, 1996, both the final lessor and final lessee as of February 12, 2004, as determined by NMFS' permit records; and

(D) A vessel captain who harvested red snapper under a red snapper endorsement in each red snapper commercial fishing season occurring between January 1, 1993, and September 1, 1996.

(II) For the second referendum:

(A) A person who according to NMFS permit records has continuously held their Gulf red snapper endorsement/Class I license from September 1, 1996 through the date of publication in the **Federal Register** of a subsequent notice announcing the second referendum;

(B) In the case of a Class 1 license that has been transferred through sale since September 1, 1996, the person that according to NMFS' permit records holds such Class 1 license as of the date of publication in the **Federal Register** of a subsequent notice announcing the second referendum;

(C) In the case of a Class 1 license that has been transferred through lease since September 1, 1996, both the final lessor and final lessee as of the date of publication in the **Federal Register** of a subsequent notice announcing the second referendum, as determined by NMFS' permit records; and

(D) A vessel captain who harvested red snapper under a red snapper endorsement in each red snapper commercial fishing season occurring between January 1, 1993, and September 1, 1996.

A person will only receive voting eligibility under one of the eligibility criteria, i.e., a person will not receive dual voting eligibility by being both a qualifying vessel captain and a qualifying holder of an endorsement/Class I license.

NMFS has sufficient information in the Southeast Regional Office fisheries permit database to identify those persons who will be eligible to vote in the referendums based on their having held a red snapper endorsement/Class 1 license during the required periods. However, NMFS did not have sufficient information to identify vessel captains whose eligibility would be based on the harvest of red snapper under a red snapper endorsement in each red snapper commercial fishing season occurring between January 1, 1993, and September 1, 1996. To obtain that information, NMFS prepared and distributed a fishery bulletin that described the general referendum procedures and provided a 20-day period (ending August 18, 2003) for submittal of detailed information by those vessel captains. That fishery bulletin was widely distributed to all Gulf reef fish permittees, including dealers, and to major fishing organizations, state fisheries directors, and others. Information received from that solicitation will be used to identify vessel captains whose eligibility to vote in the referendums is based on the red snapper harvest criterion.

How Will Votes Be Weighted?

Section 407(c)(2) of the Magnuson-Stevens Act requires that NMFS develop a formula to weight votes based on the proportional harvests under each eligible endorsement and by each eligible captain between the period January 1, 1993, and September 1, 1996. NMFS will obtain applicable red snapper landings data from the Southeast Fisheries Science Center reef fish logbook database. Information from NMFS' Southeast Regional Office permit database will be used to assign applicable landings to each eligible voter (red snapper endorsement/Class 1 license holder, lessee/lessor, or vessel captain). In cases where only one eligible voter has eligibility tied to a particular license, all applicable landings associated with that license accrue to that voter, and the voter will be assigned a vote-weighting factor of one vote per pound. In cases where more than one eligible voter has eligibility tied to a particular license, e.g., lessee and lessor, or a qualifying vessel captain and a license holder, all eligible voters associated with that license will have their vote weighted

equally such that their combined vote will equal one vote per pound of landings applicable to that license. For example, if a qualifying captain is eligible based on his/her landings under a specific license during the relevant time period, and that license is now held by a license holder who is not involved with lease arrangements with that license, but who is not the same qualifying captain, then each would get one-half of a vote per pound of landings associated with the license. In this example, should the current holder lease the same license, then each participant would have their vote weighted as one-third of a vote per pound, so that their combined vote would equal the total number of pounds associated with the license.

The weighting procedure is complicated somewhat by requirements to protect the confidentiality of landings data, when the applicable landings history involves landings by different entities. To address confidentiality concerns, NMFS will establish a series of categories (ranges) of red snapper landings based on 5,000-lb (2,268-kg) intervals, e.g., 0-5,000 lb (0-2,268 kg); 5,001-10,000 lb (2,268-4,536 kg); etc., concluding with the interval that includes the highest documented landings. The total landings between the period January 1, 1993, and September 1, 1996, associated with each license, will be attributed to the appropriate category. The overall average pounds landed attributed to each category will be determined. That average number of pounds will be the base applied to the vote-weighting factor for each eligible voter whose landings fall within that category.

For example, if the overall average number of pounds attributed to the 5,001-10,000-lb (2,268-4,536-kg) category is 8,150 lb (3,697 kg), each eligible voter within that category would receive votes equal to 8,150 multiplied by the applicable vote-weighting factor, e.g. $8,150 \times 1.0 = 8,150$ votes if only one voter was associated with the license; $8,150 \times 0.5 = 4,075$ votes each for a lessee and lessor associated with the same license; $8,150 \times 0.33 = 2,690$ votes each for a qualifying vessel captain, lessee, and lessor all associated with the same license.

How Will the Vote Be Conducted?

On or about January 30, 2004, NMFS will mail each eligible voter a ballot that would specify the number of votes (weighting) that that voter is assigned. NMFS will mail the ballots and associated explanatory information, via certified mail return receipt requested,

to the address of record indicated in NMFS' permit database for endorsement/Class I license holders and, for vessel captains, to the address provided to NMFS by the captains during the prior information solicitation that ended August 18, 2003. All votes assigned to an eligible voter must be cast for the same decision, i.e., either all to approve or all to disapprove the applicable referendum question. The ballot must be signed by the eligible voter. Ballots must be mailed to Phil Steele, Southeast Regional Office, NMFS, 9721 Executive Center Drive N., St. Petersburg, FL 33702. Ballots for the initial referendum must be received at that address by 4:30 p.m., eastern time, February 27, 2004; ballots received after that deadline will not be considered in determining the outcome of the initial referendum. Although it will not be required, voters may want to consider submitting their ballots by registered mail.

How Will the Outcome of the Referendums Be Determined?

Vote counting will be conducted by NMFS. Approval or disapproval of the referendums will be determined by a majority (i.e., a number greater than half of a total) of the votes cast. NMFS will prepare a fishery bulletin announcing the results of each referendum that is conducted and will distribute the bulletin to all Gulf reef fish permittees, including dealers, and to other interested parties. The results will also be posted on NMFS' Southeast Regional Office's website at <http://caldera.sero.nmfs.gov>.

What Will Happen After the Initial Referendum?

NMFS will present the results of the initial referendum at the March 8-11, 2004, Council meeting in Mobile, AL. If the initial referendum fails, the Council cannot proceed with preparation of a plan amendment and regulations to implement an IFQ program for the commercial red snapper fishery in the Gulf of Mexico. If the initial referendum is approved, the Council would be authorized, if it so decides, to proceed with development of a plan amendment and regulations to implement an IFQ program for the commercial red snapper fishery in the Gulf of Mexico. The proposed IFQ program would be developed through the normal Council and rulemaking processes that would involve extensive opportunities for industry and public review and input at various Council meetings, public hearings, and during public comment periods on the plan amendment and regulations. The plan amendment and

regulations could only be submitted to the Secretary for review and approval or disapproval if in a second referendum approval of the submission was passed by a majority (i.e., a number greater than half of a total) of the votes cast by the eligible voters as described in this final rule. NMFS would announce any required second referendum by publishing a notice in the **Federal Register** that would provide all pertinent information regarding the referendum. Any second referendum would be conducted in conformance with Section 407(c)(2) of the Magnuson-Stevens Act and the provisions outlined in this final rule.

Background Information About a Potential IFQ Program

In anticipation of the October 2002 expiration of the Congressional moratorium on development of IFQ programs, and recognizing that HR5666 provided the Council the authority to develop a profile for any fishery that may be considered for a quota management system, some members of the commercial red snapper fishery requested that the Council develop an IFQ profile for the fishery. Based on that request, the Council convened an Ad Hoc Red Snapper Advisory Panel (AHR SAP), comprised of participants in the commercial red snapper fishery and other individuals knowledgeable about the fishery and/or IFQ programs, to develop a profile. This profile, later referred to as an Individual Transferable Quota (ITQ) Options Paper for the Problems Identified in the Gulf of Mexico Red Snapper Fishery, provides background information about historical management of the red snapper fishery, problems in the fishery, management goals, and issues and management alternatives associated with a potential IFQ/ITQ program. The profile addresses such issues as: ITQ units of measurement (percentage of quota or pounds of red snapper); duration of ITQ rights; set-aside for non-ITQ catches under current commercial quota; actions to be taken if the quota increases or decreases; types of ITQ share certificates; initial allocation of ITQ shares and annual coupons (including eligibility, apportionment, transferability of landings histories,

etc.); possible controls on ownership and transfer of ITQ shares; whether to include a "use it or lose it" provision; disposition of unused or sanctioned ITQ shares and coupons; possible landings restrictions; monitoring of ITQ share certificates and annual coupons; quota tracking; an appeals process; and size limit changes.

This profile represents an outline of an IFQ program as envisioned by the AHR SAP, with input from the Council—it does not reflect any final decisions by the Council regarding the structure of a proposed IFQ program for the red snapper commercial fishery. The Council may consider the options in the profile, and perhaps a variety of other options, if it chooses to pursue development of an IFQ program for the fishery. However, for purposes of the initial referendum, the Council intentionally refrained from adopting the profile. Any subsequent development of a proposed IFQ program for the red snapper commercial fishery would be conducted through the normal Council and Federal rulemaking processes that ensure numerous opportunities for review and comment by industry participants and members of the public.

Classification

This final rule has been determined to be not significant for purposes of Executive Order 12866.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this rule for this action would not have a significant economic impact on a substantial number of small entities. The factual basis for the certification was published in the proposed rule. No comments were received regarding this certification. As a result, no initial or final regulatory flexibility analysis was prepared. Copies of the RIR and RFAA are available (see **ADDRESSES**).

The Assistant Administrator for Fisheries, NOAA, finds good cause under 5 U.S.C. 553(d)(3) to waive the 30-day delayed effectiveness period for this final rule. A 30-day delayed effectiveness period is unnecessary because there are no associated management measures that would

require compliance by the affected public. This final rule describes the procedures for conducting referendums to determine whether an IFQ program should be prepared for the Gulf of Mexico commercial red snapper fishery, and, if so, whether the subsequently prepared IFQ program should be submitted to the Secretary of Commerce for review. These procedures are consistent with the mandates of the

Magnuson-Stevens Act. Waiver of the 30-day delayed effectiveness period would not affect the voting rights of eligible participants and merely will require NMFS to conduct the referendum more quickly, which it is fully prepared to do.

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 (PRA) unless that collection of information displays a currently valid OMB control number.

This rule contains collection-of-information requirements subject to the PRA. The collection of this information has been approved by the OMB, OMB Control Number 0648-0477. Public reporting burden for this collection of information is estimated to average 10 minutes for a response to an initial referendum regarding preparation of an IFQ program; 20 minutes for a response to a subsequent referendum; and 10 minutes per response for any information request regarding vessel captains, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate, or any other aspect of this data collection, including suggestions for reducing the burden, to NMFS and OMB (see **ADDRESSES**).

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

Dated: February 9, 2004.

William T. Hogarth,

*Assistant Administrator for Fisheries,
National Marine Fisheries Service.*

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