

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