

Under § 407(c) of the Magnuson-Stevens Act, the Council is now authorized to prepare and submit a plan amendment and regulations to implement an IFQ program for the commercial red snapper fishery under certain conditions. First, the preparation of such a plan amendment and implementing regulations must be approved in a referendum. If the referendum is approved by a majority of the votes cast, 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 and 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, approval/disapproval, and implementation must be approved in a subsequent referendum. Both referendums must be conducted in accordance with § 407(c)(2) of the Magnuson-Stevens Act. Section 407(c)(2) of the Magnuson-Stevens Act 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."

#### **Purpose of This Proposed Rule and the Referendums**

NMFS, in accordance with the provisions of § 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 implementing regulations should be submitted to the Secretary for review, approval/disapproval, and implementation. The primary purpose of this proposed rule is to notify potential participants in the referendums, and members of the public, of the procedures, schedule, and eligibility requirements that NMFS would 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 proposed rule, and any eligibility regarding a subsequent IFQ program.

#### **Referendum Processes**

##### *Who Would 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 and the practicality and fairness of several possible interpretations, NMFS has determined that the following persons would 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 the date of publication in the **Federal Register** of the final rule implementing these referendum procedures;

(B) In the case of a Class 1 license that has been transferred through sale since September 1, 1996, the person who according to NMFS' permit records holds such Class 1 license as of the date of publication in the **Federal Register** of the final rule implementing these referendum procedures;

(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 the final rule implementing these referendum procedures, 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 who was simultaneously the holder of an endorsement/Class 1 license and a vessel captain operating under that endorsement/Class 1 license would not be granted dual eligibility. Such person may only receive eligibility under one of the eligibility criteria.

NMFS will have sufficient information in the Southeast Regional Office fisheries permit database to identify those persons 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 would be used to identify vessel captains whose eligibility to vote in the referendums is based on the red snapper harvest criterion.

##### *How Would 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