



# Federal Register

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**Thursday,  
April 30, 2009**

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**Part III**

## **Department of Commerce**

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**National Oceanic and Atmospheric  
Administration**

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**50 CFR Part 622  
Fisheries of the Caribbean, Gulf of  
Mexico, and South Atlantic; Reef Fish  
Fishery of the Gulf of Mexico;  
Amendment 29; Proposed Rule**

**DEPARTMENT OF COMMERCE****National Oceanic and Atmospheric Administration****50 CFR Part 622**

[Docket No. 090206140-9191-01]

RIN 0648-AX39

**Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Reef Fish Fishery of the Gulf of Mexico; Amendment 29**

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

**ACTION:** Proposed rule; request for comments.

**SUMMARY:** NMFS issues this proposed rule to implement Amendment 29 to the Fishery Management Plan for Reef Fish Resources of the Gulf of Mexico (FMP), as prepared and submitted by the Gulf of Mexico Fishery Management Council (Council). This proposed rule would implement a multi-species individual fishing quota (IFQ) program for the grouper and tilefish component of the commercial sector of the reef fish fishery in the Gulf of Mexico exclusive economic zone (Gulf EEZ). In addition, the proposed rule would allow permit consolidation and dual classifications to the shallow water and deepwater management units for speckled hind and warsaw grouper and would modify some provisions of the Gulf red snapper IFQ program for consistency with this proposed rule. The proposed rule is intended to reduce effort in the grouper and tilefish component of the Gulf reef fish fishery.

**DATES:** Written comments on this proposed rule must be received no later than 5:00 p.m., eastern time, on June 15, 2009.

**ADDRESSES:** You may submit comments, identified by RIN 0648-AX39, by any one of the following methods:

- Electronic Submissions: Submit all electronic public comments via the Federal eRulemaking Portal <http://www.regulations.gov>
  - Mail: Susan Gerhart, Southeast Regional Office, NMFS, 263 13th Avenue South, St. Petersburg, FL 33701
- 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.

To submit comments through the Federal e-Rulemaking Portal: <http://www.regulations.gov>, enter "NOAA-NMFS-2008-0223" in the keyword search, then select "Send a Comment or Submission." NMFS will accept anonymous comments (enter N/A in the required fields, if you wish to remain anonymous). You may submit attachments to electronic comments in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

Copies of Amendment 29, which includes a draft environmental impact statement (DEIS), an initial regulatory flexibility analysis (IRFA), and a regulatory impact review (RIR) may be obtained from the Gulf of Mexico Fishery Management Council, 2203 North Lois Avenue, Suite 1100, Tampa, FL 33607; telephone 813-348-1630; fax 813-348-1711; e-mail [gulfcouncil@gulfcouncil.org](mailto:gulfcouncil@gulfcouncil.org); or may be downloaded from the Council's website at <http://www.gulfcouncil.org/>.

Comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this proposed rule may be submitted in writing to Jason Rueter, Southeast Regional Office, NMFS, and to David Rostker, OMB, by e-mail at [David\\_Rostker@omb.eop.gov](mailto:David_Rostker@omb.eop.gov), or by fax to 202-395-7285.

**FOR FURTHER INFORMATION CONTACT:** Susan Gerhart, telephone: 727-824-5305, fax: 727-824-5308.

**SUPPLEMENTARY INFORMATION:** The reef fish fishery of the Gulf of Mexico is managed under the FMP. The FMP was prepared by the Council and is implemented through regulations at 50 CFR part 622 under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

**Background**

Current regulatory measures used to manage the commercial grouper and tilefish component of the reef fish fishery in the Gulf EEZ include a license limitation system, quotas, trip limits, minimum size limits, area and gear restrictions, and seasonal closures. Nonetheless, the commercial grouper and tilefish component has become overcapitalized, which has resulted in increasingly restrictive commercial regulations. One result of these restrictions is intensifying derby conditions, under which fishermen race to harvest as many fish as possible before the quota is reached. The intensification of derby conditions has led, in recent years, to early-season

closures of the fisheries. Under the current management structure, the commercial grouper and tilefish component is expected to continue to have higher than necessary levels of capital investment, increased operating costs, increased likelihood of shortened seasons, reduced safety at-sea, wide fluctuations in grouper and tilefish supply, and depressed ex-vessel prices.

**Permit Consolidation**

Permit consolidation would allow the owner of multiple Gulf of Mexico reef fish commercial vessel permits to consolidate some or all of such permits into one. The consolidated permit would have a catch history equal to the sum of the catch histories associated with the individual permits; the other permits involved in the consolidation would be permanently eliminated. The permits to be consolidated would have to be valid and not expired, and would have to be issued under the same name. This action could contribute to a faster reduction in the number of permits and ease permit renewal requirements. Fishermen would benefit by having to maintain and pay for fewer permits while still retaining their total landings history.

**Establishment of an IFQ Program for Groupers and Tilefishes**

The Council chose a multi-species IFQ program for all groupers, except Goliath grouper and Nassau grouper, and all tilefish species managed in the Gulf EEZ as the preferred alternative for effort management. The Magnuson-Stevens Act stipulates the Council may not submit, and the Secretary of Commerce may not approve, an IFQ program that has not first been approved by a majority of voters in a referendum. To be eligible to vote in the Gulf of Mexico grouper and tilefish IFQ referendum, an individual needed to possess an active or renewable Gulf reef fish vessel permit with combined average annual grouper and tilefish landings of at least 8,000 lb (3,629 kg) during 1999-2004 (with the allowance of dropping one year). Referendum ballots were mailed on December 5, 2008, to 301 eligible voters. Ballots were due to NOAA Fisheries Service by 4:30 p.m. on January 5, 2009. A total of 274 ballots were returned with a vote of 220 to 50 in favor of the IFQ program (four returned ballots were declared invalid).

To implement an IFQ program, several design features would need to be specified. This proposed rule contains many of these design elements, as well as major requirements for limited access privilege programs listed in the Magnuson-Stevens Act.

*Scope and Duration of the IFQ program*

The provisions of the IFQ program would apply to Gulf grouper and tilefish species in or from the Gulf EEZ and for a fisher or dealer in the IFQ program, these provisions would apply to Gulf groupers and tilefishes regardless of where harvested or possessed. The species include deepwater groupers (DWG), i.e., yellowedge grouper, misty grouper, warsaw grouper, snowy grouper, speckled hind, plus scamp under certain circumstances; red grouper, gag, and other shallow water groupers (other SWG) including black grouper, scamp, yellowfin grouper, rock hind, red hind, yellowmouth grouper, plus warsaw grouper and speckled hind under certain circumstances; and tilefishes (goldface tilefish, blackline tilefish, anchor tilefish, blueline tilefish, and tilefish).

The IFQ program would remain in effect until it is modified or terminated by an FMP amendment; however, the Council would evaluate the program every 5 years.

*IFQ Shares and Allocation*

An IFQ share is the percentage of the commercial quota or allowance for a species or species group issued to each eligible participant based on landings data. The five share categories are DWG, gag, red grouper, other SWG, and tilefish. Allocation is the actual poundage (gutted weight) in each share category that an IFQ shareholder is given the opportunity to land during each fishing year. The allocation issued to each IFQ shareholder would be calculated by multiplying their share times the annual commercial quota or allowance for each category. Annual allocation expires at the end of each year.

*Multi-use Allocation*

At the beginning of each fishing year, 4 percent of each participant's initial red grouper shares and 8 percent of each participant's initial gag shares would be converted to multi-use allocation. Multi-use allocation could be used to possess, land, or sell red groupers and gag under certain conditions. Red grouper multi-use allocation could only be used for red groupers after an IFQ account holder's entire red grouper allocation has been landed and sold, or transferred, and could be used for gag only after both gag and gag multi-use allocation have been landed and sold, or transferred. Gag multi-use allocation could only be used for gag after an IFQ account holder's entire gag allocation has been landed and sold, or transferred, and could be used for red

groupers only after both red grouper and red grouper multi-use allocation have been landed and sold, or transferred.

*Warsaw Grouper, Speckled Hind, and Scamp Classification*

Warsaw grouper and speckled hind are currently considered DWG species. Amendment 29 proposes also including these species as SWG under certain circumstances. For the purposes of the grouper and tilefish IFQ program, once an IFQ account holder's DWG allocation has been landed and sold, or transferred, or if an IFQ account holder has no DWG allocation, then other SWG allocation could be used to land and sell warsaw grouper and speckled hind.

Scamp is considered a SWG species and a DWG under certain circumstances. For the purposes of the grouper and tilefish IFQ program, once an IFQ account holder's other SWG allocation has been landed and sold, or transferred, or if an IFQ account holder has no SWG allocation, then DWG allocation could be used to land and sell scamp.

*Initial IFQ Share Eligibility and Share Calculation*

To be eligible to receive initial IFQ shares, a person would need to possess a valid (active or renewable) Gulf reef fish commercial vessel permit as of October 1, 2009. The calculation of initial shares by the RA would be based on the highest average annual landings associated with each permit during the best 5 out of 6 years for each share category, during the applicable landings period, 1999 through 2004. If a participant wishes to exclude a different year of landings history than was chosen by the RA, the participant would submit that information to the RA postmarked no later than December 1, 2009.

All landings associated with a valid Gulf reef fish commercial vessel permit for the applicable landings period would be attributed to the current owner, including landings reported by a person who held the permit prior to the current owner. Only legal landings reported in compliance with applicable state and Federal regulations would be accepted. Each participant's initial share in each category would be calculated by dividing his/her highest average annual landings by the sum of the highest average annual landings of all participants during the applicable landings period. Initial shares distributed in the gag and other SWG share categories would be based on landings that have been adjusted for gag and black grouper misidentification. Initial shares in each share category

would not be issued in units less than the percentage equivalent to 1 lb (.45 kg) of the grouper or tilefish species, based on that share category's quota or allowance.

*Appeals Process*

The only items subject to appeal under this IFQ program would be initial eligibility for shares based on ownership of a reef fish commercial vessel permit, the accuracy of the amount of landings, correct assignment of landings to the permit owner, and correct assignment of gag versus black grouper landings. Appeals would have to be submitted to the RA postmarked no later than April 1, 2010, and would have to contain documentation supporting the appeal. The RA would review, evaluate, and render final decisions on appeals. Hardship arguments would not be considered.

Appeals regarding landings data for 1999 through 2004 would be based on NMFS' logbook records. If NMFS' logbooks were not available, the RA could use state landings records or data that were submitted in compliance with applicable Federal and state regulations, on or before December 31, 2006. This date was chosen because it is 2 years after the end of the qualifying period for the IFQ program, and 2 years is the maximum amount of time from purchase or renewal of a permit until further action must be taken to prevent termination of the permit. Prior to initial distribution of shares, the RA would reserve 3-percent of IFQ shares to be used to resolve appeals. Any portion of the 3-percent share reserve remaining after the appeals process was completed would be proportionately distributed back to the initial recipients as soon as possible that year. If resolution of appeals requires more than 3-percent of shares, the shares of all initial IFQ shareholders would be reduced proportionately to accommodate the required shares in excess of the reserve.

*Adjustments in Commercial Quota and Allocation*

The Council periodically adjusts commercial quotas when they change the total allowable catch or the sector allocation in response to new data and information. If quotas are adjusted, then adjustments in IFQ allocation would be based on the percentage of the quota each IFQ shareholder possessed at the time of the adjustment.

*Redistribution of Shares Resulting from Permit Revocation*

If an IFQ shareholder's reef fish commercial vessel permit has been permanently revoked, at the beginning

of the next fishing year the RA would redistribute the shares held by that shareholder proportionately among remaining shareholders based upon the amount of shares each held just prior to the redistribution. Shares would not be distributed in such a way as to violate any share cap.

#### *Annual Recalculation and Notification of IFQ Shares and Allocation*

On or about January 1 each year, IFQ shareholders would be notified, via the IFQ website, of their shares and allocation for the new fishing year. The share values would be updated to include any share transfers and redistribution of shares. Allocation amounts would reflect any change in IFQ shares, any change in the annual commercial quota or allowance, and any debits incurred as a result of overages during the previous fishing year (see below).

#### *Electronic System Requirements, Account Setup, and Information*

The administrative functions associated with this IFQ program, such as account setup, landing transactions, and transfers, are designed to be accomplished online; therefore, all participants would need access to a computer and the Internet to participate. Assistance with online functions would be available from IFQ Customer Service, 1-866-425-7627, Monday through Friday between 8 a.m. and 4:30 p.m. eastern time. On or about October 1, 2009, the RA would mail an information package to eligible IFQ participants. The package would include historical landings, initial shares and allocation, information for accessing the online IFQ system and establishing an online account, and general instructions related to online transaction procedures and requirements. Anyone who is eligible to participate in the IFQ program, but who does not receive initial shares, may contact IFQ Customer Service to obtain information necessary to set up the required IFQ online account.

#### *IFQ Vessel Accounts*

An IFQ vessel account would be required for a person aboard a vessel to land grouper or tilefish species. Before a landing notification for the vessel was submitted, the vessel account associated with that vessel would need to have enough allocation in the appropriate share categories for the fish on board. A person who has established an IFQ account online would establish a vessel account through that IFQ account for each vessel. Each vessel account would have a unique personal identification

number (PIN) to be used during landing transactions. Only one vessel account could be established per vessel, but multiple vessel accounts could be established under each IFQ account. No fee would be charged to set-up a vessel account. The vessel account would remain valid as long as the vessel permit remained valid and the vessel owner was in compliance with all Gulf reef fish and IFQ reporting requirements, had paid all IFQ fees, and was not subject to sanctions. The vessel account could not be transferred to another vessel.

Vessel accounts could only hold allocation for use in landing and selling IFQ species. Vessel accounts could not hold shares. Allocation could be transferred into a vessel account from any IFQ account; however, allocation could only be transferred out of a vessel account to the IFQ account under which it was established. This restriction is intended to ensure that an IFQ account holder maintains control of the allocation in his/her account.

#### *IFQ Share/Allocation Transferability*

During the first 5 years of the IFQ program, shares or allocation could only be transferred to a person with a valid Gulf reef fish commercial vessel permit. After 5 years, shares and allocation could be transferred to any U.S. citizen or permanent resident alien. However, a valid reef fish commercial vessel permit would still be required to fish for Gulf groupers and tilefishes under the IFQ program.

Both share and allocation transfers would be accomplished online via the IFQ website. The online system would verify the information entered and, if the information was not accepted, the online system would send an electronic message explaining the reason(s). Once the transaction is complete, the online system would send a transfer approval code to both the transferor and transferee confirming the transaction. An IFQ shareholder who is subject to a sanction would be prohibited from initiating a share transfer. If a transferor is subject to a pending sanction, he/she would be required to disclose in writing any pending sanction at the time of the transfer of shares or allocation. No transfers would be allowed that violate the share or allocation caps.

For share transfers, approval would be required from both the transferor and transferee. If the information from the transferor was accepted, the online system would send an electronic message of the pending transfer to the transferee. The transferee would approve the share transfer by electronic signature. If the transferee approved the

share transfer, the online system would send a transfer approval code to both the transferor and transferee confirming the transaction. The minimum share amount that could be transferred would be 0.000001 percent.

Transfer of shares and associated allocation are independent; to transfer both shares and allocation, the transferor must complete both a share transfer and an allocation transfer. At the beginning of the year after a share transfer, allocation would automatically be issued to the current shareholder. Share transfers would be permanent, and would remain in effect until subsequently transferred. Allocation transfers would be valid only for the remainder of the current fishing year; allocation transfers would not carry over to the next fishing year.

Red grouper multi-use allocation could only be transferred after all of an IFQ account holder's red grouper allocation had been landed and sold, or transferred. Gag multi-use allocation could only be transferred after all an IFQ account holder's gag allocation had been landed and sold, or transferred.

All electronic IFQ transactions would have to be completed by December 31 at 6 p.m. eastern time each year. Electronic functions would resume on January 1 at 6 a.m. eastern time the following fishing year.

#### *IFQ Share and Allocation Caps*

The Magnuson-Stevens Act requires an IFQ program to prevent any entity from obtaining an excessive share of the total limited access privileges in the program. To accomplish this, both share and allocation caps would be established. No person, including a corporation or other entity, could individually or collectively hold IFQ shares in any share category greater than the maximum share initially issued to a person at the beginning of the IFQ program, as of the date appeals are resolved and shares are adjusted accordingly. Further, no person could individually or collectively hold, cumulatively during any fishing year, allocation in excess of the total allocation cap. The total allocation cap would be the sum of the allocations associated with the share caps for each share category. The allocation cap would be calculated annually based on the current quota or allowance associated with each share category.

An individual's total IFQ shares/allocation would be determined by adding the IFQ shares/allocation held independently by the individual and the applicable IFQ shares/allocation from any corporation in which the individual has ownership. Those applicable

corporate IFQ shares/allocation would be calculated by multiplying the IFQ shares/allocation owned by the corporation times the percent of ownership the individual has in the corporation. During initial implementation of the IFQ program, a corporation would provide the identity of the shareholders of the corporation and their percent of ownership in the corporation to NMFS. This information would be updated within 30 days of when changes occur. This information would also be required any time a reef fish vessel permit is renewed or transferred.

#### *Dealer Requirements*

On or about October 1, 2009, the RA would mail information pertinent to the IFQ program to each dealer with a valid Gulf reef fish dealer permit. A dealer, or a person aboard a vessel with an IFQ account wishing to sell groupers and tilefishes directly to an entity other than a dealer, would need an IFQ dealer endorsement to receive groupers and tilefishes from the Gulf EEZ. An IFQ dealer endorsement could be downloaded from the NMFS IFQ website. If a dealer did not have an IFQ online account, they could contact IFQ Customer Service. No fee would be charged for obtaining this endorsement. The endorsement would remain valid as long as the reef fish dealer permit remained valid and the dealer was in compliance with all Gulf reef fish and IFQ reporting requirements, had paid all IFQ fees, and was not subject to any sanctions. The endorsement could not be transferred.

#### *Electronic Reporting of IFQ Landing Transactions*

The dealer would be responsible for completing a landing transaction report for each landing and sale of groupers and tilefishes through his/her IFQ account. The landing transaction would be completed at the time of sale. The fisherman would validate the dealer transaction report by entering the unique PIN for the vessel account when the transaction report was submitted. After the dealer submitted the report and NMFS verified the information, the online system would send a transaction approval code to the dealer and the allocation holder. This approval code would be necessary to verify the transaction was legal and the vessel account had the correct amount of grouper and tilefish allocation. The dealer endorsement would have to accompany any fish from the landing location through possession by a dealer. Fish could not be transported on land by any means without a transaction

approval code and a copy of the dealer endorsement.

If a discrepancy regarding the landing transaction report was discovered after approval, the dealer or vessel account holder (or his or her authorized agent) could initiate a landing transaction correction form to correct the landing transaction. This form would be available via the IFQ website. Both parties would validate the landing correction form by entering their respective PINs. The dealer would then print out the form, both parties would sign it, and the form would be mailed to NMFS. The form would need to be received by NMFS no later than 15 days after the date of the initial landing transaction.

#### *Limited Landings Overage Allowance*

A person on board a vessel with an IFQ vessel account landing the IFQ shareholder's only remaining allocation could legally exceed, by up to 10 percent, the amount of the allocation remaining on that last fishing trip. Under current interpretation of the Council's intent, allocation from all share categories must be exhausted to use the overage, and the overage would be allowed only one time per fishing year for each shareholder. Another interpretation of the Council's intent would be to allow the use of the 10 percent overage once per year for each category. In that case, a person on board a vessel with an IFQ vessel account landing the IFQ shareholder's only remaining allocation in a share category could legally exceed, by up to 10 percent, the amount of the allocation remaining in that share category on that fishing trip. The Council will be asked to clarify their intention on this issue at their April 2009 meeting. NMFS is specifically seeking comment from the public on which approach best serves the objectives of the overage provision.

If additional allocation is purchased after a shareholder uses his overage privilege, no additional overage would be allowed. Overages would be deducted from the next year's allocation associated with the shareholder's IFQ share. Share transfers would not be allowed that would reduce the shareholder's IFQ shares lower than the amount needed to pay back the overage. A person who only possessed allocation and no IFQ shares would not be allowed an overage. That person might not receive allocation in the following year and therefore, could not pay back the overage.

#### *Cost Recovery*

The Magnuson-Stevens Act requires the Secretary of Commerce to establish

a fee to assist in recovering the actual costs directly related to managing and enforcing an IFQ program. This fee may not exceed 3 percent of the ex-vessel value of fish harvested under the IFQ program. Cost recovery fees must be in addition to any other fees charged under the Magnuson-Stevens Act and must be deposited in the Limited Access System Administration Fund. Initially, the fee for the Gulf of Mexico grouper and tilefish IFQ would be 3 percent of the actual ex-vessel value of groupers and tilefishes landed under the IFQ program as documented in each landings transaction report. NMFS is currently analyzing the expected costs for the first year to determine if the 3-percent fee is appropriate. The RA would review the cost recovery fee annually to determine if an adjustment is warranted. If the RA determined that a fee adjustment is warranted, the RA would publish a notification of the fee adjustment in the **Federal Register**.

The participant whose allocation is used for a grouper or tilefish landing would be responsible for paying the associated IFQ cost recovery fees. The IFQ dealer who receives the fish would be responsible for collecting the fee from the participant and submitting the fee to NMFS using pay.gov via the IFQ system. The fee would be due at the end of each calendar-year quarter, but no later than 30 days after the end of each calendar-year quarter. Authorized payment methods would be credit card, debit card, or automated clearing house (ACH), or by check if the RA has determined that the geographical area or individual(s) is affected by catastrophic conditions. Fees not received by the deadline would be considered delinquent. Failure to resolve payment of delinquent fees could result in suspension of the IFQ endorsement which would prevent a dealer from completing any IFQ landing transactions. Continued failure to resolve payment could result in submission of the matter to appropriate authorities for resolution.

#### *Measures to Enhance Enforceability*

Fishermen participating in the IFQ program would be required to offload their grouper and tilefish landings to permitted IFQ dealers only between 6 a.m. and 6 p.m., local time. For the purpose of this program, landing means to arrive at a dock, berth, beach, seawall, or ramp. Any person landing groupers or tilefishes would be required to notify NMFS 3 to 12 hours in advance of landing. The landing notification would include the time and location of landing, the name and address of the dealer where the fish would be received,

the vessel identification number (Coast Guard registration number or state registration number), and the estimated pounds (gutted weight) of fish to be landed in each share category. The fisherman could supply this notification by calling NMFS at 1-866-425-7627, by completing and submitting the notification form provided through the VMS unit, or by accessing the web-based form available on the IFQ website. The vessel account associated with the vessel landing groupers or tilefishes must have sufficient allocation in the appropriate share category or categories (except for any overage allowed on the last fishing trip) from the time of the landing notification through landing.

Possession of IFQ groupers or tilefishes from the time of transfer from a vessel through possession by a dealer would be prohibited unless accompanied by a transaction approval code verifying a legal transaction of the amount of IFQ groupers or tilefishes in possession and a copy of the dealer endorsement. This requirement also applies to IFQ fish possessed on a vessel that is trailered for transport to a dealer. If groupers or tilefishes are offloaded to a vehicle for transportation to a dealer or are on a vessel that is trailered for transport to a dealer, on-site capability to accurately weigh the fish and to connect electronically to the online IFQ system to complete the transaction and obtain the transaction approval code would be required. At-sea or dockside vessel-to-vessel transfers of fish would be prohibited.

#### *Approved Landing Locations*

NMFS' Office for Law Enforcement would have to approve landing locations prior to landing or offloading groupers and tilefishes at these sites. Proposed landing locations could be submitted online via the IFQ website or by calling IFQ Customer Service at any time. However, new landing locations would be approved only at the end of each calendar-year quarter. To have a landing location approved by the end of the calendar-year quarter, it would have to be submitted at least 45 days before the end of the calendar-year quarter. Landing locations would have to be publicly accessible by land and water, and they must have a street address. If a particular landing location has no street address on record, global positioning system (GPS) coordinates for an identifiable geographic location must be provided. Other criteria could also be applied.

#### *Paper-based reporting during catastrophic conditions*

The RA would provide paper-based components for basic required functions of the IFQ program as a backup only during catastrophic conditions. The RA would determine when catastrophic conditions exist, the duration of the catastrophic conditions, and which participants or geographic areas are affected by the catastrophic conditions. The RA would provide timely notice to affected participants and would authorize the affected participants' use of paper-based components for the duration of the catastrophic conditions. NMFS would provide each IFQ dealer the necessary paper forms. No paper-based mechanism for transfers of shares or allocation would be available. Assistance in complying with the requirements of the paper-based system would be available via IFQ Customer Service, Monday through Friday between 8 a.m. and 4:30 p.m. eastern time.

#### **Changes in the Red Snapper IFQ Program**

Several changes to the red snapper IFQ program would be made to align that program with the grouper and tilefish IFQ program. One change would be the requirement for an IFQ vessel account for a person aboard a vessel to land red snapper. Before a landing notification for the vessel was submitted, the vessel account associated with that vessel would need to have enough allocation for the fish on board. To improve enforceability of the IFQ program, the estimated pounds (gutted weight) of red snapper on board would be included in the landing notification.

A person who has established an IFQ account online would establish a vessel account through that IFQ account for each vessel. Only one vessel account could be established per vessel, but multiple vessel accounts could be established under each IFQ account. No fee would be charged to set-up an IFQ vessel account. The vessel account would remain valid as long as the reef fish vessel permit remained valid and the vessel owner was in compliance with all Gulf reef fish and IFQ reporting requirements, had paid all IFQ fees, and was not subject to sanctions. The vessel account could not be transferred to another vessel.

The requirement for vessel accounts would eliminate the need for IFQ vessel endorsements; therefore the vessel endorsement requirement would be eliminated from the red snapper IFQ program.

#### *Changes in the Red Snapper IFQ Program Relating to Dealer Requirements*

Currently, no method exists to correct errors to landing transactions. Through this rule, if a discrepancy regarding the landing transaction report was discovered after approval, the dealer or vessel account holder (or his or her authorized agent) could initiate a landing transaction correction form to correct the landing transaction. This form would be available via the IFQ website. Both parties would validate the landing correction form by entering their respective PINs. The dealer would then print out the form, both parties would sign it, and the form would be mailed to NMFS. The form would need to be received by NMFS no later than 15 days after the date of the initial landing transaction.

Two items would be eliminated to ease the administrative burden associated with dealer requirements. The first would be the annual ex-vessel value report because the information in the report is readily available on the IFQ website. The second would be the notice of annulment sent on or about the 61st day after the end of each calendar-year quarter for a dealer whose cost recovery fee payment remains delinquent. This notice did not accompany any new action on the part of NMFS to curtail the dealer's activities, and so is unnecessary.

#### *Changes to Share Transfer Process for the Red Snapper IFQ Program*

Currently share transfers can only be accomplished by submitting a form signed by both the transferor and transferee to NMFS. With the proposed regulatory change, both share and allocation transfers would be accomplished online via the IFQ website. Approval would be required from both the transferor and transferee. If the information from the transferor was accepted, the online system would send an electronic message of the pending transfer to the transferee. The transferee would approve the share transfer by electronic signature. If the transferee approved the share transfer, the online system would send a transfer approval code to both the transferor and transferee confirming the transaction.

An IFQ shareholder who is subject to a sanction is prohibited from initiating a share transfer. If a transferor is subject to a pending sanction, he/she would be required to disclose in writing the existence of any pending sanction at the time of the transfer to the prospective transferee. The minimum share amount

that could be transferred would be 0.0001 percent.

#### *Changes to Approval of Landing Locations for the Red Snapper IFQ Program*

Currently, an IFQ participant can enter any location during the landing notification, and approval is only needed to place the location on the drop-down menu. This proposed rule would require landing locations be approved by NMFS' Office for Law Enforcement prior to landing or offloading at these sites. Proposed landing locations could be submitted via the IFQ website or by calling IFQ Customer Service at any time. However, new landing locations would be approved only at the end of each calendar-year quarter. To have a landing location approved by the end of the calendar-year quarter, it would need to be submitted at least 45 days before the end of the calendar-year quarter. Landing locations would have to be publicly accessible by land and water, and would have to have a street address. If a particular landing location has no street address on record, global positioning system (GPS) coordinates for an identifiable geographic location would have to be provided. Other criteria could also be applied.

#### **Availability of Amendment 29**

Additional background and rationale for the measures discussed above are contained in Amendment 29. The availability of Amendment 29 was announced in the **Federal Register** on April 8, 2009 (74 FR 15911). Written comments on Amendment 29 must be received by June 8, 2009. All comments received on Amendment 29 or on this proposed rule during their respective comment periods will be addressed in the preamble of the final rule.

#### **Classification**

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that this proposed rule is consistent with Amendment 29, other provisions of the Magnuson-Stevens Act, and other applicable law, subject to further consideration after public comment.

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

NMFS prepared a Draft Environmental Impact Statement (DEIS) for this amendment. A notice of availability for the DEIS was published on July 3, 2008 (73 FR 38204).

NMFS prepared an IRFA, as required by section 603 of the Regulatory Flexibility Act, for this proposed rule.

The IRFA describes the economic impact this proposed rule, if adopted, would have on small entities. A description of the action, why it is being considered, and the objectives of, and 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 copy of the full analysis is available from the Council (see ADDRESSES). A summary of the IRFA follows.

This proposed rule would implement an IFQ program in the commercial grouper and tilefish fisheries; allow a single owner of multiple commercial reef fish permits to consolidate his (her) permits into one, with the consolidated permit having a catch history equal to the sum of the catch histories associated with the individual permits; maintain the current composition of the multi-species DWG unit and revise the SWG unit to include speckled hind and warsaw grouper; restrict initial eligibility to valid commercial reef fish permit holders; distribute initial IFQ shares proportionately among eligible participants based on the average annual landings from logbooks associated with their current permit(s) during the time period 1999 through 2004 with an allowance for excluding one year; establish IFQ share types as follows: red grouper, gag, other SWG, DWG, and tilefish shares; convert 4 percent of each IFQ participant's red grouper individual species share into multi-use red grouper allocation valid for harvesting red or gag groupers, and convert 8 percent of each IFQ participant's gag grouper individual species share into multi-use gag grouper allocation valid for harvesting gag or red groupers; allow transfers of IFQ shares or allocations only to commercial reef fish permit holders during the first five years of the IFQ program and all U.S. citizens and permanent resident aliens thereafter; set a cap on any one person's ownership of IFQ shares to no more than the maximum percentage issued to the recipient of the largest shares at the time of the initial apportionment of IFQ shares, with the cap(s) calculated as separate caps for each type of share; set a total allocation cap calculated as the sum of the maximum allocations associated with the share caps for each individual share category; allocate adjustments in the commercial quota proportionately among eligible IFQ shareholders based on their respective shareholdings at the time of the adjustments; let the RA review, evaluate, and render final decision on appeals, without consideration of hardship arguments; set aside 3 percent

of the current commercial quota or allowance to resolve appeals, with any remaining amount proportionately distributed back to initial IFQ shareholders after the appeals process has been terminated; impose an IFQ cost recovery fee based on actual ex-vessel value at the time of sale of fish, with the payment of the fee being the responsibility of the recognized IFQ shareholder and collection/remittance of the fee being the responsibility of the dealer; and establish certified landing sites for all IFQ programs in the commercial reef fish fisheries, with the sites selected by fishermen but certified by NMFS Office of Law Enforcement.

The Magnuson-Stevens Act provides the statutory basis for the proposed rule. No duplicative, overlapping, or conflicting Federal rules have been identified.

This proposed rule would introduce new or additional reporting, record-keeping and other compliance requirements. Details of these requirements would be spelled out before implementation of the program. A summary of the general requirements of the grouper and tilefish IFQ program follows.

An IFQ dealer endorsement would be required of any dealer purchasing groupers or tilefishes subject to this IFQ program. The IFQ dealer endorsement would be issued at no cost to those individuals who possess a valid reef fish dealer permit and request the endorsement. Although the current reef fish dealer permit must be renewed annually at a cost of \$60 for the initial permit (\$12.60 for each additional permit), the IFQ dealer endorsement would remain valid as long as the individual possesses a valid Gulf reef fish dealer permit and abides by all reporting and cost recovery requirements of the IFQ program. This requirement would affect all 159 existing dealers (as of November 2008) of groupers or tilefishes.

An electronic reporting system would serve as the main vehicle for tracking IFQ activities. The electronic nature of the reporting system would render the reporting of most IFQ activities practically on a real time basis. For example, to effect a sale of grouper or tilefish landings, the purchasing dealer would have to log into the electronic reporting system and enter all the required information about the grouper or tilefish sale. The required information includes, but is not limited to, the name of the dealer and that of the fisherman, identification number of the harvesting vessel, and the pounds and ex-vessel values of groupers and tilefishes. Electronic validation of the

dealer-supplied information by the selling fisherman is necessary to complete the sale. Also, transfer of IFQ allocations and shares would have to be effected and recorded through the electronic reporting system. Holders of IFQ allocations could also access the system to check on the outstanding IFQ allocations remaining in their account/possession. In this connection, an IFQ shareholder account, IFQ vessel account, and IFQ dealer account would have to be established with NMFS. There would be no charge to establishing any of these accounts.

By the very nature of the reporting system, IFQ dealers would be required to have access to computers and the Internet. If a dealer does not have current access to computers and the Internet, he/she may have to expend approximately \$1,500 for computer equipment (one-time cost) and \$300 annual cost for Internet access. Dealers would need some basic computer and Internet skills to input information for all grouper and tilefish purchases into the IFQ electronic reporting system.

Dealers also would have to remit to NMFS, on a quarterly basis, the cost recovery fees initially set at 3 percent of the ex-vessel value of groupers and tilefishes purchased from IFQ share/allocation holders. Although IFQ share/allocation holders would have to pay this fee, it would be the responsibility of dealers to collect and remit these fees to NMFS. Dealers would be required to remit fees electronically by automatic clearing house (ACH), debit card or credit card. There is currently no available information to determine how many of the 159 grouper or tilefish dealers have the necessary electronic capability to participate in the IFQ program. However, demonstration of this capability would be necessary for IFQ program participation. Those dealers currently participating in the red snapper IFQ program would generally meet most, if not all, of the requirements under the electronic reporting system.

Holders of IFQ shares and allocations would need to have access to computers and the Internet to effect allocation transfers through the electronic reporting system. These persons would then be subject to the same cost and skill requirements as dealers. It is very likely that most individuals have access to computers and the Internet. It should also be pointed out that in the case of reporting a sale of groupers or tilefishes to a dealer, all the fisherman would have to do is to validate the sale using the dealer's computer. This requirement would affect all those who would initially qualify for, or those who would

decide to participate in, the grouper and tilefish IFQ program.

One other compliance issue under the IFQ system would involve landing and offloading of IFQ groupers or tilefishes. The owner or operator of a vessel landing IFQ groupers or tilefishes would have to provide NMFS an advance landing notification at least 3 hours but no more than 12 hours before arriving at a dock, berth, beach, seawall, or ramp. In addition, offloading of IFQ groupers or tilefishes would be allowed only between 6 a.m. and 6 p.m..

This proposed rule would be expected to directly affect vessels that operate in the Gulf of Mexico commercial reef fish fishery and reef fish dealers or processors. The Small Business Administration (SBA) has established size criteria for all major industry sectors in the U.S. including fish harvesters, fish processors, and fish dealers. A business involved in fish harvesting is classified as a small business if it is independently owned and operated, is not dominant in its field of operation (including its affiliates), and has combined annual receipts not in excess of \$4.0 million (NAICS code 114111, finfish fishing) for all affiliated operations worldwide. For seafood processors and dealers, rather than a receipts threshold, the SBA uses an employee threshold of 500 or fewer persons on a full-time, part-time, temporary, or other basis, at all affiliated operations for a seafood processor and 100 or fewer persons for a seafood dealer.

A total of 1,209 vessels is assumed to comprise the universe of commercial harvest operations in the Gulf reef fish fishery. This total includes vessels with active or renewable permits. An examination of permits in conjunction with logbook information revealed, however, that 1,028 permits (as of November 2008) would have some records of landings during the Council's chosen period of 1999–2004 for purposes of determining initial apportionment of IFQ shares.

Whereas there is a one to one correspondence between permits and vessels, the total number of vessels actually harvesting reef fish, or groupers or tilefishes, may be lower or higher than the number of permits. Some vessels may remain inactive in the reef fish fishery during the entire year, so there would be fewer vessels than permits. Because a permit can be transferred from one vessel to another during the year, the number of vessels harvesting any of the species in this amendment during the year may exceed the number of permits. This distinction

is important when using logbook information to count vessels.

For the period 1993–2006, an average of 1,123 vessels harvested at least 1 pound (0.45 kg) of reef fish, 993 vessels harvested any groupers or tilefishes, 765 vessels harvested red groupers, 591 vessels harvested gag, 977 vessels harvested shallow water groupers (SWG), 376 vessels harvested deepwater groupers (DWG), and 212 vessels harvested tilefishes. For the period 1999–2004, an average of 1,075 vessels harvested at least 1 pound (0.45 kg) of reef fish, 968 vessels harvested any groupers or tilefishes, 767 vessels harvested red groupers, 655 vessels harvested gag, 958 vessels harvested SWG, 368 vessels harvested DWG, and 193 vessels harvested tilefishes.

Vessels harvesting reef fish in general and groupers or tilefishes in particular use a variety of gear. Some vessels use only one gear type while others use multiple gear types; thus, classification of vessels by gear type is not straightforward for some vessels. For the period 1993–2006, an average of 805 vessels harvested groupers or tilefishes using vertical lines, 171 vessels harvested groupers or tilefishes using longlines, and 162 vessels harvested groupers or tilefishes using other gear types (diving, trap, unclassified). For the period 1999–2004, an average of 790 vessels harvested groupers or tilefishes using vertical lines, 167 vessels harvested groupers or tilefishes using longlines, and 148 vessels harvested groupers or tilefishes using other gear types (diving, trap, unclassified).

Collection of information regarding vessel operating costs was only initiated in mid-2005 and is anticipated to provide trip cost and return information once these data are processed and analyzed. Information from this survey was used in estimating overall economic effects on the commercial sector of an IFQ system in the fishery. This was possible as the evaluation was conducted on a trip basis. However, vessel-level gross and net revenues could not be readily derived using the same trip-based information. For our current purpose, we use cost and return information derived from an earlier survey of commercial reef fish fishermen in the Gulf of Mexico. High-volume vertical line vessels in the northern Gulf grossed an average of approximately \$110,000 (2005 dollars) and those in the eastern Gulf grossed approximately \$68,000. Their respective net revenues were approximately \$28 thousand and \$24,000. Low-volume vertical line vessels in the northern Gulf grossed approximately \$24,000 and those in the eastern Gulf grossed



approximately \$25,000. Their respective net revenues were approximately \$7,000 and \$4,000. High-volume longline vessels grossed approximately \$117,000 while low-volume longline vessels grossed \$88,000. Their respective net revenues were approximately \$25,000 and \$15,000. High-volume fish traps (fish traps have been banned since February 2007) grossed approximately \$93,000 while their low-volume counterparts grossed approximately \$86,000. Their respective net revenues were approximately \$19,000 and \$21,000.

A definitive calculation of which commercial entities would be considered large entities and small entities cannot be made using average income information. However, based on those data and the permit data showing the number of permits each person/entity owns, it appears that all of the commercial reef fish fleet would be considered small entities. The maximum number of permits reported to be owned by the same person/entity was six, additional permits (and revenues associated with those permits) may be linked through affiliation rules. Affiliation links cannot be made using permit data. If one entity held six permits and was a high-volume bottom longline gear vessel, they would be estimated to generate about \$700,000 in annual revenue. That estimate is well below the \$4 million threshold set by the SBA for defining a large entity.

Also affected by the measures in this amendment are fish dealers, particularly those who receive gag and red groupers from harvesting vessels. Currently, a Federal permit is required for a fish dealer to receive reef fish from commercial vessels. As of November 2008, there were 159 active permits for dealers buying and selling reef fish species; but since the reef fish dealer permitting system in the Gulf is an open access program, the number of dealers can vary from year to year. As part of the commercial reef fish logbook program, reporting vessels identify the dealers who receive their landed fish. Commercial reef fish vessels with Federal permits are required to sell their harvest only to permitted dealers. For the period 2004–2007, these dealers handled an average of 10.8 million lb (4.9 million kg) of groupers and tilefishes valued at \$25.4 million. These dealer transactions were distributed as follows: Florida, with 10 million lb (4.5 million kg) worth \$23.5 million; Alabama and Mississippi, with 102,000 lb (46,266 kg) worth \$222 thousand; Louisiana, with 270,000 lb (122,476 kg) worth \$592 thousand; and, Texas, with 434,000 lb (196,859 kg) worth \$1.03

million. The rest of transactions were handled by dealers outside of the Gulf.

Average employment information per reef fish dealer is unknown. It is estimated that total employment for reef fish processors in the Southeast at approximately 700 individuals, both part and full time. It is assumed all processors must be dealers, yet a dealer need not be a processor. Further, processing is a much more labor intensive exercise than dealing. Therefore, given the employment estimate for the processing sector, it is assumed that the average dealer's number of employees would not surpass the SBA employment benchmark.

Based on the gross revenue and employment profiles presented above, all permitted commercial reef fish vessels and fish dealers directly affected by the proposed rule may be classified as small entities.

Because all entities that are expected to be affected by the proposed rule are considered small entities, the issue of disproportional impacts on small and large entities does not arise. Although some vessel operations are larger than others, they nevertheless fall within the definition of small entities.

The various measures in this proposed rule have varying effects on small entities. Adoption of an IFQ program for the grouper and tilefish fishery has been estimated to result in variable cost savings to the fishing industry of \$2.23 to \$3.24 million per year. There would also be some unknown reductions in fixed costs. In addition, there would result possible increases in revenues as improved product quality would command higher prices.

Permit stacking would allow owners to consolidate their multiple permits into one with corresponding consolidation of landings history for all permits. This may be expected to accelerate the reduction in the number of permits, resulting in cost savings to permit owners and in administrative cost reductions.

Dual classification of both speckled hind and warsaw grouper into SWG and DWG would tend to reduce discards of both species and allow fishermen to keep more of these two species they catch. Also, this has been estimated to increase revenues of fishermen by \$450,000.

Restricting the number of participants eligible to receive initial IFQ shares to commercial permit holders only would prevent over-extended distribution of IFQ shares while allowing active participants in the fishery to immediately benefit from the implementation of the grouper and

tilefish IFQ program. This limitation would also tend to speed up the process of consolidation in the fishery, a result that would allow participants to reap the gains from an IFQ program over a relatively short time.

Initial apportionment of IFQ shares based on landings history for the years 1999–2004, with allowance to drop one year, would provide a higher likelihood that active participants in the fishery would be allotted IFQ shares in accordance with the extent of their participation in the fishery. This would tend to preserve the historical landings status of eligible participants, so the initial impacts on their profits would be at least not be diminished. As the IFQ program progresses, their profits may be expected to increase whether or not they choose to fish their IFQs or lease or sell them to others.

By defining IFQ shares on a species-specific basis, the eventual true value of each species may be generated. This option, however, could result in more discards of some species and complicate balancing of catch and quota as well as the monitoring of the IFQ program. It thus needs to be complemented by flexibility measures to assist IFQ participants in balancing their catch and quota holdings. The provision for multi-use allocations would introduce certain flexibility as IFQ participants would have some leeways in balancing their catch and quota holdings.

The transferability aspect of IFQ shares/allocation provides the mechanism to allow the IFQ program to generate greater efficiency and higher profitability in the fishery. As such, the lesser the limitations on transferability the better the system would be. The proposed rule would limit transfers only to reef fish permit holders the first five years of the program and to a broader pool of participants thereafter. While the five-year limitation would unlikely bring about cost increases, it would not allow proper pricing of IFQ shares. This condition, however, may be necessary to allow IFQ holders to get familiar with the IFQ program before they engage in transfers outside of the limited pool of eligible IFQ transfer recipients.

Establishing a cap on IFQ share holdings is consistent with the Magnuson-Stevens Act provision to prevent the acquisition of excessive shares in the IFQ program. The proposed rule to set the share cap to the maximum assigned to a participant during initial apportionment would allow every participant to at least maintain their existing scale of operation. Costs of operation and possibly revenues may be expected to remain the same. Over time, all

participants, except the highest one, would be able to increase their scale of operation they deem most profitable to them. The highest holders, however, and presumably the current more efficient producers would not have the same opportunity as the others.

The same reasoning as stated in the preceding paragraph for a share cap would also apply to the proposed rule to establish a cap on IFQ allocation holdings. In addition, the established cap on IFQ allocations could possibly close the loophole allowing some participants to circumvent the established cap on IFQ share holdings by entering into a long-term contract with other participants.

Quotas change periodically, so there is a need to address this in the IFQ program. The proposed rule would allocate quota adjustments, increases or decreases, in proportion to a participant's IFQ share ownership at the time of quota adjustments. This may not allocate quota adjustments as efficiently as an auction alternative, but it appears to be the least costly and least disruptive option.

The establishment of an appeals process affords participants the opportunity to correct any mistakes in the initial allocation of IFQ shares. This could result in more costs to participants and the administering agency, but such costs are expected to be relatively small especially when seen against the potential benefits it would generate. The added provision to set aside 3 percent of the quota to settle appeals would prevent the possibility of taking back some allocations already distributed to participants.

The cost recovery fee feature of the IFQ program (a requirement under the Magnuson-Stevens Act) would undoubtedly impose additional cost on fishing participants both in terms of reductions in revenue and increases in costs (particularly on dealers) to comply with the collection and remittance of the fees to NMFS. A 3-percent cost recovery fee based on total revenues could translate into larger reductions in profits, particularly for small fishing operations.

Certified landing sites where fishermen are obligated to land their IFQ catches may increase the cost of fishing operations. This could happen if for some reasons, such as weather conditions and fishing opportunities, fishermen may have to travel far if the nearest landing site is not certified. This could, however, enhance the enforcement of IFQ rules which may help ensure that benefits from the program are not impaired.

It is expected that the combined effects of the proposed rule would result in significant changes to the profitability status of fishing operations in the grouper and tilefish fishery. This is especially true over the long run when significant benefits, both in terms of revenue increases and cost decreases, may be expected to accrue. The net economic effects on dealers cannot be readily ascertained.

Several alternatives were considered by the Council in their deliberation of the various measures in this amendment. For purposes of the succeeding discussion, each of the Council's preferred alternatives is termed proposed action.

Three alternatives, including no action, were considered for establishment of an IFQ program. The first alternative (no action) to the proposed action would maintain the incentives to overcapitalize the fishery and to promote derby fishing. Such conditions may be expected to result in increased operating costs, increased likelihood of shortened seasons, reduced at-sea safety, wide fluctuations in domestic grouper and tilefish supply, and depressed ex-vessel prices for groupers and tilefishes. The other alternative to the proposed action, establishment of an endorsement system, would have short-term effectiveness in addressing overcapitalization and derby fishing by reducing the number of participants. Over the long run, remaining participants may be expected to increase their effort either through vessel, crew, and equipment upgrades or via additional or longer fishing trips.

The only alternative to the proposed action of consolidating multiple commercial reef fish permits is the no action alternative. This alternative would not accelerate the reduction in the number of permits, thus forgoing the benefits from permit stacking due to cost savings by permit owners and reductions in administrative costs.

Four alternatives, including no action, were considered regarding the species composition of DWG and SWG. The first alternative (no action) to the proposed action would maintain the composition of the SWG and DWG management units. This alternative would neither reduce the discards of speckled hind or warsaw grouper nor grant flexibility to IFQ participants. The second alternative to the proposed action would classify speckled hind as both SWG and DWG while the third alternative to the proposed action would classify warsaw grouper as both SWG and DWG. These two alternatives would reduce discards and add flexibility to IFQ participants

but only with respect to either speckled hind or warsaw grouper but not both as in the proposed action.

Four alternatives, including no action, were considered for initial eligibility in the IFQ program. The first alternative (no action) to the proposed action would not specify initial eligibility requirements for IFQ share allocation, and thus is deemed to provide insufficient guidance in initially allocating IFQ shares. The other alternatives to the proposed action would include more entities for initial distribution of IFQ shares: a) commercial reef fish permit holders and reef fish captains and crew, b) commercial reef fish permit holders and permitted dealers, and c) commercial reef fish permit holders, reef fish captains and crew, and permitted dealers. These other alternatives to the proposed action would complicate the determination of initial IFQ holders, slow down the eventual consolidation of fishing operations in the fishery, and lessen the likelihood of maintaining viable fishing operations.

Four alternatives, including no action, were considered for the initial apportionment of IFQ shares. The first alternative (no action) to the proposed action would not provide any guidance in initially apportioning IFQ shares. The second alternative to the proposed action would proportionately allocate IFQ shares based on average annual landings during 1999–2004. This alternative is less flexible than the proposed action where eligible participants could drop one year in calculating annual average landings. The third alternative to the proposed action would initially distribute IFQ shares through an auction. This alternative may be deemed best in generating the most appropriate value for IFQ shares at the start of the program. However, this alternative offers some possibility that some historical yet active participants in the fishery would not receive any IFQ share or receive only few shares that would not make their fishing operations viable.

Four alternatives, including no action, were considered for IFQ share definitions. The first alternative (no action) to the proposed action would not establish IFQ shares and is therefore not a viable alternative under an IFQ system. The second alternative to the proposed action would establish a single IFQ share for the combined groupers and tilefishes. While this alternative would tend to minimize transaction costs and eliminate the need to trade shares to balance catch and quota holdings, it would limit the effectiveness of species-specific

management measures and complicate the future establishment of annual catch limits required by the Magnuson-Stevens Act. The third alternative to the proposed action would establish separate IFQ shares for the deep water grouper complex, the shallow water grouper complex, and tilefish. As with the second alternative, this particular alternative would limit the effectiveness of species-specific management measures and complicate the future establishment of annual catch limits required by the Magnuson-Stevens Act.

Three alternatives, including no action, were considered for multi-use allocation and trip limits. The first alternative (no action) to the proposed action would not establish multi-use IFQ shares or trip allowances and thus, would not contribute to catch and quota balancing under the IFQ program. The second alternative to the proposed action would establish a trip allowance granting IFQ participants the flexibility to land red or gag for which the IFQ participant has no allocation by using allocation from the other species (i.e., red or gag). This alternative would not cap the amount of multi-use allocation and would be associated with a higher likelihood of exceeding allowable harvest levels.

Three alternatives, including no action, were considered for transfer eligibility requirements. The first alternative (no action) to the proposed action would make any U.S. citizen or permanent resident alien eligible for IFQ share or allocation transfer. Among the alternatives, this one would immediately allow the largest pool of IFQ share/allocation recipients, thereby providing the best mechanism for eliciting the highest value of an IFQ share or allocation. The difference between this alternative and the proposed action is the provision in the latter that transfers be allowed only among holders of commercial reef fish permits during the first 5 years of the IFQ program. Over the long-run, then, the two alternatives would have the same economic effects. The proposed action reflects the Council's intent to provide enough time for current fishery participants to be familiar with the nature of the IFQ system, particularly with respect to proper valuation of IFQ shares/allocations, before opening up the market to a broader pool of participants. The second alternative to the proposed action would limit transfer eligibility only to commercial reef fish permit holders. This alternative was not chosen, because it would constrain the process of valuing IFQ shares/allocations over a long time.

Three alternatives, including no action, were considered for caps on IFQ share ownership. The first alternative (no action) to the proposed action would not impose any cap on IFQ share ownership. Although this alternative offers the best environment for individual fishing operations to determine their most profitable scale of operations, this was not chosen because it also offers the highest probability for an individual fishing operation or very few fishing operations to obtain "excessive share" which the Magnuson-Stevens Act disallows. The second alternative to the proposed action would impose an IFQ share cap of 5 percent, 10 percent, or 15 percent of either the total grouper and tilefish shares or each type of species-specific shares. Part of this second alternative is the provision for grandfathering in those with initial percent shares higher than the chosen ownership cap. Although this alternative appears to balance the concern over excessive share and that of constraining the operations of the most efficient producers, this was not chosen because it would appear to impose arbitrary levels of maximum share ownership. The issue of grandfathering in those with initial share above the maximum would also limit the ability of some producers to compete in the open market against those grandfathered in. Part of the rationale for the proposed action was to achieve consistency with similar provision in the red snapper IFQ program, and this would not be achieved under the two alternatives to the proposed action. A sub-option under the proposed action which would impose a cap on total grouper and tilefish IFQ shares but not on each type of IFQ share was not chosen, because it could result in some entities obtaining excessive shares of certain species.

Three alternatives, including no action, were considered for caps on IFQ allocation ownership. The first alternative (no action) to the proposed action would not limit the amount of IFQ allocation to be owned by any entity each year. Although this alternative would provide the best economic environment relative to the holding of IFQ allocations, it would afford some entities the opportunity to circumvent the provision on IFQ share cap by entering into long-term arrangements with IFQ share/allocation holders. The second alternative to the proposed action would impose an allocation cap of an additional 1 percent, 2 percent, or 5 percent above the percent cap on IFQ share ownership. This alternative was not chosen because of the potential complication it would

add to the monitoring and enforcement of share ownership cap.

Three alternatives, including no action, were considered for adjustments in annual allocations of commercial TAC. The first alternative (no action) to the proposed action would not specify the allocation mechanism of any changes in commercial TAC. This alternative was not chosen because it would require the Council to address allocation issue every time the commercial quota is adjusted and thus would impose additional administrative costs. This could also delay the determination of each entity's allocation at the start of the fishing season which could be disruptive to the affected entity's fishing operations. The second alternative to the proposed action would allocate adjustments in the commercial quota via an auction system. This alternative was not chosen because it could complicate and thus increase the cost of allocating quota adjustments. Moreover, it could raise equity concerns if the winners were new entrants who did not share the cost of managing the fishery.

Four alternatives, including no action, were considered regarding the appeals process. The proposed action consists of two alternatives. One pertains to the establishment and structure of an appeals process and the other to the provision of a commercial quota set-aside to resolve appeals. The first alternative (no action) to the proposed action on appeals process would not provide a formal, in-house means of addressing disputes particularly regarding initial IFQ share allocation and so was not chosen by the Council. The second alternative to the proposed action on appeals process would establish a special board composed of state directors/designees who will review, evaluate, and make individual recommendations to the NMFS RA on appeals. This alternative was not chosen because it would merely add layers to the appeals process that would tend to increase the administrative costs. Besides, this alternative would mainly provide board members' advice to the RA on appeals matters. The 3-percent quota set-aside is based on a similar percent level chosen for the red snapper IFQ program that sufficiently accommodated all appeals.

Three alternatives, including no action, were considered for a cost recovery plan. The first alternative (no action) to the proposed action would not impose a cost recovery fee. This would not be consistent with provisions of the Magnuson-Stevens Act. The second alternative to the proposed action would require each IFQ

registered buyer who purchased IFQ groupers or tilefishes to submit an IFQ Buyer report either on a quarterly or annual basis. This alternative was deemed to mainly impose additional costs with relatively small economic or social benefits. Under the proposed action, several sub-options were also considered but rejected. The first of such sub-options would calculate the recovery fee based on standard, as opposed to actual, ex-vessel value. The second sub-option would impose the responsibility of collecting and remitting the fees on the IFQ shareholders. The third sub-option would require the remittance of collected fees on a monthly basis. The rationale for their rejection was that being inconsistent with corresponding provisions in the red snapper IFQ system would add complication to the cost recovery plan and add costs to both the participants and NMFS.

Three alternatives, including no action, were considered for certifying landing sites. The first alternative (no action) to the proposed action would not establish certified landing sites for IFQ programs in the commercial reef fish fisheries, thus providing no additional means to improve enforcement of the grouper and tilefish IFQ program. The second alternative to the proposed action would require that landing sites be certified by the Office of Law Enforcement in order for IFQ fishermen to use the VMS units as an option for reporting landing notifications. This was deemed unnecessary for monitoring and enforcing the grouper and tilefish IFQ program. Under the proposed action, a sub-option providing for the selection of certified landing sites by the Council and NMFS, based on industry recommendations and resource availability was not adopted. This sub-option was deemed more restrictive than the proposed action in identifying landing sites for certification purposes.

In addition to the above, Amendment 29 also explicitly considered six other issues for which the Council chose the no action alternatives. These issues are: (1) definition of "substantial participants" for the IFQ program; (2) "use it or lose it" policy for IFQ shares; (3) IFQ guaranteed loan program; (4) minimum threshold landings for the endorsement system; (5) qualifying years for the endorsement system; and, (6) incidental catch provision under the endorsement system.

Seven alternatives, including no action, were considered for the definition of substantial participants. The various alternatives would include varying entities as substantial

participants in the fishery. The first alternative (no action) would not impose an all-encompassing number of eligible entities for the transfer of IFQ shares/allocations; the second would include only commercial reef fish permit holders; the third would include commercial reef fish permit holders and reef fish captains and crew; the fourth would include commercial reef fish permit holders and permitted reef fish dealers; the fifth would include commercial reef fish permit holders, permitted reef fish dealers, and reef fish captains and crew; the sixth would include commercial reef fish permit holders considered substantial participants for purposes of the referendum; and, the seventh would include commercial reef fish permit holders, reef fish captains and crew, and others who provide services in the reef fish fishery, such as restaurant owners and fish house employees. All these alternatives, except no action, would limit the number of entities eligible for the transfer of IFQ shares and annual allocations so as to eventually affect the appropriate pricing of shares, allocations, and ultimately the fish resource.

Three alternatives, including no action, were considered for the "use it or lose it" policy for IFQ shares. The first alternative (no action) would not require any minimum landings for an IFQ share to remain valid; the second would provide for the revocation and subsequent redistribution among the remaining shareholders of IFQ share certificates that remain inactive (less than 30-percent utilization) for 3 years; the third is similar to the second, except that it defines inactivity as less than 50-percent utilization of allotted IFQ shares. All these alternatives, except no action, would tend to unduly penalize those experiencing problems with their equipment, labor, or health. Although, the alternatives, other than no action, would address permanent disability. In addition, they would mainly increase monitoring costs without necessarily providing any tangible economic or social benefits.

Three alternatives, including no action, were considered for the IFQ loan program. The first alternative (no action) would not establish a guaranteed loan program under the IFQ system; the second would set aside 15 percent of the cost recovery fees to establish a guaranteed loan program; and, the third would set aside 25 percent of the cost recovery fees to establish a guaranteed loan program. Establishing a guaranteed loan program under the second or third alternative would use up part of the cost recovery fees as well as divert NMFS

resources that could otherwise be devoted to effectively administer the grouper and tilefish IFQ program.

Three sets of alternatives were considered for the endorsement system. Three alternatives, including no action, were considered for minimum threshold landings for endorsements; three alternatives, including no action, were considered for qualifying years for endorsement eligibility; and, three alternatives, including no action, were considered for incidental catch provision under the endorsement system. Opting for the no action alternatives follows from the Council's decision to reject the endorsement system as an effort management approach in favor of the IFQ program.

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 Office of Management and Budget (OMB) control number.

This proposed rule contains collection-of-information requirements subject to the PRA. The collections and the associated estimated average public reporting burden per response are provided in the following table.

| COLLECTION REQUIREMENT         | ESTIMATED BURDEN PER RESPONSE |
|--------------------------------|-------------------------------|
| Dealer Account Activation      | 5 minutes                     |
| Dealer Transaction Report      | 7 minutes                     |
| Shareholder Account Activation | 5 minutes                     |
| Fisherman Account Activation   | 10 minutes                    |
| Active Vessels Report          | 10 minutes                    |
| Approval of Landing Location   | 5 minutes                     |
| Notification of Landing Time   | 3 minutes                     |
| Transfer of Share              | 15 minutes                    |
| Transfer of Allocation         | 5 minutes                     |
| Permit Consolidation           | 10 minutes                    |

These requirements have been submitted to OMB for approval. These estimates of the public reporting burden includes the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and

reviewing the collections of information.

Public comment is sought regarding: whether these proposed collections of information are necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; the accuracy of the burden estimates; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information, including through the use of automated collection techniques or other forms of information technology. Send comments regarding the burden estimates or any other aspect of the collection-of-information requirements, including suggestions for reducing the burden, to NMFS and to OMB (see ADDRESSES).

**List of Subjects in 50 CFR Part 622**

Fisheries, Fishing, Puerto Rico, Reporting and recordkeeping requirements, Virgin Islands.

Dated: April 21, 2009.

**John Oliver,**

Deputy Assistant Administrator for Operations, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 622 is proposed to be amended as follows:

**PART 622—FISHERIES OF THE CARIBBEAN, GULF, AND SOUTH ATLANTIC**

1. The authority citation for part 622 continues to read as follows:

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

2. In § 622.1, paragraph (b), Table 1, the entry for FMP for the Reef Fish Resources of the Gulf of Mexico, and footnote 5 are revised, and footnote 6 is added to read as follows:

**§ 622.1 Purpose and scope.**

\* \* \* \* \*

(b) \* \* \*

**TABLE 1—FMPs IMPLEMENTED UNDER PART 622**

| FMP title  | Responsible fishery management council(s) | Geographical area      |
|--|---|------------------------|
| * * *  | * *                                       | *                      |
| FMP for the Reef Fish Resources of the Gulf of Mexico. | GMFMC                                     | Gulf. <sup>1,5,6</sup> |

**TABLE 1—FMPs IMPLEMENTED UNDER PART 622—Continued**

| FMP title | Responsible fishery management council(s) | Geographical area |
|-----------|---|-------------------|
| * * *     | * *                                       | *                 |

<sup>1</sup>Regulated area includes adjoining state waters for purposes of data collection and quota monitoring.  
\* \* \*

<sup>5</sup>Regulated area includes adjoining state waters for Gulf red snapper harvested or possessed by a person aboard a vessel for which a Gulf red snapper IFQ vessel account has been established or possessed by a dealer with a Gulf IFQ dealer endorsement.

<sup>6</sup>Regulated area includes adjoining state waters for Gulf groupers and tilefishes harvested or possessed by a person aboard a vessel for which an IFQ vessel account for Gulf groupers and tilefishes has been established or possessed by a dealer with a Gulf IFQ dealer endorsement.

3. In § 622.2, the definitions of “Deep-water groupers (DWG)” and “Shallow-water groupers (SWG)” are added to read as follows:

**§ 622.2 Definitions and acronyms.**

\* \* \* \* \*

*Deep-water groupers (DWG)* means yellowedge grouper, misty grouper, warsaw grouper, snowy grouper, and speckled hind. In addition, for the purposes of the IFQ program for Gulf groupers and tilefishes in § 622.20, scamp are also included as DWG as specified in § 622.20(b)(2)(vi).  
\* \* \* \* \*

*Shallow-water groupers (SWG)* means gag, red grouper, black grouper, scamp, yellowfin grouper, rock hind, red hind, and yellowmouth grouper. In addition, for the purposes of the IFQ program for Gulf groupers and tilefishes in § 622.20, speckled hind and warsaw grouper are also included as SWG as specified in § 622.20(b)(2)(v).  
\* \* \* \* \*

4. In § 622.4, paragraphs (a)(2)(v), (a)(2)(ix), and (a)(4)(ii) are revised, and a new sentence is added after the third sentence in paragraph (i) to read as follows:

**§ 622.4 Permits and fees.**

\* \* \* \* \*

(a) \* \* \*

(2) \* \* \*

(v) *Gulf reef fish.* For a person aboard a vessel to be eligible for exemption from the bag limits, to fish under a quota, as specified in § 622.42(a)(1), or to sell Gulf reef fish in or from the Gulf EEZ, a commercial vessel permit for Gulf reef fish must have been issued to

the vessel and must be on board. If Federal regulations for Gulf reef fish in subparts A, B, or C of this part are more restrictive than state regulations, a person aboard a vessel for which a commercial vessel permit for Gulf reef fish has been issued must comply with such Federal regulations regardless of where the fish are harvested. See paragraph (a)(2)(ix) of this section regarding an IFQ vessel account required to fish for, possess, or land Gulf red snapper or Gulf groupers and tilefishes. To obtain or renew a commercial vessel permit for Gulf reef fish, more than 50 percent of the applicant’s earned income must have been derived from commercial fishing (i.e., harvest and first sale of fish) or from charter fishing during either of the 2 calendar years preceding the application. See paragraph (m) of this section regarding a limited access system for commercial vessel permits for Gulf reef fish and limited exceptions to the earned income requirement for a permit.

(A) *Option to consolidate commercial vessel permits for Gulf reef fish.* A person who has been issued multiple commercial vessel permits for Gulf reef fish and wants to consolidate some or all of those permits, and the landings histories associated with those permits, into one permit must submit a completed permit consolidation application to the RA. The permits consolidated must be valid, non-expired permits and must be issued to the same entity. The application form and instructions are available online at [sero.nmfs.noaa.gov](http://sero.nmfs.noaa.gov). After consolidation, such a person would have a single permit, and the permits that were consolidated into that permit will be permanently terminated.

(B) [Reserved]

\* \* \* \* \*

(ix) *Gulf IFQ vessel accounts.* For a person aboard a vessel, for which a commercial vessel permit for Gulf reef fish has been issued, to fish for, possess, or land Gulf red snapper or Gulf groupers (including DWG and SWG, as specified in § 622.20(a)) or tilefishes (including goldface tilefish, blackline tilefish, anchor tilefish, blueline tilefish, and tilefish), regardless of where harvested or possessed, a Gulf IFQ vessel account for the applicable species or species groups must have been established. As a condition of the IFQ vessel account, a person aboard such vessel must comply with the requirements of § 622.16 when fishing for red snapper or § 622.20 when fishing for groupers or tilefishes regardless of where the fish are harvested or

possessed. An owner of a vessel with a commercial vessel permit for Gulf reef fish, who has established an IFQ account for the applicable species, as specified in § 622.16(a)(3)(i) or § 622.20(a)(3)(i), online via the NMFS IFQ website *ifq.seo.nmfs.noaa.gov*, may establish a vessel account through that IFQ account for that permitted vessel. If such owner does not have an online IFQ account, the owner must first contact IFQ Customer Service at 1-866-425-7627 to obtain information necessary to access the IFQ website and establish an online IFQ account. There is no fee to set-up an IFQ account or a vessel account. Only one vessel account may be established per vessel under each IFQ program. An owner with multiple vessels may establish multiple vessel accounts under each IFQ account. The purpose of the vessel account is to hold IFQ allocation that is required to land the applicable IFQ species. A vessel account must hold sufficient IFQ allocation in the appropriate share category, at least equal to the pounds in gummy weight of the red snapper or groupers and tilefishes on board, from the time of advance notice of landing through landing (except for any overage allowed as specified in § 622.16(c)(1)(ii) for red snapper and § 622.20(c)(1)(ii) for groupers and tilefishes). The vessel account remains valid as long as the vessel permit remains valid; the vessel has not been sold or transferred; and the vessel owner is in compliance with all Gulf reef fish and IFQ reporting requirements, has paid all applicable IFQ fees, and is not subject to sanctions under 15 CFR part 904. The vessel account is not transferable to another vessel. The provisions of this paragraph do not apply to fishing for or possession of Gulf groupers and tilefishes under the bag limit specified in § 622.39 (b)(1)(ii) or Gulf red snapper under the bag limit specified in § 622.39 (b)(1)(iii). See § 622.16 regarding other provisions pertinent to the Gulf red snapper IFQ system and § 622.20 regarding other provisions pertinent to the IFQ system for Gulf groupers and tilefishes.

\* \* \* \* \*

(4) \* \* \*

(ii) *Gulf IFQ dealer endorsements.* In addition to the requirement for a dealer permit for Gulf reef fish as specified in paragraph (a)(4)(i) of this section, for a dealer to receive red snapper subject to the Gulf red snapper IFQ program, as specified in § 622.16(a)(1), or groupers and tilefishes subject to the IFQ program for Gulf groupers and tilefishes, as specified in § 622.20(a)(1), or for a person aboard a vessel with a Gulf IFQ vessel account to sell such red snapper

or groupers and tilefishes directly to an entity other than a dealer, such persons must also have a Gulf IFQ dealer endorsement. A dealer with a Gulf reef fish permit can download a Gulf IFQ dealer endorsement from the NMFS IFQ website at *ifq.seo.nmfs.noaa.gov*. If such persons do not have an IFQ online account, they must first contact IFQ Customer Service at 1-866-425-7627 to obtain information necessary to access the IFQ website and establish an IFQ online account. There is no fee for obtaining this endorsement. The endorsement remains valid as long as the Gulf reef fish dealer permit remains valid and the dealer is in compliance with all Gulf reef fish and IFQ reporting requirements, has paid all IFQ fees required under paragraph (c)(2) of this section, and is not subject to any sanctions under 15 CFR part 904. The endorsement is not transferable. See § 622.16 regarding other provisions pertinent to the Gulf red snapper IFQ system and § 622.20 regarding other provisions pertinent to the IFQ system for Gulf groupers and tilefishes.

\* \* \* \* \*

(i) *Display.* \* \* \* A Gulf IFQ dealer endorsement must accompany each vehicle that is used to pick up Gulf IFQ red snapper and/or Gulf IFQ groupers and tilefishes. \* \* \*

\* \* \* \* \*

5. In § 622.7, paragraphs (gg) and (hh) are revised to read as follows:

**§ 622.7 Prohibitions.**

\* \* \* \* \*

(gg) Fail to comply with any provision related to the Gulf red snapper IFQ program as specified in § 622.16, or the IFQ program for Gulf groupers and tilefishes as specified in § 622.20.

(hh) Falsify any information required to be submitted regarding the Gulf red snapper IFQ program as specified in § 622.16, or the IFQ program for Gulf groupers and tilefishes as specified in § 622.20.

\* \* \* \* \*

6. In § 622.16, revise the fifth and sixth sentences in the introductory text of paragraph (a), and revise paragraphs (a)(1) and (c) to read as follows:

**§ 622.16 Gulf red snapper individual fishing quota (IFQ) program.**

(a) \* \* \* See § 622.4(a)(2)(ix) regarding a requirement for a vessel landing red snapper subject to this IFQ program to have a Gulf red snapper IFQ vessel account. See § 622.4(a)(4)(ii) regarding a requirement for a Gulf IFQ dealer endorsement. \* \* \*

(1) *Scope.* The provisions of this section apply to Gulf red snapper in or from the Gulf EEZ and, for a person

aboard a vessel with a Gulf red snapper IFQ vessel account as required by § 622.4(a)(2)(ix) or for a person with a Gulf IFQ dealer endorsement as required by § 622.4(a)(4)(ii), these provisions apply to Gulf red snapper regardless of where harvested or possessed.

\* \* \* \* \*

**(c) IFQ operations and requirements—**

(1) *IFQ Landing and transaction requirements.* (i) Gulf red snapper subject to this IFQ program can only be possessed or landed by a vessel with a Gulf red snapper IFQ vessel account with allocation at least equal to the pounds of red snapper on board, except as provided in paragraph (c)(1)(ii) of this section. Such red snapper can only be received by a dealer with a Gulf IFQ dealer endorsement.

(ii) A person on board a vessel with an IFQ vessel account landing the shareholder's only remaining allocation, can legally exceed, by up to 10 percent, the shareholder's allocation remaining on that last fishing trip of the fishing year, i.e., a one-time per fishing year overage. Any such overage will be deducted from the shareholder's applicable allocation for the subsequent fishing year. From the time of the overage until January 1 of the subsequent fishing year, the IFQ shareholder must retain sufficient shares to account for the allocation that will be deducted the subsequent fishing year. Share transfers that would violate this requirement will be prohibited.

(iii) The dealer is responsible for completing a landing transaction report for each landing and sale of Gulf red snapper via the IFQ website at *ifq.seo.nmfs.noaa.gov* at the time of the transaction in accordance with reporting form and instructions provided on the website. This report includes, but is not limited to, date, time, and location of transaction; weight and actual ex-vessel value of red snapper landed and sold; and information necessary to identify the fisherman, vessel, and dealer involved in the transaction. The fisherman must validate the dealer transaction report by entering his unique PIN number when the transaction report is submitted. After the dealer submits the report and the information has been verified, the website will send a transaction approval code to the dealer and the allocation holder.

(iv) If there is a discrepancy regarding the landing transaction report after approval, the dealer or vessel account holder (or his or her authorized agent) may initiate a landing transaction correction form to correct the landing

transaction. This form is available via the IFQ website at [ifq.sero.nmfs.noaa.gov](http://ifq.sero.nmfs.noaa.gov). Both parties must validate the landing correction form by entering their respective PIN numbers, i.e. vessel account PIN or dealer account PIN. The dealer must then print out the form, both parties must sign it, and the form must be mailed to NMFS. The form must be received by NMFS no later than 15 days after the date of the initial landing transaction.

(2) *IFQ cost recovery fees.* As required by section 304(d)(2)(A)(i) of the Magnuson-Stevens Act, the RA will collect a fee to recover the actual costs directly related to the management and enforcement of the Gulf red snapper IFQ program. The fee cannot exceed 3 percent of the ex-vessel value of Gulf red snapper landed under the IFQ program. Such fees will be deposited in the Limited Access System Administration Fund (LASAF). Initially, the fee will be 3 percent of the actual ex-vessel value of Gulf red snapper landed under the IFQ program, as documented in each landings transaction report. The RA will review the cost recovery fee annually to determine if adjustment is warranted. Factors considered in the review include the catch subject to the IFQ cost recovery, projected ex-vessel value of the catch, costs directly related to the management and enforcement of the IFQ program, the projected IFQ balance in the LASAF, and expected non-payment of fee liabilities. If the RA determines that a fee adjustment is warranted, the RA will publish a notification of the fee adjustment in the **Federal Register**.

(i) *Payment responsibility.* The IFQ allocation holder specified in the documented red snapper IFQ landing transaction report is responsible for payment of the applicable cost recovery fees.

(ii) *Collection and submission responsibility.* A dealer who receives Gulf red snapper subject to the IFQ program is responsible for collecting the applicable cost recovery fee for each IFQ landing from the IFQ allocation holder specified in the IFQ landing transaction report. Such dealer is responsible for submitting all applicable cost recovery fees to NMFS on a quarterly basis. The fees are due and must be submitted, using [pay.gov](http://pay.gov) via the IFQ system at the end of each calendar-year quarter, but no later than 30 days after the end of each calendar-year quarter. Fees not received by the deadline are delinquent.

(iii) *Fee payment procedure.* For each IFQ dealer, the IFQ system will post, on individual message boards, an end-of-

quarter statement of cost recovery fees that are due. The dealer is responsible for submitting the cost recovery fee payments using [pay.gov](http://pay.gov) via the IFQ system. Authorized payments methods are credit card, debit card, or automated clearing house (ACH). Payment by check will be authorized only if the RA has determined that the geographical area or an individual(s) is affected by catastrophic conditions.

(iv) *Fee reconciliation process—delinquent fees.* The following procedures apply to an IFQ dealer whose cost recovery fees are delinquent.

(A) On or about the 31st day after the end of each calendar-year quarter, the RA will send the dealer an electronic message via the IFQ website and official notice via mail indicating the applicable fees are delinquent, and the dealer's IFQ account has been suspended pending payment of the applicable fees.

(B) On or about the 91st day after the end of each calendar-year quarter, the RA will refer any delinquent IFQ dealer cost recovery fees to the appropriate authorities for collection of payment.

(3) *Measures to enhance IFQ program enforceability—(i) Advance notice of landing.* For the purpose of this paragraph, landing means to arrive at a dock, berth, beach, seawall, or ramp. The owner or operator of a vessel landing IFQ red snapper is responsible for ensuring that NMFS is contacted at least 3 hours, but no more than 12 hours, in advance of landing to report the time and location of landing, estimated red snapper landings in pounds gutted weight, vessel identification number (Coast Guard registration number or state registration number), and the name and address of the IFQ dealer where the red snapper are to be received. The vessel landing red snapper must have sufficient IFQ allocation in the IFQ vessel account, at least equal to the pounds in gutted weight of red snapper on board (except for any overage up to the 10 percent allowed on the last fishing trip) from the time of the advance notice of landing through landing. Authorized methods for contacting NMFS and submitting the report include calling NMFS Office for Law Enforcement at 1-866-425-7627, completing and submitting to NMFS the notification form provided through the VMS unit, or providing the required information to NMFS through the web-based form available on the IFQ website at [ifq.sero.nmfs.noaa.gov](http://ifq.sero.nmfs.noaa.gov). As new technology becomes available, NMFS will add other authorized methods for complying with the advance notification requirement, via appropriate rulemaking. Failure to comply with this advance notice of landing requirement

is unlawful and will preclude authorization to complete the landing transaction report required in paragraph (c)(1)(iii) of this section and, thus, will preclude issuance of the required transaction approval code.

(ii) *Time restriction on offloading.* IFQ red snapper may be offloaded only between 6 a.m. and 6 p.m., local time.

(iii) *Restrictions on transfer of IFQ red snapper.* At-sea or dockside transfer of IFQ red snapper from one vessel to another vessel is prohibited.

(iv) *Requirement for transaction approval code.* If IFQ red snapper are offloaded to a vehicle for transportation to a dealer or are on a vessel that is trailered for transport to a dealer, on-site capability to accurately weigh the fish and to connect electronically to the online IFQ system to complete the transaction and obtain the transaction approval code is required. After a landing transaction has been completed, a transaction approval code verifying a legal transaction of the amount of IFQ red snapper in possession and a copy of the dealer endorsement must accompany any IFQ red snapper from the landing location through possession by a dealer. This requirement also applies to IFQ red snapper possessed on a vessel that is trailered for transport to a dealer.

(v) *Approved landing locations.* Landing locations must be approved by NMFS Office for Law Enforcement prior to landing or offloading at these sites. Proposed landing locations may be submitted online via the IFQ website at [ifq.sero.nmfs.noaa.gov](http://ifq.sero.nmfs.noaa.gov), or by calling IFQ Customer Service at 1-866-425-7627, at any time, however, new landing locations will be approved only at the end of each calendar-year quarter. To have a landing location approved by the end of the calendar-year quarter, it must be submitted at least 45 days before the end of the calendar-year quarter. NMFS will evaluate the proposed sites based on, but not limited to, the following criteria:

(A) Landing locations must be publicly accessible by land and water, and

(B) They must have a street address. If there is no street address on record for a particular landing location, global positioning system (GPS) coordinates for an identifiable geographic location must be provided.

(4) Transfer of IFQ shares and allocation. Until January 1, 2012, IFQ shares and allocations can be transferred only to a person who holds a valid commercial vessel permit for Gulf reef fish; thereafter, IFQ shares and allocations can be transferred to any U.S. citizen or permanent resident alien.

However, a valid commercial permit for Gulf reef fish, a Gulf red snapper IFQ vessel account, and Gulf red snapper IFQ allocation are required to possess (at and after the time of the advance notice of landing), land or sell Gulf red snapper subject to this IFQ program.

(i) *Share transfers.* Share transfers are permanent, i.e., they remain in effect until subsequently transferred. Transfer of shares will result in the corresponding allocation being automatically transferred to the person receiving the transferred share beginning with the fishing year following the year the transfer occurred. However, within the fishing year the share transfer occurs, transfer of shares and associated allocation are independent—unless the associated allocation is transferred separately, it remains with the transferor for the duration of that fishing year. A share transfer transaction that remains in pending status, i.e., has not been completed and verified with a transaction approval code, after 30 days from the date the shareholder initiated the transfer will be cancelled, and the pending shares will be re-credited to the shareholder who initiated the transfer.

(ii) *Share transfer procedures.* Share transfers must be accomplished online via the IFQ website. An IFQ shareholder must initiate a share transfer request by logging onto the IFQ website at [ifq.sero.nmfs.noaa.gov](http://ifq.sero.nmfs.noaa.gov). Following the instructions provided on the website, the shareholder must enter pertinent information regarding the transfer request including, but not limited to, amount of shares to be transferred, which must be a minimum of 0.0001 percent; name of the eligible transferee; and the value of the transferred shares. An IFQ shareholder who is subject to a sanction under 15 CFR part 904 is prohibited from initiating a share transfer. An IFQ shareholder who is subject to a pending sanction under 15 CFR part 904 must disclose in writing to the prospective transferee the existence of any pending sanction at the time of the transfer. For the first 5 years this IFQ program is in effect, an eligible transferee is a person who has a valid commercial vessel permit for Gulf reef fish; is in compliance with all reporting requirements for the Gulf reef fish fishery and the red snapper IFQ program; is not subject to sanctions under 15 CFR part 904; and who would not be in violation of the share cap as specified in paragraph (c)(6) of this section. Thereafter, share transferee eligibility will be extended to include U.S. citizens and permanent resident aliens who are otherwise in compliance with the provisions of this section. The

online system will verify the transfer information entered. If the information is not accepted, the online system will send the shareholder an electronic message explaining the reason(s) why the transfer request can not be completed. If the information is accepted, the online system will send the transferee an electronic message of the pending transfer. The transferee must approve the share transfer by electronic signature. If the transferee approves the share transfer, the online system will send a transaction approval code to both the transferor and transferee confirming the transaction. All share transfers must be completed and the transaction approval code received prior to December 31 at 6 p.m. eastern time each year.

(iii) *Allocation transfers.* An allocation transfer is valid only for the remainder of the fishing year in which it occurs; it does not carry over to the subsequent fishing year. Any allocation that is unused at the end of the fishing year is void. Allocation may be transferred to a vessel account from any IFQ account. Allocation held in a vessel account, however, may only be transferred back to the IFQ account through which the vessel account was established.

(iv) *Allocation transfer procedures.* Allocation transfers must be accomplished online via the IFQ website. An IFQ account holder must initiate an allocation transfer by logging onto the IFQ website at [ifq.sero.nmfs.noaa.gov](http://ifq.sero.nmfs.noaa.gov), entering the required information, including but not limited to, name of an eligible transferee and amount of IFQ allocation to be transferred and price, and submitting the transfer electronically. An IFQ allocation holder who is subject to a sanction under 15 CFR part 904 is prohibited from initiating an allocation transfer. An IFQ allocation holder who is subject to a pending sanction under 15 CFR part 904 must disclose in writing to the prospective transferee the existence of any pending sanction at the time of the transfer. If the transfer is approved, the online system will provide a transaction approval code to the transferor and transferee confirming the transaction.

(5) *Restricted transactions during the 12-hour online maintenance window.* All electronic IFQ transactions must be completed by December 31 at 6 p.m. eastern time each year. Electronic IFQ functions will resume again on January 1 at 6 a.m. eastern time the following fishing year. The remaining 6 hours prior to the end of the fishing year, and the 6 hours at the beginning of the next fishing year, are necessary to provide

NMFS time to reconcile IFQ accounts, adjust allocations for the upcoming year if the commercial quotas for Gulf red snapper have changed, and update shares and allocations for the upcoming fishing year. No electronic IFQ transactions will be available during these 12 hours. An advance notice of landing may still be submitted during the 12-hour maintenance window by calling IFQ Customer Service at 1-866-425-7627.

(6) *IFQ share cap.* No person, including a corporation or other entity, may individually or collectively hold IFQ shares in excess of 6.0203 percent of the total shares. For the purposes of considering the share cap, a corporation's total IFQ share is determined by adding the applicable IFQ shares held by the corporation and any other IFQ shares held by a corporation(s) owned by the original corporation prorated based on the level of ownership. An individual's total IFQ share is determined by adding the applicable IFQ shares held by the individual and the applicable IFQ shares equivalent to the corporate share the individual holds in a corporation. Initially, a corporation must provide the RA the identity of the shareholders of the corporation and their percent of shares in the corporation, and provide updated information to the RA within 30 days of when changes occur. This information must also be provided to the RA any time a commercial vessel permit for Gulf reef fish is renewed or transferred.

(7) *Redistribution of shares resulting from permanent permit or endorsement revocation.* If a shareholder's commercial vessel permit for Gulf reef fish has been permanently revoked under provisions of 15 CFR part 904, the RA will redistribute the IFQ shares held by that shareholder proportionately among remaining shareholders (subject to cap restrictions) based upon the amount of shares each held just prior to the redistribution. During December of each year, the RA will determine the amount of revoked shares, if any, to be redistributed, and the shares will be distributed at the beginning of the subsequent fishing year.

(8) *Annual recalculation and notification of IFQ shares and allocation.* On or about January 1 each year, IFQ shareholders will be notified, via the IFQ website at [ifq.sero.nmfs.noaa.gov](http://ifq.sero.nmfs.noaa.gov), of their IFQ share and allocation for the upcoming fishing year. These updated share values will reflect the results of applicable share transfers and any redistribution of shares (subject to cap restrictions) resulting from permanent revocation of



applicable permits under 15 CFR part 904. Allocation is calculated by multiplying IFQ share times the annual red snapper commercial quota. Updated allocation values will reflect any change in IFQ share, any change in the annual commercial quota for Gulf red snapper, and any debits required as a result of prior fishing year overages as specified in paragraph (c)(1)(ii) of this section. IFQ participants can monitor the status of their shares and allocation throughout the year via the IFQ website.

7. Section 622.20 is added to subpart B to read as follows:

**§ 622.20 Individual fishing quota (IFQ) program for Gulf groupers and tilefishes.**

(a) *General.* This section establishes an IFQ program for the commercial components of the Gulf reef fish fishery for groupers (including DWG, red grouper, gag, and other SWG) and tilefishes (including goldface tilefish, blackline tilefish, anchor tilefish, blue-line tilefish, and tilefish). For the purposes of this IFQ program, DWG includes yellowedge grouper, misty grouper, warsaw grouper, snowy grouper, and speckled hind, and scamp, but only as specified in paragraph (b)(2)(vi) of this section. For the purposes of this IFQ program, other SWG includes black grouper, scamp, yellowfin grouper, rock hind, red hind, and yellowmouth grouper, and warsaw grouper and speckled hind, but only as specified in paragraph (b)(2)(v) of this section. Under the IFQ program, the RA initially will assign eligible participants IFQ shares, in five share categories. These IFQ shares are equivalent to a percentage of the annual commercial quotas for DWG, red grouper, gag, and tilefishes, and the annual commercial catch allowance (meaning the SWG quota minus gag and red grouper) for other SWG species, based on their applicable historical landings. Shares determine the amount of IFQ allocation for Gulf groupers and tilefishes, in pounds gutted weight, a shareholder is initially authorized to possess, land, or sell in a given calendar year. Shares and annual IFQ allocation are transferable. See § 622.4(a)(2)(ix) regarding a requirement for a vessel landing groupers or tilefishes subject to this IFQ program to have an IFQ vessel account for Gulf groupers and tilefishes. See § 622.4(a)(4)(ii) regarding a requirement for a Gulf IFQ dealer endorsement. Details regarding eligibility, applicable landings history, account setup and transaction requirements, constraints on transferability, and other provisions of this IFQ system are provided in the following paragraphs of this section.

(1) *Scope.* The provisions of this section apply to Gulf groupers and tilefishes in or from the Gulf EEZ and, for a person aboard a vessel with an IFQ vessel account for Gulf groupers and tilefishes as required by § 622.4(a)(2)(ix) or for a person with a Gulf IFQ dealer endorsement as required by § 622.4(a)(4)(ii), these provisions apply to Gulf groupers and tilefishes regardless of where harvested or possessed.

(2) *Duration.* The IFQ program established by this section will remain in effect until it is modified or terminated; however, the program will be evaluated by the Gulf of Mexico Fishery Management Council every 5 years.

(3) *Electronic system requirements.* (i) The administrative functions associated with this IFQ program, e.g., registration and account setup, landing transactions, and transfers, are designed to be accomplished online; therefore, a participant must have access to a computer and Internet access and must set up an appropriate IFQ online account to participate. The computer must have browser software installed, e.g. Internet Explorer, Netscape, Mozilla Firefox; as well as the software Adobe Flash Player version 9.0 or greater, which may be downloaded from the Internet for free. Assistance with online functions is available from IFQ Customer Service by calling 1-866-425-7627 Monday through Friday between 8 a.m. and 4:30 p.m. eastern time.

(ii) The RA will mail initial shareholders and dealers with Gulf reef fish dealer permits information and instructions pertinent to setting up an IFQ online account. Other eligible persons who desire to become IFQ participants by purchasing IFQ shares or allocation or by obtaining a Gulf IFQ dealer endorsement must first contact IFQ Customer Service at 1-866-425-7627 to obtain information necessary to set up the required IFQ online account. Each IFQ participant must monitor his/her online account and all associated messages and comply with all IFQ online reporting requirements.

(iii) During catastrophic conditions only, the IFQ program provides for use of paper-based components for basic required functions as a backup. The RA will determine when catastrophic conditions exist, the duration of the catastrophic conditions, and which participants or geographic areas are deemed affected by the catastrophic conditions. The RA will provide timely notice to affected participants via publication of notification in the **Federal Register**, NOAA weather radio, fishery bulletins, and other appropriate

means and will authorize the affected participants' use of paper-based components for the duration of the catastrophic conditions. NMFS will provide each IFQ dealer the necessary paper forms, sequentially coded, and instructions for submission of the forms to the RA. The paper forms will also be available from the RA. The program functions available to participants or geographic areas deemed affected by catastrophic conditions will be limited under the paper-based system. There will be no mechanism for transfers of IFQ shares or allocation under the paper-based system in effect during catastrophic conditions. Assistance in complying with the requirements of the paper-based system will be available via IFQ Customer Service 1-866-425-7627 Monday through Friday between 8 a.m. and 4:30 p.m. eastern time.

(b) *Procedures for initial implementation—(1) Determination of eligibility for initial IFQ shares.* To be eligible as an initial IFQ shareholder a person must possess a valid commercial Gulf reef fish permit as of October 1, 2009. NMFS' permit records are the sole basis for determining eligibility for the IFQ program for Gulf groupers and tilefishes based on permit history. No more than one initial eligibility will be granted based upon a given commercial vessel permit for Gulf reef fish.

(2) *Calculation of initial IFQ shares and allocation—(i) IFQ shares.* The RA will calculate initial IFQ shares based on the highest average annual landings of Gulf groupers and tilefishes, in each of five share categories, associated with each shareholder's current commercial vessel permit for Gulf reef fish during the applicable landings history. The five share categories are gag, red grouper, DWG, other SWG, and tilefishes. The applicable landings history for reef fish permit holders with grouper or tilefish landings includes landings data from 1999 through 2004 with the allowance for dropping one year. All grouper and tilefish landings associated with a current reef fish permit for the applicable landings history, including those reported by a person(s) who held the license prior to the current license owner, will be attributed to the current license owner. Only legal landings reported in compliance with applicable state and Federal regulations will be accepted. For each share category, each shareholder's initial share is derived by dividing the shareholder's highest average annual landings during the applicable landings history by the sum of the highest average annual landings of all shareholders during the respective applicable landings histories. Initial shares distributed in the gag share

category and the other SWG share category will be based on landings that have been adjusted for gag and/or black grouper misidentification. Initial IFQ shares will not be issued in units less than the percentage equivalent to 1.0 lb (0.45 kg) of the grouper or tilefish species, in each share category, based on that share category's quota or catch allowance.

(ii) *Initial share set-aside to accommodate resolution of appeals.* During the first year of implementation of this IFQ program only, for each share category, the RA will reserve a 3-percent IFQ share prior to the initial distribution of shares, to accommodate resolution of appeals, if necessary. Any portion of the 3-percent share set-aside for each share category remaining after the appeals process is completed will be distributed as soon as possible among initial shareholders in direct proportion to the percentage share each was initially allocated. If resolution of appeals requires more than a 3-percent share set-aside for a share category, the shares of all initial shareholders, for that share category, would be reduced accordingly in direct proportion to the percentage share each was initially allocated.

(iii) *IFQ allocation.* IFQ allocation is the amount of Gulf groupers and tilefishes, in pounds gutted weight, an IFQ shareholder or allocation holder is authorized to possess, land, or sell during a given fishing year. IFQ allocation for the five respective share categories is derived at the beginning of each year by multiplying a shareholder's IFQ share times the annual commercial quota for gag, red grouper, DWG, and tilefishes; and times the annual commercial catch allowance for other SWG.

(iv) *Red grouper and gag multi-use allocation—(A) Red grouper multi-use allocation.* At the beginning of each fishing year, 4 percent of each shareholder's initial red grouper allocation will be converted to red grouper multi-use allocation. Red grouper multi-use allocation may be used to possess, land, or sell either red grouper or gag under certain conditions. Red grouper multi-use allocation may be used to possess, land, or sell red grouper only after an IFQ account holder's (shareholder or allocation holder's) red grouper allocation has been landed and sold, or transferred; and to possess, land, or sell gag, only after both gag and gag multi-use allocation have been landed and sold, or transferred.

(B) *Gag multi-use allocation.* At the beginning of each fishing year, 8 percent of each shareholder's initial gag allocation will be converted to gag

multi-use allocation. Gag multi-use allocation may be used to possess, land, or sell either gag or red grouper under certain conditions. Gag multi-use allocation may be used to possess, land, or sell gag only after an IFQ account holder's gag allocation has been landed and sold, or transferred; and possess, land or sell red grouper, only after both red grouper and red grouper multi-use allocation have been landed and sold, or transferred. Multi-use allocation transfer procedures and restrictions are specified in paragraph (c)(4)(iv) of this section.

(v) *Warsaw grouper and speckled hind classification.* Warsaw grouper and speckled hind are considered DWG species and under certain circumstances SWG species. For the purposes of the IFQ program for Gulf groupers and tilefishes, once all of an IFQ account holder's DWG allocation has been landed and sold, or transferred, or if an IFQ account holder has no DWG allocation, then other SWG allocation may be used to land and sell warsaw grouper and speckled hind.

(vi) *Scamp classification.* Scamp is considered a SWG species and under certain circumstances a DWG. For the purposes of the IFQ program for Gulf groupers and tilefishes, once all of an IFQ account holder's other SWG allocation has been landed and sold, or transferred, or if an IFQ account holder has no SWG allocation, then DWG allocation may be used to land and sell scamp.

(3) *Shareholder notification regarding landings history, initial determination of IFQ shares and allocations, and IFQ account setup information.* (i) On or about October 1, 2009, the RA will mail each Gulf reef fish commercial vessel permittee with grouper and tilefish landings history during the qualifying years, information pertinent to the IFQ program. This information will include—

(A) Gulf grouper and tilefish landings associated with the Gulf reef fish commercial vessel permit during each year of the applicable landings history;

(B) The highest average annual grouper and tilefish landings, in each of the five share categories, based on the permittee's best 5 out of 6 years of applicable landings history;

(C) The permittee's initial IFQ share, in each of the five share categories, based on the highest average annual landings associated with the permittee's best 5 out of 6 years of applicable landings history;

(D) The initial IFQ allocation, in each of the five share categories, as well as their total IFQ allocation;

(E) Instructions for appeals;

(F) General instructions regarding procedures related to the IFQ online system, including how to set up an online account; and

(G) A user identification number; and a personal identification number (PIN) that will be provided in a subsequent letter.

(ii) The RA will provide this information, via certified mail return receipt requested, to the permittee's address of record as listed in NMFS' permit files. A permittee who does not receive such notification from the RA, must contact the RA by November 1, 2009, to clarify eligibility status and landings and initial share information.

(iii) The initial share information provided by the RA is based on the highest average annual landings during the best 5 out of 6 years associated with the permittee's applicable landings history for each share category; however, a permittee may select to exclude a different year of landings history than was chosen, consistent with the permittee's applicable landings history, for the calculation of the initial IFQ share. The permittee must submit that information to the RA postmarked no later than December 1, 2009. If alternative years, consistent with the applicable landings history, are selected, revised information regarding shares and allocations will be posted on the online IFQ accounts no later than January 1, 2010. A permittee who disagrees with the landings or eligibility information provided by the RA may appeal the RA's initial determinations.

(4) *Procedure for appealing IFQ eligibility and/or landings information.* The only items subject to appeal under this IFQ system are initial eligibility for IFQ shares based on ownership of a reef fish permit, the accuracy of the amount of landings, correct assignment of landings to the permittee, and correct assignment of gag versus black grouper landings. Appeals based on hardship factors will not be considered. Appeals must be submitted to the RA postmarked no later than April 1, 2010, and must contain documentation supporting the basis for the appeal. The RA will review all appeals, render final decisions on the appeals, and advise the appellant of the final decision.

(i) *Eligibility appeals.* NMFS' records of reef fish permits are the sole basis for determining ownership of such permits. A person who believes he/she meets the permit eligibility criteria based on ownership of a vessel under a different name, as may have occurred when ownership has changed from individual to corporate or vice versa, must document his/her continuity of ownership.

(ii) *Landings appeals.* Appeals regarding landings data for 1999 through 2004 will be based on NMFS' logbook records. If NMFS' logbooks are not available, the RA may use state landings records or data that were submitted in compliance with applicable Federal and state regulations, on or before December 31, 2006.

(5) *Dealer notification and IFQ account setup information.* On or about October 1, 2009, the RA will mail each dealer with a valid Gulf reef fish dealer permit information pertinent to the IFQ program. Any such dealer is eligible to receive a Gulf IFQ dealer endorsement, which can be downloaded from the IFQ website at [ifq.sero.nmfs.noaa.gov](http://ifq.sero.nmfs.noaa.gov) once an IFQ account has been established. The information package will include general information about the IFQ program and instructions for accessing the IFQ website and establishing an IFQ dealer account.

(c) *IFQ operations and requirements—(1) IFQ Landing and transaction requirements.* (i) Gulf groupers and tilefishes subject to this IFQ program can only be possessed or landed by a vessel with a IFQ vessel account for Gulf groupers and tilefishes. Such groupers and tilefishes can only be received by a dealer with a Gulf IFQ dealer endorsement. The vessel landing groupers or tilefishes must have sufficient IFQ allocation in the IFQ vessel account, at least equal to the pounds in gutted weight of grouper or tilefish species to be landed, from the time of advance notice of landing through landing, except as provided in paragraph (c)(1)(ii) of this section.

(ii) A person on board a vessel with an IFQ vessel account landing the shareholder's only remaining allocation from among any of the grouper or tilefish share categories, can legally exceed, by up to 10 percent, the shareholder's allocation remaining on that last fishing trip of the fishing year, i.e. a one-time per fishing year overage. Any such overage will be deducted from the shareholder's applicable allocation for the subsequent fishing year. From the time of the overage until January 1 of the subsequent fishing year, the IFQ shareholder must retain sufficient shares to account for the allocation that will be deducted the subsequent fishing year. Share transfers that would violate this requirement will be prohibited.

(iii) The dealer is responsible for completing a landing transaction report for each landing and sale of Gulf groupers and tilefishes via the IFQ website at [ifq.sero.nmfs.noaa.gov](http://ifq.sero.nmfs.noaa.gov) at the time of the transaction in accordance with reporting form and instructions provided on the website. This report

includes, but is not limited to, date, time, and location of transaction; weight and actual ex-vessel value of groupers and tilefishes landed and sold; and information necessary to identify the fisherman, vessel, and dealer involved in the transaction. The fisherman must validate the dealer transaction report by entering the unique PIN number for the vessel account when the transaction report is submitted. After the dealer submits the report and the information has been verified by NMFS, the online system will send a transaction approval code to the dealer and the allocation holder.

(iv) If there is a discrepancy regarding the landing transaction report after approval, the dealer or vessel account holder (or his or her authorized agent) may initiate a landing transaction correction form to correct the landing transaction. This form is available via the IFQ website at [ifq.sero.nmfs.noaa.gov](http://ifq.sero.nmfs.noaa.gov). Both parties must validate the landing correction form by entering their respective PIN numbers, i.e. vessel account PIN or dealer account PIN. The dealer must then print out the form, both parties must sign it, and the form must be mailed to NMFS. The form must be received by NMFS no later than 15 days after the date of the initial landing transaction.

(2) *IFQ cost recovery fees.* As required by section 304(d)(2)(A)(i) of the Magnuson-Stevens Act, the RA will collect a fee to recover the actual costs directly related to the management and enforcement of the IFQ program for Gulf groupers and tilefishes. The fee cannot exceed 3 percent of the ex-vessel value of Gulf groupers and tilefishes landed under the IFQ program. Such fees will be deposited in the Limited Access System Administration Fund (LASAF). Initially, the fee will be 3 percent of the actual ex-vessel value of Gulf groupers and tilefishes landed under the IFQ program, as documented in each landings transaction report. The RA will review the cost recovery fee annually to determine if adjustment is warranted. Factors considered in the review include the catch subject to the IFQ cost recovery, projected ex-vessel value of the catch, costs directly related to the management and enforcement of the IFQ program, the projected IFQ balance in the LASAF, and expected non-payment of fee liabilities. If the RA determines that a fee adjustment is warranted, the RA will publish a notification of the fee adjustment in the **Federal Register**.

(i) *Payment responsibility.* The IFQ account holder specified in the documented IFQ landing transaction

report for Gulf groupers and tilefishes is responsible for payment of the applicable cost recovery fees.

(ii) *Collection and submission responsibility.* A dealer who receives Gulf groupers or tilefishes subject to the IFQ program is responsible for collecting the applicable cost recovery fee for each IFQ landing from the IFQ account holder specified in the IFQ landing transaction report. Such dealer is responsible for submitting all applicable cost recovery fees to NMFS on a quarterly basis. The fees are due and must be submitted, using [pay.gov](http://pay.gov) via the IFQ system, at the end of each calendar-year quarter, but no later than 30 days after the end of each calendar-year quarter. Fees not received by the deadline are delinquent.

(iii) *Fee payment procedure.* For each IFQ dealer, the IFQ system will post, in individual IFQ dealer accounts, an end-of-quarter statement of cost recovery fees that are due. The dealer is responsible for submitting the cost recovery fee payments using [pay.gov](http://pay.gov) via the IFQ system. Authorized payment methods are credit card, debit card, or automated clearing house (ACH). Payment by check will be authorized only if the RA has determined that the geographical area or an individual(s) is affected by catastrophic conditions.

(iv) *Fee reconciliation process—delinquent fees.* The following procedures apply to an IFQ dealer whose cost recovery fees are delinquent.

(A) On or about the 31st day after the end of each calendar-year quarter, the RA will send the dealer an electronic message via the IFQ website and official notice via mail indicating the applicable fees are delinquent, and the dealer's IFQ account has been suspended pending payment of the applicable fees.

(B) On or about the 91st day after the end of each calendar-year quarter, the RA will refer any delinquent IFQ dealer cost recovery fees to the appropriate authorities for collection of payment.

(3) *Measures to enhance IFQ program enforceability—(i) Advance notice of landing.* For the purpose of this paragraph, landing means to arrive at a dock, berth, beach, seawall, or ramp. The owner or operator of a vessel landing IFQ groupers or tilefishes is responsible for ensuring that NMFS is contacted at least 3 hours, but no more than 12 hours, in advance of landing to report the time and location of landing, estimated grouper and tilefish landings in pounds gutted weight for each share category (gag, red grouper, DWG, other SWG, tilefishes), vessel identification number (Coast Guard registration number or state registration number), and the name and address of the IFQ

dealer where the groupers or tilefishes are to be received. The vessel landing groupers or tilefishes must have sufficient IFQ allocation in the IFQ vessel account, and in the appropriate share category or categories, at least equal to the pounds in gutted weight of all groupers and tilefishes on board (except for any average up to the 10 percent allowed on the last fishing trip) from the time of the advance notice of landing through landing. Authorized methods for contacting NMFS and submitting the report include calling NMFS at 1-866-425-7627, completing and submitting to NMFS the notification form provided through the VMS unit, or providing the required information to NMFS through the web-based form available on the IFQ website at [ifq.sero.nmfs.noaa.gov](http://ifq.sero.nmfs.noaa.gov). As new technology becomes available, NMFS will add other authorized methods for complying with the advance notification requirement, via appropriate rulemaking. Failure to comply with this advance notice of landing requirement is unlawful and will preclude authorization to complete the landing transaction report required in paragraph (c)(1)(iii) of this section and, thus, will preclude issuance of the required transaction approval code.

(ii) *Time restriction on offloading.* IFQ groupers and tilefishes may be offloaded only between 6 a.m. and 6 p.m., local time.

(iii) *Restrictions on transfer of IFQ groupers and tilefishes.* At-sea or dockside transfer of IFQ groupers or tilefishes from one vessel to another vessel is prohibited.

(iv) *Requirement for transaction approval code.* If IFQ groupers or tilefishes are offloaded to a vehicle for transportation to a dealer or are on a vessel that is trailered for transport to a dealer, on-site capability to accurately weigh the fish and to connect electronically to the online IFQ system to complete the transaction and obtain the transaction approval code is required. After a landing transaction has been completed, a transaction approval code verifying a legal transaction of the amount of IFQ groupers and tilefishes in possession and a copy of the dealer endorsement must accompany any IFQ groupers and tilefishes from the landing location through possession by a dealer. This requirement also applies to IFQ groupers and tilefishes possessed on a vessel that is trailered for transport to a dealer.

(v) *Approved landing locations.* Landing locations must be approved by NMFS Office for Law Enforcement prior to landing or offloading at these sites. Proposed landing locations may be

submitted online via the IFQ website at [ifq.sero.nmfs.noaa.gov](http://ifq.sero.nmfs.noaa.gov), or by calling IFQ Customer Service at 1-866-425-7627, at any time, however, new landing locations will be approved only at the end of each calendar-year quarter. To have your landing location approved by the end of the calendar-year quarter, it must be submitted at least 45 days before the end of the calendar-year quarter. NMFS will evaluate the proposed sites based on, but not limited to, the following criteria:

(A) Landing locations must be publicly accessible by land and water, and

(B) They must have a street address. If there is no street address on record for a particular landing location, global positioning system (GPS) coordinates for an identifiable geographic location must be provided.

(4) *Transfer of IFQ shares and allocation.* Until January 1, 2015, IFQ shares and allocations can be transferred only to a person who holds a valid commercial vessel permit for Gulf reef fish; thereafter, IFQ shares and allocations can be transferred to any U.S. citizen or permanent resident alien. However, a valid commercial permit for Gulf reef fish, an IFQ vessel account for Gulf groupers and tilefishes, and IFQ allocation for Gulf groupers or tilefishes are required to possess (at and after the time of the advance notice of landing), land or sell Gulf groupers or tilefishes subject to this IFQ program.

(i) *Share transfers.* Share transfers are permanent, i.e., they remain in effect until subsequently transferred. Transfer of shares will result in the corresponding allocation being automatically transferred to the person receiving the transferred share beginning with the fishing year following the year the transfer occurred. However, within the fishing year the share transfer occurs, transfer of shares and associated allocation are independent--unless the associated allocation is transferred separately, it remains with the transferor for the duration of that fishing year. A share transfer transaction that remains in pending status, i.e., has not been completed and verified with a transaction approval code, after 30 days from the date the shareholder initiated the transfer will be cancelled, and the pending shares will be re-credited to the shareholder who initiated the transfer.

(ii) *Share transfer procedures.* Share transfers must be accomplished online via the IFQ website. An IFQ shareholder must initiate a share transfer request by logging onto the IFQ website at [ifq.sero.nmfs.noaa.gov](http://ifq.sero.nmfs.noaa.gov). An IFQ shareholder who is subject to a sanction

under 15 CFR part 904 is prohibited from initiating a share transfer. An IFQ shareholder who is subject to a pending sanction under 15 CFR part 904 must disclose in writing to the prospective transferee the existence of any pending sanction at the time of the transfer. Following the instructions provided on the website, the shareholder must enter pertinent information regarding the transfer request including, but not limited to: amount of shares to be transferred, which must be a minimum of 0.000001 percent; name of the eligible transferee; and the value of the transferred shares. For the first 5 years this IFQ program is in effect, an eligible transferee is a person who has a valid commercial vessel permit for Gulf reef fish; is in compliance with all reporting requirements for the Gulf reef fish fishery and the IFQ program for Gulf groupers and tilefishes; is not subject to sanctions under 15 CFR part 904; and who would not be in violation of the share or allocation caps as specified in paragraph (c)(6) of this section. Thereafter, share transferee eligibility will be extended to include U.S. citizens and permanent resident aliens who are otherwise in compliance with the provisions of this section. The online system will verify the information entered. If the information is not accepted, the online system will send the shareholder an electronic message explaining the reason(s). If the information is accepted, the online system will send the transferee an electronic message of the pending transfer. The transferee must approve the share transfer by electronic signature. If the transferee approves the share transfer, the online system will send a transfer approval code to both the shareholder and transferee confirming the transaction. All share transfers must be completed and the transaction approval code received prior to December 31 at 6 p.m. eastern time each year.

(iii) *Allocation transfers.* An allocation transfer is valid only for the remainder of the fishing year in which it occurs; it does not carry over to the subsequent fishing year. Any allocation that is unused at the end of the fishing year is void. Allocation may be transferred to a vessel account from any IFQ account. Allocation held in a vessel account, however, may only be transferred back to the IFQ account through which the vessel account was established.

(iv) *Allocation transfer procedures and restrictions—(A) Allocation transfer procedures.* Allocation transfers must be accomplished online via the IFQ website. An IFQ account holder must

initiate an allocation transfer by logging onto the IFQ website at *ifq.sero.nmfs.noaa.gov*, entering the required information, including but not limited to, name of an eligible transferee and amount of IFQ allocation to be transferred and price, and submitting the transfer electronically. An IFQ allocation holder who is subject to a sanction under 15 CFR part 904 is prohibited from initiating an allocation transfer. An IFQ allocation holder who is subject to a pending sanction under 15 CFR part 904 must disclose in writing to the prospective transferee the existence of any pending sanction at the time of the transfer. If the transfer is approved, the website will provide a transfer approval code to the transferor and transferee confirming the transaction.

(B) *Multi-use allocation transfer restrictions*—(1) *Red grouper multi-use allocation*. Red grouper multi-use allocation may only be transferred after all an IFQ account holder's red grouper allocation has been landed and sold, or transferred.

(2) *Gag multi-use allocation*. Gag multi-use allocation may only be transferred after all an IFQ account holder's gag allocation has been landed and sold, or transferred.

(5) *Restricted transactions during the 12-hour online maintenance window*. All electronic IFQ transactions must be completed by December 31 at 6 p.m. eastern time each year. Electronic IFQ functions will resume again on January 1 at 6 a.m. eastern time the following fishing year. The remaining 6 hours prior to the end of the fishing year, and the 6 hours at the beginning of the next fishing year, are necessary to provide NMFS time to reconcile IFQ accounts, adjust allocations for the upcoming year if the commercial quotas or catch allowances for Gulf groupers or tilefishes have changed, and update shares and allocations for the upcoming fishing year. No electronic IFQ transactions will be available during these 12 hours. An advance notice of landing may still be submitted by calling IFQ Customer Service at 1-866-425-7627.

(6) *IFQ share and allocation caps*. A corporation's total IFQ share (or allocation) is determined by adding the applicable IFQ shares (or allocation) held by the corporation and any other

IFQ shares (or allocation) held by a corporation(s) owned by the original corporation prorated based on the level of ownership. An individual's total IFQ share is determined by adding the applicable IFQ shares held by the individual and the applicable IFQ shares equivalent to the corporate share the individual holds in a corporation. An individual's total IFQ allocation is determined by adding the individual's total allocation to the allocation derived from the IFQ shares equivalent to the corporate share the individual holds in a corporation.

(i) *IFQ share cap for each share category*. No person, including a corporation or other entity, may individually or collectively hold IFQ shares in any share category (gag, red grouper, DWG, other SWG, or tilefishes) in excess of the maximum share initially issued for the applicable share category to any person at the beginning of the IFQ program, as of the date appeals are resolved and shares are adjusted accordingly. A corporation must provide to the RA the identity of the shareholders of the corporation and their percent of shares in the corporation, by December 1, 2009, for initial issuance of IFQ shares and allocation, and provide updated information to the RA within 30 days of when changes occur. This information must also be provided to the RA any time a commercial vessel permit for Gulf reef fish is renewed or transferred.

(ii) *Total allocation cap*. No person, including a corporation or other entity, may individually or collectively hold, cumulatively during any fishing year, IFQ allocation in excess of the total allocation cap. The total allocation cap is the sum of the maximum allocations associated with the share caps for each individual share category and is calculated annually based on the applicable quotas or catch allowance associated with each share category.

(7) *Redistribution of shares resulting from permanent permit revocation*. If a shareholder's commercial vessel permit for Gulf reef fish has been permanently revoked under provisions of 15 CFR part 904, the RA will redistribute the IFQ shares associated with the revoked permit proportionately among remaining shareholders (subject to cap restrictions) based upon the amount of shares each held just prior to the

redistribution. During December of each year, the RA will determine the amount of revoked shares, if any, to be redistributed, and the shares will be distributed at the beginning of the subsequent fishing year.

(8) *Annual recalculation and notification of IFQ shares and allocation*. On or about January 1 each year, IFQ shareholders will be notified, via the IFQ website at *ifq.sero.nmfs.noaa.gov*, of their IFQ shares and allocations, for each of the five share categories, for the upcoming fishing year. These updated share values will reflect the results of applicable share transfers and any redistribution of shares (subject to cap restrictions) resulting from permanent revocation of applicable permits under 15 CFR part 904. Allocation, for each share category, is calculated by multiplying IFQ share for that category times the annual commercial quota or commercial catch allowance for that share category. Updated allocation values will reflect any change in IFQ share for each share category, any change in the annual commercial quota or commercial catch allowance for the applicable categories; and any debits required as a result of prior fishing year overages as specified in paragraph (c)(1)(ii) of this section. IFQ participants can monitor the status of their shares and allocation throughout the year via the IFQ website.

7. In § 622.42, paragraph (a)(1)(ii) and the first sentence of paragraph (a)(1)(iii) are revised to read as follows:

**§ 622.42 Quotas.**

\* \* \* \* \*

(a) \* \* \*

(1) \* \* \*

(ii) Deep-water groupers (DWG) combined -1.02 million lb (0.46 million kg), gutted weight, that is, eviscerated but otherwise whole.

(iii) Shallow-water groupers (SWG) have a combined quota as specified in paragraph (a)(1)(iii)(A) of this section. \* \* \*

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**§ 622.44 [Amended]**

7. In § 622.44, paragraph (g) is removed and reserved.

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