

246.471 Authorizing shipment of supplies.

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(b) Alternative Procedures-Contractor Release for Shipment.

(1) The contract administration office may authorize, in writing, the contractor to release supplies for shipment when—

(i)(A) Products are non-complex or non-critical;

(B) Conformance will be validated by periodic assessments; and

(C) The contractor has a record of satisfactory quality; or

(ii)(A) Products are complex or critical;

(B) The authorization of the shipping papers by a representative of the contract administration office prevents expediency of shipment;

(C) The Government performs a systematic and continuing evaluation of the contractor's control of quality; and

(D) The contractor has a record of satisfactory quality, including that pertaining to preparation for shipment.

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PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

3. Section 252.246–7000 is amended by revising the clause date and adding paragraph (c) to read as follows:

252.246–7000 Material Inspection and Receiving Report.

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Material Inspection and Receiving Report (XXX 2008)

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(c) When submitting the receiving report (whether using DD Form 250 or WAWF), the Contractor is affirming that the items listed on the report conform to contract requirements, except as otherwise noted on the report.

Appendix F—Material Inspection and Receiving Report

4. Appendix F to chapter 2 is amended in Part 3, Section F–301, by revising paragraphs (b)(21)(i) and (ii), paragraph (b)(21)(iv)(A) introductory text, and paragraph (b)(21)(v)(B) introductory text to read as follows:

F–301 Preparation instructions.

* * * * *

(b) * * *

(21) * * *

(i) The words “subject to Government contract quality assurance surveillance” contained in the printed statements in Blocks 21a and 21b relate to quality and to the quantity of the items on the report. Do not modify the statements. Enter notes taking exception in Block 16 or on attached supporting documents with an appropriate block cross-reference.

(ii) When a shipment is authorized under alternative release procedures (see

246.471(b)), the contractor shall attach or include the appropriate signed certificate on the top copy of the DD Form 250 copies distributed to the payment office or attach or include the appropriate contractor certificate on the contract administration office copy when contract administration (Block 10 of the DD Form 250) is performed by the Defense Contract Management Agency (DCMA).

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(iv) * * *

(A) The authorized Government representative shall—

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(v) * * *

(B) When CQA and acceptance or acceptance is at destination, the authorized Government representative shall—

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 600

[Docket No. 070920529–8571–02]

RIN 0648–AW05

Magnuson-Stevens Act Provisions; Limited Access Privilege Programs; Individual Fishing Quota Referenda Guidelines and Procedures for the New England Fishery Management Council and Gulf of Mexico Fishery Management Council

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

ACTION: Proposed guidelines and procedures; request for comments.

SUMMARY: In accordance with the Magnuson-Stevens Fishery Conservation and Management Act, as amended (Magnuson-Stevens Act), NMFS proposes guidelines and procedures for the New England Fishery Management Council (NEFMC), the Gulf of Mexico Fishery Management Council (GMFMC) (collectively the Councils), and NMFS to follow in determining procedures and voting eligibility requirements for referenda on Individual Fishing Quota (IFQ) program proposals. The intended effect of these procedures and guidance is to ensure IFQ program referenda are fair and equitable.

DATES: Comments must be submitted in writing on or before June 23, 2008.

ADDRESSES: Copies of the Regulatory Impact Review/Initial Regulatory

Flexibility Analysis (RIR/IRFA) prepared for this action, may be obtained from the mailing address listed here or by calling Robert Gorrell, NMFS–SF, 1315 East-West Highway, Silver Spring, MD 20910. You may submit comments, identified by 0648–AW05, by any one of the following methods:

- Electronic Submissions: Submit all electronic public comments via the Federal eRulemaking Portal <http://www.regulations.gov>.

- Fax: 301–713–1193, Attn: Robert Gorrell.

- Mail: Alan Risenhoover, Director, Office of Sustainable Fisheries, NMFS, Attn: IFQ Referenda Guidelines, 1315 East-West Highway, SSMC3, Silver Spring, MD 20910.

Instructions: All comments received are a part of the public record and will generally be posted to <http://www.regulations.gov> without change. All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

NMFS will accept anonymous comments. Attachments to electronic comments will be accepted in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

FOR FURTHER INFORMATION CONTACT:

Robert Gorrell, at 301–713–2341 or via e-mail at robert.gorrell@noaa.gov.

SUPPLEMENTARY INFORMATION: Section 303A of the Magnuson-Stevens Act specifies general requirements for Limited Access Privilege (LAP) programs implemented in U.S. marine fisheries. A LAP is defined as a Federal limited access permit that provides a person the exclusive privilege to harvest a specific portion of a fishery's total allowable catch. This definition encompasses exclusive harvesting privileges allocated to participants under IFQ programs.

Section 303A(c)(6)(D) of the Magnuson-Stevens Act outlines specific requirements for IFQ program proposals developed by the NEFMC and GMFMC. Specifically, the Magnuson-Stevens Act requires such program proposals be approved through referenda before they may be submitted for review and implementation by the Secretary of Commerce (Secretary). Additionally, the Magnuson-Stevens Act requires the Secretary publish guidelines and procedures to determine procedures and voting eligibility requirements for IFQ program referenda and to conduct such referenda in a fair and equitable manner.

A referendum conducted on a NEFMC IFQ program proposal must be approved by more than $\frac{2}{3}$ of those voting in the referendum among eligible permit holders and other eligible voters. The Magnuson-Stevens Act requires the Secretary promulgate criteria to determine whether additional fishery participants are eligible to vote in NEFMC IFQ program referenda in order to ensure that crew members who derive a significant percentage of their total income from a proposed IFQ fishery are eligible to participate in an IFQ referendum conducted in association with the program proposal.

A referendum conducted on a GMFMC IFQ program proposal must be approved by a majority of those voting in the referendum. For Gulf of Mexico fisheries managed with multispecies permits, the Magnuson-Stevens Act limits eligible referenda voters to those permit holders who have substantially fished the species to be included in the proposed IFQ program.

This action proposes procedures for initiating, conducting, and deciding IFQ program referenda, as well as guidelines for specifying referenda voting eligibility requirements. These procedures and guidelines are intended to ensure referenda conducted on IFQ program proposals are fair and equitable, while providing the NEFMC and GMFMC the flexibility to define IFQ program referenda voting eligibility requirements on a fishery-specific basis within the constraints of the Magnuson-Stevens Act and other applicable law.

These proposed procedures and guidelines also would apply to referenda conducted in association with any IFQ program proposal advanced through a Secretarial fishery management plan (FMP) or FMP amendment under the authority of Section 304(c) of the Magnuson-Stevens Act for a New England or Gulf of Mexico fishery. Any Secretarial IFQ program proposal must be approved by a majority of the voting members, present and voting, of the appropriate Council before it can be included in a Secretarial FMP or FMP amendment.

Initiating Referenda

For the Council to initiate an IFQ referendum, these proposed guidelines and procedures would require the NEFMC or GMFMC to submit a request to NMFS by letter. The referendum initiation letter must include recommended eligibility criteria for voting in the referendum, rationale for the recommendation, and any other information that may be needed consistent with applicable law and the referenda guidelines and procedures; for

example, alternatives to the recommendation and supporting analyses of the alternatives. Any referendum initiation letter submitted by the NEFMC must also include recommended criteria for determining whether additional fishery participants, including crew members, are eligible to vote in the referendum. Specifically, NEFMC's initiation letters must include a recommendation for the percentage of a crew member's total income that, if earned in the proposed IFQ fishery, would be considered significant. Any referendum initiation letter submitted by the GMFMC for a fishery managed with multispecies permits must also include recommended criteria for defining those permit holders who have substantially fished the species to be included in the proposed IFQ program.

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

A Council may not submit a referendum initiation letter to NMFS until: (1) The Council has held public hearings on the IFQ program proposal that is the subject of the referendum initiation letter; (2) the Council has considered public comments on the proposal; and (3) the Council has selected preferred alternatives for the proposal.

NMFS is considering alternative approaches to the timing of the IFQ referendum initiation letter relative to a Council's procedure for development of the IFQ program proposal and FMP or FMP Amendment. The proposed action provides for a somewhat compressed referendum schedule by allowing the initiation request to be submitted after the Council has solicited and considered public input on an IFQ program proposal and selected preferred alternatives for the proposal. An alternative approach would require that the Council's FMP or FMP amendment document be complete, all public comment be considered and analyzed, and but for the requirement to conduct the referendum, the document be ready for submission to NMFS, before the referendum initiation request may be submitted.

Voter Eligibility

Voter eligibility requirements recommended by the Councils must provide for fair and equitable referenda. When developing recommended voter

eligibility criteria, Councils must consider the following factors: (1) The full range of entities likely to be eligible for initial allocations under the proposed IFQ program; (2) current and historic harvest and participation in the proposed IFQ fishery; and (3) any other factors determined by the Council to be relevant.

When determining whether certain crew members may be eligible to vote in NEFMC IFQ program referenda, the Council must consider, at least, the following factors: (1) A crew member's history of participation in the fishery aboard a referendum-eligible vessel; (2) the economic value of and employment practices in the proposed IFQ fishery and other economic and social factors that would help determine what percentage of a crew member's total income from the fishery should be considered significant; and (3) the availability of documentary proof of employment and income to validate eligibility. For the purposes of this action, "referendum-eligible vessel" means a vessel, the permit holder or owner of which has been determined to be eligible to vote in the referendum on the basis of such vessel's history or other characteristics meeting the prescribed voter eligibility criteria.

To be eligible to vote in a NEFMC IFQ program referendum, crew members, at a minimum: (1) Must have worked aboard a referendum-eligible vessel at sea while engaged in fishing; (2) must produce documentary proof of income and employment or service as a crew member during the eligibility periods proposed by the NEFMC (if requested); (3) must have derived a percentage of his/her income from the fishery under the proposed IFQ program that is equal to or greater than the percentage determined to be significant relative to the economic value and employment practices of the fishery during the qualifying periods proposed by the NEFMC; and (4) must meet any additional eligibility criteria promulgated by NMFS. These criteria would limit eligibility of crew members to those who have worked aboard referendum-eligible vessels. If a vessel's activity in a fishery is considered by the NEFMC to be too little or dated to warrant the permit holder's participation in the referendum, it is unreasonable to allow crew members to derive eligibility from their work on that vessel. Also, this requirement would prevent the possibility of referendum-eligible permit holders from influencing the referendum through their subordinate associates.

The Magnuson-Stevens Act requirement to provide for the

possibility of other fishery participants, including crew members, to participate in NEFMC IFQ program referenda creates the challenge of verifying whether these individuals meet voter eligibility criteria. NMFS has records on the history of Federal fishery permits and landings, but has little information on crew member participation in fisheries. NMFS does have contact information for those crew members that have vessel operator permits, but NMFS does not collect information on individuals who serve aboard a fishing vessel as crew or in any other capacity or on the income of crew members. Nor does NMFS have historical data of this nature.

To address this problem, NMFS is proposing to include the availability of employment and income documentation as a factor the NEFMC must consider when developing recommended referendum voter eligibility criteria. Specifically, the NEFMC must consider whether documentation of service onboard a vessel as crew or in other capacities exists, and to what extent the availability of documentation should affect voter eligibility. The NEFMC may consider similar documentation limitations when evaluating the percentage of an individual's total income generated by the proposed IFQ fishery.

NMFS acknowledges the dearth of information and the irregularity of documentation in this component of the fishery. While the NEFMC may recommend and NMFS may require crew members to provide verifiable documentation as proof of meeting the voter eligibility criteria established for any given IFQ program referendum, this proposed action provides for the possibility of allowing fishery participants to certify on referendum ballots that they meet the voter eligibility criteria. Self-certification would consist of a signature attesting to one's meeting the stated criteria, and participants would be subject to prosecution for any false statements made on official forms.

NMFS interprets the Magnuson-Stevens Act requirement to ensure that certain crew members engaged in NEFMC fisheries are eligible to vote in IFQ program referenda to mean that NEFMC IFQ program referenda must provide for participation by eligible crew members.

A Council may consider criteria for weighting eligible referendum votes. Section 303A(c)(6)(D) does not explicitly mention vote weighting, but the sections's legislative history gives the example of weighting votes in Gulf of Mexico fisheries by the quantity of

fish authorized to be harvested under the permits of those voting (e.g., 200 pounds per day or 2,000 pounds per day). If a Council recommends such criteria in a letter requesting initiation of a referendum, it should fully describe in the letter its rationale and the expected effects of such weighting on the referendum. NMFS will give consideration to the reasons for the proposed criteria to determine whether they are consistent with the National Standards of the Magnuson-Stevens Act, other provisions of the Act, and other applicable legal standards.

Ensuring Referenda Are Fair and Equitable

The Magnuson-Stevens Act requires the Secretary to conduct IFQ program referenda in a fair and equitable manner. Every component of these proposed procedures and guidelines supports NMFS's compliance with that requirement. Council recommendations for voter eligibility criteria would be developed through public processes, along with any alternatives and supporting analyses or other information required by applicable law and provided in the Councils' referendum initiation letters. If NMFS finds the referendum voter eligibility criteria recommended by a Council would not provide for a fair and equitable referendum, or that they would not be consistent with National Standards under the Magnuson-Stevens Act, other provisions of the Act, and other applicable legal standards, then NMFS would deny the Council's request to conduct an IFQ program referendum and would inform the Council of the agency's finding, including reasons for the finding. The Council could then modify the voter eligibility criteria and supporting analyses to address NMFS's finding, and submit another referendum initiation letter to NMFS.

In assessing whether Council recommendations for referenda criteria are fair and equitable, NMFS, at a minimum, would be required to take into account: (1) Whether the criteria are rationally connected to or further the objectives of the proposed IFQ program; (2) whether the criteria are designed in such a way to prevent any person or other entity from obtaining an excessive share of voting privileges; (3) whether the criteria are reasonable relative to the availability of documentary evidence and the possibility of validating a participant's eligibility; and (4) whether the referendum can be administered and executed fairly and equitably within a reasonable amount of time and without subjecting industry members, the Council, or NMFS to administrative

burdens, costs, or other requirements that would be considered onerous. No voting eligibility criteria may differentiate among U.S. citizens, nationals, resident aliens, or corporations on the basis of their state of residence. The Council should analyze the relative benefits and hardships imposed by the voter eligibility criteria, and compare their consequences with those of alternative voter eligibility criteria.

Rulemaking to implement fishery-specific IFQ referenda must describe the internal measures NMFS shall use to ensure referenda ballots are properly distributed, evaluated, and counted, and the procedures used to conduct the referenda are fair and equitable. Referenda ballots would be considered by NMFS as fishery information submitted to NMFS and subject to the confidentiality provisions and limitations of section 402(b) of the Magnuson-Stevens Act and regulations in 50 CFR 600 subpart E.

Conducting Referenda

NMFS would initiate rulemaking to implement an IFQ program referendum as soon as practicable after receiving a Council's referendum initiation letter and finding the referendum can be conducted in a fair and equitable manner. The proposed schedules, procedures, and voter eligibility requirements associated with fishery-specific referenda would be published as proposed rules in the **Federal Register** for public comment. Final fishery-specific referenda procedures and guidelines would be implemented through final rules published in the **Federal Register**.

The Magnuson-Stevens Act requires the Secretary to conduct referenda on NEFMC and GMFMC IFQ program proposals as ultimately developed. NMFS interprets this provision to mean that NMFS may not publish a final rule implementing fishery-specific referenda procedures and guidelines until the Council determines the IFQ proposal and supporting analyses are complete and ready for Secretarial review. NMFS would inform the Council and the public through the **Federal Register** if the agency decided not to conduct a referendum, as proposed, including reasons for the decision.

NMFS would provide each eligible voter a referendum ballot and would make available associated explanatory information concerning the referendum schedule, procedures, and eligibility requirements. NMFS may require individuals who wish to vote as other fishery participants in NEFMC IFQ program referenda to provide certain

documentation and certifications in order to receive a referendum ballot. Referenda ballots must be signed by eligible voters and received by NMFS by the specified deadline. Ballots received after the specified deadline would not be considered valid or evaluated in deciding the outcome of the referendum.

NMFS interprets the Magnuson-Stevens Act to provide for permit holders to submit a ballot for each permit held.

Deciding Referenda

NMFS would evaluate and count referenda ballots and announce referenda results within 60 days of the date by which completed ballots must be received. For a NEFMC IFQ referendum to be approved, more than 2/3 of those voting in a referendum of eligible permit holders and others must vote in favor of the measure. For a GMFMC IFQ referendum to be approved, a majority of those voting must vote in favor of the referendum.

If NMFS determines an IFQ referendum to be approved, then the Council may submit the associated FMP or FMP amendment for Secretarial review, approval, and implementation. If NMFS determines an IFQ referendum to have failed, then the Council may not submit the FMP or FMP amendment for Secretarial review. However, the Council may modify its IFQ program proposal and request a new referendum on the modified proposal.

Any changes made to an IFQ program proposal that was reviewed by eligible voters through a referendum may invalidate the referendum and require the modified IFQ program proposal to be reviewed and approved through a subsequent referendum before the Council could submit the proposal for Secretarial review and implementation.

Classification

These proposed guidelines and procedures are published under the authority of, and consistent with, the Magnuson-Stevens Act.

This proposed action has been determined to be not significant for purposes of Executive Order 12866.

The Regulatory Flexibility Act requires that, for a proposed rule, an initial regulatory flexibility analysis (IRFA) be prepared unless it is determined that the rule will not have a significant economic impact on a substantial number of small entities. NMFS believes it may be appropriate to make a determination that the rule will not have a significant economic impact on a substantial number of small entities, but is interested in receiving

comments on whether it would be appropriate to make such a certification to the Chief Counsel for Advocacy of the Small Business Administration.

Therefore, an initial regulatory flexibility analysis (IRFA) was prepared for this action, and NMFS will consider any comments received when deciding whether to make this certification at the final rule stage. A description of the action, why it is being considered, and the legal basis for this action are contained at the beginning of this section in the preamble and in the **SUMMARY** section of the preamble. A summary of the analysis follows. Copies of this analysis are available from NMFS (see **ADDRESSES**).

The proposed action would establish guidelines and procedures mandated by Section 303A(c)(6)(D) of the Magnuson-Stevens Act for referenda on all Individual Fishing Quota (IFQ) program proposals (with the exception of an IFQ program for the Gulf of Mexico commercial red snapper fishery) to be developed by the New England Fishery Management Council and the Gulf of Mexico Fishery Management Council. Those future IFQ program proposals must be approved by referenda before they may be submitted for review and approval by the Secretary of Commerce.

The proposed action contains guidelines and procedures (1) to determine procedures and voting eligibility, and (2) to conduct such referenda in a fair and equitable manner. At the same time, it would provide the Councils the flexibility to define IFQ program referenda voting eligibility requirements on a fishery-specific basis within the constraints of the Magnuson-Stevens Act and other applicable law. The Small Business Administration (SBA) has defined small entities as all fish harvesting businesses that are independently owned and operated, not dominant in its field of operation, and with annual receipts of \$4 million or less. In addition, processors with 500 or fewer employees for related industries involved in canned and cured fish and seafood, or preparing fresh fish and seafood, are also considered small entities. Because it would apply to all entities affected by NE or GOM proposal for an IFQ fishery, regardless of size, the proposed rule imposes no disproportionate impacts between large and small entities.

Using the best available information, the number and description of small entities that could be affected by the proposed action includes approximately 8,300 permit holders in Gulf of Mexico fisheries, including those who hold 1,800 commercial shrimp permits, 1,500 commercial king mackerel permits, 1,450 commercial Spanish mackerel permits, 1,350 for-hire coastal migratory pelagic permits, 9,00 commercial reef fish permits, and 1,310 for-hire reef fish permits. Approximately 14,200 captains or crew members were employed in New England states (ME, NH, MA, RI, and CT) in New England fisheries for the calendar year 2005. In addition, approximately 9,900 Mid-Atlantic residents (NY, NH, DE, MD, VA, and

NC) were captains or crew members in New England fisheries for the calendar year 2005. In total, assuming future levels of employment are similar to employment in 2005, as many as 24,000 captains or crew members could be affected by this proposed rule.

Given that the Magnuson-Stevens Act requires that the agency provide this referenda guidance, NMFS was unable to identify any significant alternatives that could meet the statutory requirements, yet minimize burdens on small entities. NMFS specifically invites public comment on this aspect of the rule.

This proposed action would merely provide guidance and set out procedures for subsequent rules and thus does not impose any direct economic impact. However, the intangible benefits of ensuring that IFQ referenda are conducted in a fair and equitable manner are believed considerable. On the other hand, because the proposed action stipulates that permit holders and other fishery participants must meet voter eligibility criteria recommended by the Council and promulgated by NMFS regulations, future referenda criteria may limit voter eligibility and would thereby adversely impact some small business entities (e.g., certain crew members may be ineligible to vote in a future NEFMC IFQ program referendum). While the program is expected to provide a net benefit, this is not quantifiable until fishery-specific IFQ referenda are proposed because the proposed action only conveys broad guidance. Detailed analysis of data and impacts on vessels, vessel revenues, port revenues, fish stock impacts, etc. are not possible in the absence of identifying specific fisheries and IFQ program proposal components. Estimated direct economic impacts would be evaluated in compliance with the Regulatory Flexibility Act and other applicable Federal law at the time fishery-specific program proposals are developed.

IFQ program referenda conducted under section 303A(c)(6)(D)(iv) of the Magnuson-Stevens Act are exempt from the Paperwork Reduction Act.

List of Subjects in 50 CFR Part 600

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: April 17, 2008.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons stated in the preamble, 50 CFR part 600 is proposed to be amended as follows:

PART 600—MAGNUSON-STEVENS ACT PROVISIONS

1. Under part 600, add subpart O to read as follows:

Subpart O—Limited Access Privilege Programs

Sec.
600.1300 [Reserved]

600.1301 [Reserved]
 600.1302 [Reserved]
 600.1303 [Reserved]
 600.1304 [Reserved]
 600.1305 [Reserved]
 600.1306 [Reserved]
 600.1307 [Reserved]
 600.1308 [Reserved]
 600.1309 [Reserved]
 600.1310 Referenda.

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

Subpart O—Limited Access Privilege Programs

§ 600.1310 Referenda.

(a) *Purpose and scope.* This section establishes procedures and guidelines for referenda to be conducted on Individual Fishing Quota (IFQ) program proposals initiated by the New England Fishery Management Council (NEFMC), Gulf of Mexico Fishery Management Council (GMFMC), and NMFS. This section provides guidance on developing voter eligibility criteria and establishes general procedures to ensure referenda are conducted in a fair and equitable manner.

(b) *Initiating IFQ Referenda.* (1) The NEFMC and the GMFMC shall not submit, and the Secretary shall not approve, an FMP or FMP amendment that would establish an IFQ program until the IFQ program proposal, as ultimately developed, has been approved by a referendum of eligible voters. Paragraph (h) of this section provides criteria for determining the outcome of IFQ referenda.

(2) To initiate a referendum on a proposed IFQ program:

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

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

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

(iv) The chair of the Council with jurisdiction over such proposed IFQ fishery must request a referendum on the proposed IFQ program in a letter to the appropriate NMFS Regional Administrator; and

(v) The letter requesting initiation of a referendum must include, but is not limited to, recommended criteria for NMFS to use in determining who is eligible to vote in the referendum, and may also include recommended criteria for vote weighting. The letter must provide the rationale supporting the Council's recommendation, as well as such additional information and analyses as needed consistent with applicable law and these guidelines and

procedures. If a Council recommends vote weighting criteria, the letter should fully describe the expected effects of such weighting on the referendum.

(vi) In addition to the requirements specified at paragraphs (b)(2)(iv)–(v) of this section, NEFMC referenda initiation letters must also include recommended criteria for NMFS to use in determining the eligibility of other fishery participants to vote in the referendum, including a criterion setting the minimum percentage of a crew member's total income that must have been earned in the proposed IFQ fishery. Guidelines for developing such recommendations are provided in paragraph (c)(2) of this section.

(vii) In addition to the requirements specified at paragraphs (b)(2)(iv)–(v) of this section, GMFMC letters initiating referenda of multispecies permit holders in the Gulf of Mexico must include recommended criteria to be used in identifying those permit holders who have substantially fished the species proposed to be included in the proposed IFQ program, along with alternatives to the recommendation, and supporting analyses. Guidelines for developing such recommendations are provided at paragraph (c)(3) of this section.

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

(c) *Referenda voter eligibility.*—(1) *Permit holders and other fishery participants.*—(i) To be eligible to vote in IFQ referenda, permit holders and other fishery participants must meet voter eligibility criteria recommended by the Council and promulgated by NMFS.

(ii) Holders of multispecies permits in the Gulf of Mexico must be determined to have substantially fished the species proposed to be included in the IFQ program to be eligible to vote in a referendum on the proposed program.

(iii) When developing recommended criteria for determining which permit holders may participate in an IFQ program, referendum, the Councils must consider, but are not limited to considering:

(A) The full range of entities likely to be eligible to receive initial quota allocation under the proposed IFQ program;

(B) Current and historical harvest and participation in the fishery; and

(C) Other factors as may be determined by the Council to be relevant to the fishery and to the proposed IFQ program.

(2) *Crew member eligibility in NEFMC IFQ referenda.*—(i) For the purposes of these procedures and guidelines, “referendum-eligible vessel” means a vessel, the permit holder or owner of which has been determined to be eligible to vote in the referendum on the basis of such vessel's history or other characteristics meeting the prescribed voter eligibility criteria.

(ii) To be eligible to vote in an NEFMC IFQ referendum, crew members must meet the following eligibility requirements:

(A) The crew member must have worked aboard a referendum-eligible vessel at sea while engaged in fishing.

(B) If requested, the crew member must produce documentary proof of employment or service as a crew member and income during the eligibility periods established by the NEFMC. Documents may include, but are not limited to, signed crew contracts, records of payment, settlement sheets, income tax records, a signed statement from the permit holder, and other documents as evidence of the period and the vessel upon which the crew member worked.

(C) During the qualifying periods established by the NEFMC, the crew member must have derived a percentage of his/her total income from the fishery under the proposed IFQ program that is equal to or greater than the percentage promulgated by NMFS and determined to be significant relative to the economic value and employment practices of the fishery.

(D) Any additional eligibility criteria promulgated by the NMFS.

(iii) When developing recommended criteria for determining whether other fishery participants, including crew members, may participate in a NEFMC IFQ referendum, the NEFMC must consider, but is not limited to considering:

(A) The full range of entities likely to be eligible to receive initial quota under the proposed IFQ program;

(B) A crew member's current and historical participation in the fishery aboard a referendum-eligible vessel;

(C) The economic value of the proposed IFQ fishery, employment practices in the proposed IFQ fishery, and other economic and social factors that would bear on a determination of what percentage of a crew member's total income from the fishery should be considered significant for the purposes of this section;

(D) The availability of documentary proof of employment and income to validate eligibility; and

(E) Any other factors as may be determined by the Council to be relevant to the fishery and the proposed IFQ program.

(3) *GMFMC's substantially fished criterion.* When developing recommended criteria for identifying those multispecies permit holders who have substantially fished the species to be included in the IFQ program proposal, the GMFMC must consider, but is not limited to considering:

(i) Current and historical harvest and participation in the fishery;

(ii) The economic value of and employment practices in the fishery; and

(iii) Any other factors determined by the Council to be relevant to the fishery and the proposed IFQ program.

(d) Council-recommended criteria under (c) may include, but are not limited to, levels of participation or reliance on the fishery as represented by landings, sales, expenditures, or other considerations. A Council may also consider criteria for weighting eligible referendum votes. In its letter requesting initiation of a referendum, a Council should fully describe its rationale for any weighting recommendation and the expected effects of such weighting on the referendum.

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

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

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

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

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

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

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

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

(f) *Conducting IFQ referenda.* (1) NMFS shall promulgate specific referenda procedural requirements, voter eligibility requirements, and any vote weighting criteria through appropriate rulemaking. A proposed rule shall seek public comment on the specific schedule, procedures, and other requirements for the referendum process.

(2) For NEFMC IFQ program referenda, the proposed rule shall establish procedures for documenting or certifying that other fishery participants, including crew members, meet the proposed voter eligibility criteria.

(3) For GMFMC IFQ program referenda of multispecies permit holders, the proposed rule shall include criteria to be used in identifying those permit holders who have substantially fished the species that are the subject of the proposed IFQ program.

(4) If NMFS decides to proceed with the referendum after reviewing public comments, NMFS shall publish

implementing regulations through a final rule in the **Federal Register** as soon as practicable after the Council determines the IFQ program proposal and supporting analyses are complete and ready for Secretarial review. Otherwise, NMFS shall publish a notice in the **Federal Register** to inform the Council and the public of its decision not to conduct the referendum, as proposed, including reasons for the agency's decision.

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

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

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

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

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

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

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

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

(2) A NEFMC IFQ program referendum shall be considered approved only if more than 2/3 of those voting submit valid ballots in favor of the referendum question.

(3) A GMFMC IFQ program referendum shall be considered approved only if a majority of those voting submit valid ballots in favor of the referendum question.

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

amendment for Secretarial review and implementation.

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

the Secretary for review and implementation.

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

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