

model CL-600-2B19. Although smoke testing requirements of § 25.853 per Appendix F, part V, are not part of the part 25 certification basis for Bombardier Model CL-600-2B19 airplanes, these special conditions are applicable if the airplanes are in 14 CFR part 121 service. Part 121 requires applicable interior panels to comply with § 25.853 and Appendix F, part V, regardless of the certification basis. It is not our intent to require seats with large non-metallic panels to meet § 25.853 and Appendix F, parts V, if they are installed in cabins of airplanes that otherwise are not required to meet these standards. Should Bombardier apply at a later date for a change to the type certificate to include another model incorporating the same novel or unusual design feature, the special conditions would apply to that model as well.

These special conditions are applicable to Bombardier airplane Models CL-600-2C10, -2D15 and -2D24. Because the heat release and smoke testing requirements of § 25.853 are part of the type certification basis for the airplane Models CL-600-2C10, -2D15 and -2D24, these special conditions are applicable to the airplane Models CL-600-2C10, -2D15 and -2D24. Should Bombardier apply at a later date for a change to the type certificate to include another model incorporating the same novel or unusual design feature, the special conditions would apply to that model as well.

Seats do not have to meet these special conditions when installed in compartments that are not otherwise required to meet the test requirements of CFR part 25, Appendix F, parts IV and V. For example, airplanes that do not have § 25.853, Amendment 25-61 or later, in their certification basis and those airplanes that do not need to comply with the requirements of § 121.312.

Conclusion

This action affects only certain novel or unusual design features on Bombardier Inc.: airplane Models CL-600-2B19, -2C10, -2D15 and -2D24. It is not a rule of general applicability.

The substance of these special conditions has been subjected to the notice and comment period in several prior instances and has been derived without substantive change from those previously issued. These special conditions were also subjected to a notice and comment period of 45 days with no changes made. Therefore, the FAA has determined that good cause exists for adopting these special conditions upon issuance.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

Authority Citation

■ The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701, 44702, 44704.

The Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type certification basis for Bombardier Inc. airplane Models CL-600-2B19, -2C10, -2D15 and -2D24.

1. Passenger Seats with Non-Traditional, Large, Non-metallic Panels.

2. Except as provided in paragraph 3 of these special conditions, compliance with heat release and smoke emission testing requirements per 14 CFR part 25 and Appendix F, parts IV and V, is required for seats that incorporate non-traditional, large non-metallic panels that may either be a single component or multiple components in a concentrated area in their design.

3. The applicant may designate up to and including 1.5 square feet of non-traditional, non-metallic panel material per seat place that does not have to comply with special condition Number 1, above. A triple seat assembly may have a total of 4.5 square feet excluded on any portion of the assembly (*e.g.*, outboard seat place 1 square foot, middle 1 square foot, and inboard 2.5 square feet).

4. Seats do not have to meet the test requirements of 14 CFR part 25 and Appendix F, parts IV and V, when installed in compartments that are not otherwise required to meet these requirements. Examples include:

a. Airplanes with passenger capacities of 19 or less,

b. Airplanes that do not have 14 CFR 25.853, Amendment 25-61 or later, in their certification basis and do not need to comply with the requirements of 14 CFR 121.312, and

c. Airplanes exempted from 14 CFR 25.853, Amendment 25-61 or later.

5. Only airplanes associated with new seat certification programs approved after the effective date of these special conditions will be affected by the requirements in these special conditions. Previously certificated interiors on the existing airplane fleet and follow-on deliveries of airplanes with previously certificated interiors are not affected.

Issued in Renton, Washington, on August 4, 2009.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Part 902

50 CFR Part 622

[Docket No. 090206149-91081-03]

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: Final rule.

SUMMARY: NMFS issues this final 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 final rule implements 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 (Gulf) exclusive economic zone. In addition, the final rule allows permit consolidation and dual classifications to the shallow-water grouper (SWG) and deep-water grouper (DWG) management units for speckled hind, warsaw grouper, and scamp, and modifies some provisions of the Gulf red snapper IFQ program for consistency with this final rule. NMFS also informs the public of the approval by the Office of Management and Budget (OMB) of the collection-of-information requirements contained in this final rule and publishes the OMB control numbers for those collections. This rule is intended to reduce effort in the grouper and tilefish component of the commercial Gulf reef fish fishery.

DATES: This final rule is effective September 30, 2009; however, the applicability date for all the amendments except for amendments to § 622.7 (gg) and (hh), § 622.20(b), § 622.20(c)(3)(v), and § 622.20(c)(6) is January 1, 2010.

ADDRESSES: Copies of the Final Environmental Impact Statement (FEIS), Final Regulatory Flexibility Analysis (FRFA), and Record of Decision (ROD) may be obtained from Susan Gerhart, Southeast Regional Office, NMFS 263 13th Avenue South, St. Petersburg, FL 33701; telephone 727-824-5305; fax 727-824-5308.

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this final rule may be submitted to Susan Gerhart, Southeast Regional Office, NMFS, and by e-mail to

David.Rostker@omb.eop.gov, or by fax to 202-395-7285.

FOR FURTHER INFORMATION CONTACT:

Susan Gerhart, telephone: 727-824-5305.

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).

On April 8, 2009, NMFS published a notice of availability of Amendment 29 and requested public comments (74 FR 15911). On April 30, 2009, NMFS published the proposed rule to implement Amendment 29 and requested public comments (74 FR 20134). NMFS approved Amendment 29 on July 2, 2009. The rationale for the measures in Amendment 29 is provided in the amendment and the preamble to the proposed rule and is not repeated here.

Effective Dates and Applicability Dates

To implement this IFQ program on January 1, 2010, it is essential that certain provisions of the final rule be effective earlier to allow for the logistical operations required prior to implementation, e.g., exchange of information between NMFS and fishers and dealers, preliminary determinations of eligibility, share values, etc.

Therefore, NMFS has structured this rule to make the entire rule effective September 30, 2009 but is delaying the applicability date, the date on which compliance is required, until January 1, 2010, for all provisions of the rule except § 622.7(gg) and (hh), § 622.20(b), § 622.20(c)(3)(v), and § 622.20(c)(6). Compliance with these sections of the rule is required September 30, 2009. Compliance with all other provisions of the rule is required beginning January 1, 2010, the start of the fishing year and the start of the IFQ program.

Comments and Responses

NMFS received 153 public comments on Amendment 29 and the proposed rule, including 94 comments from individuals, 54 copies of a form letter sent by individuals, and 5 comments from non-governmental agencies. Several comments fell outside the scope of the amendment and the rule, including comments regarding the Council's role in fisheries management, bycatch in the red snapper IFQ program, IFQ programs in Iceland, and a comment questioning the legal authority of the Magnuson-Stevens Act. These comments were not addressed in this final rule. Comments that pertain to the actions addressed in the amendment or the proposed rule were categorized by topic. The following are NMFS' respective responses for each category.

Comment 1: An IFQ program is not needed because quotas are not being met.

Response: The intention of the IFQ program is to rationalize effort and reduce overcapacity in the grouper and tilefish component of the commercial Gulf reef fish fishery to achieve and maintain optimum yield for the fishery. An IFQ program will also improve safety at sea by eliminating derby conditions under which fishermen race to harvest as many fish as possible before the quota is reached. Both DWG and tilefish quotas have been met or exceeded, annually, the past 5 years. SWG and red grouper quotas were not met the past 2 years, but were met before 2006. Preliminary results from the red grouper and gag stock assessments, in May 2009, indicate that quotas may need to be reduced to levels below landings in recent years.

The fact that in some years certain grouper and tilefish components of the commercial Gulf reef fish fishery did not experience a closure, does not indicate a significant change in the prevailing incentive structure for derby behavior. Rather, it is simply an indication of changes in relative abundance due to biological factors.

Comment 2: Actions to restrict longline gear and a new grouper stock assessment update that may indicate a need for further reduction in the quota will reduce capacity in the fishery; therefore an IFQ is not needed.

Response: Amendment 31 to the Gulf reef fish FMP addresses hard shell sea turtle takes by the longline component of the commercial Gulf reef fish fishery. Proposed restrictions include time/area closures and gear endorsements. These actions could reduce effort for SWG; however, they are not expected to decrease effort for DWG or tilefish.

Preliminary reports from the red grouper and gag stock assessment updates indicate total allowable catch (TAC) may need to be reduced for these species. If the same number of vessels that comprise the fishery were under a reduced TAC, this situation would compound the overcapacity issue and could continue to lead to early closures. Thus the intentions of the IFQ program to reduce overcapacity and eliminate the race for fish would become even more necessary in the Gulf reef fish fishery.

Comment 3: The IFQ program will improve management, better utilize resources, and help meet National Standards (NS) 1, 9, and 10.

Response: Current regulatory measures used in the management of the grouper complex have allowed the fishery to become overcapitalized, which means the collective harvest capacity of participants is in excess of that required to efficiently harvest the commercial share of the total allowable catch. The overcapitalization observed in the fishery has caused commercial grouper regulations to become increasingly restrictive over time, intensifying derby conditions under which fishermen race to harvest as many fish as possible before the quota is reached.

Incentives for overcapitalization and derby fishing conditions are expected to be maintained as long as the current management structure persists. Therefore, the Council approved and NMFS is implementing an IFQ program to rationalize effort and reduce overcapacity in the grouper and tilefish component of the commercial Gulf reef fish fishery to achieve and maintain optimum yield in this multi-species fishery.

IFQ programs can help meet NS 1, 9, and 10, by preventing overfishing, minimizing bycatch and bycatch mortality, and promoting safety at sea. NS 1 requires management measures to prevent overfishing while achieving optimum yield for the fishery. Assigning shares to individual permit holders helps prevent landings from exceeding catch limits.

NS 9 requires management measures to minimize bycatch and bycatch mortality. Under an IFQ program, regulatory discards due to seasonal closures are eliminated because fishermen can catch their allocation any time during the year. Discards are further limited because ghost fishing is expected to significantly decrease when crew members are not racing to catch fish. In addition, provisions for multi-use allocation will allow fishermen to land gag incidentally caught when

fishing for red grouper (or red grouper incidentally caught when fishing for gag) rather than discard them. Other IFQ program requirements, including a limited landings overage and revisions to species classification for warsaw grouper, speckled hind, and scamp will also contribute to reducing discards in the IFQ program for Gulf groupers and tilefishes.

NS 10 requires management measures to promote safety at sea. Under an IFQ program, fishermen can fish any time during the year and not feel obliged to fish during bad weather. A lack of derby conditions will improve safety and overall quality of working conditions.

Comment 4: The IFQ program should be implemented because it has significant and widespread support.

Response: In 2004, the Council created an IFQ Advisory Panel to develop a plan for creating a grouper IFQ program. The ten members of the panel were commercial fishermen and dealers. The program received widespread support because it was designed by members of the industry. After development of Amendment 29, NMFS conducted a referendum in December 2008. Individuals eligible to participate in the referendum accounted for approximately 89 percent of grouper and tilefish landings during the qualifying time period. Eighty-one percent of votes were in favor of the proposed IFQ program. At their January 2009 meeting, the Council voted 14–3 in favor of submitting Amendment 29 to NMFS for approval.

Comment 5: The IFQ program is inconsistent with the Magnuson-Stevens Act.

Response: Section 303A of the Magnuson-Stevens Act specifically authorizes and establishes requirements for limited access privilege programs (LAPPs). LAPP requirements under the Magnuson-Stevens Act include goals and objectives of the program, program duration and provisions for regular review, appeals process, allocation, and transferability. Amendment 29 addresses all of these issues, as well as details of the implementation of the program for which the Magnuson-Stevens Act allows discretion. Amendment 29 and the associated rule have been determined by NOAA and the Department of Commerce to be consistent with the Magnuson-Stevens Act and other applicable laws.

Comment 6: The IFQ program grants permanent rights to individuals to use a public resource.

Response: Section 303A(a) of the Magnuson-Stevens Act clearly states that a limited access system does not create a right, title, or interest. Awarded

shares are considered a grant of permission to harvest that may be revoked at any time, in accordance with the Magnuson-Stevens Act. The IFQ program does not confer any right of compensation to shareholders if it is discontinued.

Comment 7: The IFQ program will increase bycatch.

Response: Under an IFQ program, regulatory discards due to seasonal closures are eliminated because fishermen can catch their allocation at any time during the year. Discards are further limited because ghost fishing, which refers to fish killed by abandoned or lost gear, is expected to significantly decrease when crew members are not racing to catch fish. In the Gulf, implementation of the red snapper IFQ program and the 13-inch minimum size limit in 2007 resulted in fewer fish discarded per fish landed.

The allowance of multi-use allocation for gag and red grouper will further reduce discards. Annual multi-use allocation allows fishermen to use a small portion of their allocation for one species to harvest another species that would otherwise be discarded because the fisherman does not possess allocation for that species.

Reduced bycatch of warsaw grouper, speckled hind, and scamp is expected to occur with revisions to species classifications in the DWG and SWG complexes under this IFQ program. Warsaw grouper and speckled hind, which are considered DWG species under current regulations, will be considered SWG species after an IFQ account holder's DWG allocation has been landed and sold, or transferred, or if an IFQ account holder has no DWG allocation. Scamp, considered a SWG species under current regulations, will be considered a DWG species after an IFQ account holder's SWG allocation has been landed and sold, or transferred, or if an IFQ account holder has no SWG allocation. Because these species are caught in both shallow water and deep water, classification changes are expected to reduce discards.

IFQ program participants are also allotted a limited landings overage in each share category on their last fishing trip, which is expected to reduce bycatch. If catch exceeds a fisherman's allocation on his last trip, he is allowed to retain up to 10 percent more fish than his remaining allocation, which is then deducted from next year's allocation. This will prevent fishers from having to discard fish harvested in excess of available allocation.

Comment 8: The program should be able to be reviewed and altered based on new information.

Response: The Magnuson-Stevens Act specifies that a detailed review of the program be conducted within the first 5 years of implementation of the program and thereafter, no less than once every 7 years. Additionally, the Southeast Regional Office will conduct an annual review of the program activities and costs and disseminate a report of the results. If new information indicates the program should be altered, the Council may initiate the fisheries management plan amendment process.

Comment 9: The amendment does not analyze the effects of the IFQ program on the recreational sector.

Response: Actions contained in Amendment 29 are not directed at the recreational sector of the Gulf reef fish fishery and as such do not present many potential impacts to the recreational sector. The establishment of the IFQ program does not change the TAC, nor does it change the allocation between the recreational and commercial sectors. For example, the allocation of gag will remain 61 percent to the recreational sector and 39 percent to the commercial sector unless changed by a subsequent amendment. However, to the extent that actions contained in Amendment 29 do present potential impacts to the recreational sector, those impacts are addressed in the FEIS, particularly in the cumulative impacts assessment and the environmental baseline discussions.

Comment 10: The amendment did not analyze the social impacts of an IFQ program.

Response: In Amendment 29, the Fisheries Impact Statement (page vi), Description of the Social Environment (page 134), Environmental Consequences - Action A1 (page 150), as well as Environmental Consequences for other actions all address the social impacts of the IFQ program. Based on an analysis of landings and permit data, few communities in the Gulf of Mexico region can be described as dependent on these species. Fishing communities were ranked according to the dealer-reported number of pounds landed and value for the grouper and tilefish component of the commercial Gulf reef fish fishery for 2004–2007. These data revealed that a substantial portion of groupers and tilefishes are historically landed off west Florida and south Texas. Permits data were also examined to determine where permit concentrations existed. As a result of these examinations, Madeira Beach and Panama City, Florida, and Port Isabel, Texas, were selected as representative communities for the grouper and tilefish component of the commercial Gulf reef fish fishery. Other communities would be impacted by the IFQ program, but

little data are available to include in the analysis.

Comment 11: Small-scale fishermen will be put out of business and only large-scale fishermen will be allowed to fish for grouper and tilefish.

Response: All individuals with annual average grouper and tilefish landings of one or more pounds during the qualifying time period, 1999–2004 (with allowance for dropping one year), will receive IFQ shares, provided they have an active or renewable commercial Gulf reef fish permit, as of October 1, 2009. NMFS estimates nearly 1,000 out of the 1,209 permit holders that comprise the commercial sector of the Gulf reef fish fishery will receive grouper and/or tilefish shares in this IFQ program. Shareholders will have the option of fishing their allocation or transferring their shares or allocation to other Gulf reef fish permit holders, for the first 5 years of the program, and to all U.S. citizens or resident aliens thereafter. LAPPs are designed for the fishermen to manage their share of the resource for the best net benefit to the nation.

Comment 12: The program ignores new entrants to the fishery, who may have purchased permits after 2004.

Response: Initial allocation of shares in the IFQ program for groupers and tilefishes will be based on landings history associated with a permit. All landings associated with a valid Gulf reef fish vessel permit for the applicable landings period (1999–2004) will be attributed to the current owner, including those reported by a person who held the permit prior to the current owner. Therefore, even individuals who purchased permits recently may be eligible to receive shares. Individuals who are not initially eligible may participate in the program through transfer of shares or allocation.

Comment 13: Recreational fishermen should be allowed to purchase IFQ shares and allocation.

Response: Five years after implementation of this IFQ program, all U.S. citizens and permanent resident aliens will be eligible to purchase shares and allocation in the IFQ program for groupers and tilefishes. However a commercial permit would be required to fish the allocation.

The Council is considering a variety of data collection methods that would allow development of a catch share program for the recreational sector. However, because recreational fishers are not currently required to report their catch, tracking of individual catch is not possible at this time and, therefore, an IFQ program for the recreational sector is premature.

Comment 14: Landings history should not be based on logbooks as they may not be factual.

Response: Logbooks provide the most complete set of landings data from individual vessels available to NMFS. Logbooks submitted to NMFS Southeast Fisheries Science Center contain landings for each trip by species, as well as other information such as trip length, number of sets, and bait used. While some information may not be entirely accurate, submitting false information to NMFS via a logbook is a violation of Federal law. Accordingly, logbooks are considered to be the most accurate source of vessel specific landings information.

Comment 15: Each participant should receive a minimum of 10,000 pounds of allocation.

Response: Assigning 10,000 pounds to each participant would greatly exceed the catch limits for these species and allow overfishing to occur, which violates NS 1 of the Magnuson-Stevens Act. In addition, this amount would exceed the average annual landings for the majority of the permit holders currently participating in the fishery.

Comment 16: The government should rent shares similar to leases for oil and gas resources.

Response: The Council considered an alternative to distribute initial IFQ shares through an auction system. They determined the auction system could provide an unfair advantage to those participants who have greater financial resources than other participants. Similarly, allocation by a resource rental system could encounter environmental justice issues and discriminate against lower-income fishers. This alternative would also provide less consideration to historical dependence on the fishery since it might allow shares to be distributed to participants who have never fished but could afford to compete in the auction or buy leases.

Comment 17: Transfer of shares and allocation should not be allowed. If a participant does not use his shares, these shares should be revoked.

Response: A transferable IFQ program will allow the market to reduce fishing capacity, as quota could be consolidated among fewer vessel owners, who would then have an incentive to fish efficiently to maximize profits. Fishermen who desired more quota than they received through initial apportionment could purchase additional shares or allocation. Conversely, those fishermen who were apportioned too small a portion of the quota to make fishing worthwhile could sell their shares or allocation.

Prohibiting transfers would not allow a fisherman to pass on his or her fishing

privileges to other family members, including their children, a common practice within fishing communities.

The Council considered implementation of a use it or lose it provision in Amendment 29. Under this policy, IFQ shares that remained inactive for 3 years would be revoked and redistributed proportionately among the remaining shareholders. However, a use it or lose it provision could create greater incentive for fishermen to increase their landings, resulting in higher fishing mortality rates. If fishermen choose not to harvest their allotted IFQ shares in any given year it would benefit rebuilding of overfished stocks and stocks undergoing overfishing (e.g., gag) as well as reduce gear-habitat interactions.

Comment 18: The IFQ program should be designed to allow day trippers to fish during the same hours they currently fish.

Response: All persons fishing in the IFQ program would be able to catch and land their fish 24 hours a day but would be required to notify NMFS enforcement agents 3–12 hours in advance of the time of landing. For enforcement purposes, fishermen participating in the IFQ program would be required to offload their grouper and tilefish landings only between 6:00 a.m. and 6:00 p.m. daily.

Comment 19: Fishermen who do not support the IFQ program will not comply with the regulations.

Response: Most individuals who participate in the Gulf reef fish fishery are honest and law-abiding. Those who are not will receive violations and appropriate penalties if apprehended. The IFQ program is designed to track fishing activity throughout the fishing, landing, and sale processes. Currently, reef fish fishermen must submit a declaration of fishing activity before a trip. Under the IFQ program, participants will also be required to submit a landing notification 3–12 hours before landing ashore identifying the number of pounds of each IFQ species to be landed, as well as the landing time and location. NMFS Office for Law Enforcement then has the opportunity to meet the vessel at the landing location to check for compliance. Fishermen could not offload or transport fish until a landing transaction takes place with a dealer. A landing transaction number will be required to offload the fish and transport them. Any failure to comply with any of these steps could result in a violation.

Classification

The Administrator, Southeast Region, NMFS, determined that Amendment 29 is necessary for the conservation and management of Gulf groupers and tilefishes and is consistent with the Magnuson-Stevens Act and other applicable laws.

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

NMFS prepared an FEIS for this amendment. A notice of availability for the FEIS was published on May 8, 2009 (74 FR 21684). A copy of the ROD is available from NMFS (see **ADDRESSES**).

An FRFA was prepared. The FRFA incorporates the initial regulatory flexibility analysis (IRFA), a summary of the significant economic issues raised by public comments, NMFS responses to those comments, and a summary of the analyses completed to support the action. A copy of the full analysis is available from NMFS (see **ADDRESSES**). A summary of the FRFA follows.

Although no comments were received specific to the IRFA, several comments were received that pertain to the economic effects of the proposed rule. These comments were addressed in the comments and responses section of this final rule. The economic analysis conducted for the proposed rule estimated the expected quantitative effects of each alternative to the extent possible. Qualitative discussion of expected effects was provided where data or analytical techniques were not available. The economic analysis concluded that the proposed rule would enhance the overall net benefits to the nation. No changes were made to the final rule in response to public comments, therefore, the final rule is expected to enhance the overall net benefits to the nation.

This final rule implements an IFQ program for the grouper and tilefish component of the commercial Gulf reef fish fishery; allows a single owner of multiple commercial reef fish permits to consolidate his or 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; maintains the current composition of the multi-species DWG unit and revises the SWG unit to include speckled hind and warsaw grouper; restricts initial eligibility to valid commercial reef fish permit holders; distributes 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; establishes IFQ share types as follows: red grouper, gag, other SWG, DWG, and tilefish shares; converts four 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 converts eight percent of each IFQ participant's gag grouper individual species share into multi-use gag grouper allocation valid for harvesting gag or red groupers; allows transfers of IFQ shares or allocations only to commercial reef fish permit holders during the first five years of the IFQ program and to all U.S. citizens and permanent resident aliens thereafter; sets 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; sets a total allocation cap calculated as the sum of the maximum allocations associated with the share caps for each individual share category; allocates adjustments in the commercial quota proportionately among eligible IFQ shareholders based on their respective shareholdings at the time of the adjustments; lets the RA review, evaluate, and render the final decision on appeals (hardship arguments will not be considered for appeals); sets aside three 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; implements 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 establishes certified landing sites for all IFQ programs for the commercial Gulf reef fish fishery, with the sites selected by the fishermen but certified completed by NMFS Office for Law Enforcement.

This final rule is expected to directly affect vessels that operate in the commercial Gulf 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.

This final rule introduces new or additional reporting, record-keeping and other compliance requirements. A summary of the general requirements of the IFQ program for Gulf groupers and tilefishes follows.

An IFQ dealer endorsement is required of any dealer purchasing groupers or tilefishes subject to this IFQ program. The IFQ dealer endorsement will 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 will 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 will affect all 159 existing dealers (as of November 2008) of groupers or tilefishes.

An electronic reporting system will serve as the main vehicle for tracking IFQ activities. The electronic nature of the reporting system will render the reporting of most IFQ activities on a real time basis. For example, to effect a sale of grouper or tilefish landings, the purchasing dealer will 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 will be effected and recorded through the electronic reporting system. Holders of IFQ allocations will be able to access the system to check on the outstanding IFQ allocations remaining in their account/possession. In this scenario, an IFQ shareholder account, an IFQ vessel account, and an IFQ dealer account will be established with NMFS. There will

be no charge for establishing any of these accounts.

By the very nature of the reporting system, IFQ dealers will 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 will need some basic computer and Internet skills to input information for all grouper and tilefish purchases into the IFQ electronic reporting system.

Dealers will also be required to remit to NMFS, on a quarterly basis, the cost recovery fees initially set at three percent of the ex-vessel value of groupers and tilefishes purchased from IFQ share/allocation holders. Although IFQ share/allocation holders will pay this fee, it will be the responsibility of dealers to collect and remit it to NMFS. Dealers will 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 will be necessary for IFQ program participation. Those dealers currently participating in the red snapper IFQ program will generally meet most, if not all, of the requirements under the electronic reporting system.

Holders of IFQ shares and allocations will need access to computers and the Internet to effect allocation transfers through the electronic reporting system. These persons will 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 will do is to validate the sale using the dealer's computer. This requirement affects all those who will initially qualify for, or those who will decide to participate in, the IFQ program for Gulf groupers and tilefishes.

One other compliance issue under the IFQ system involves landing and offloading of IFQ groupers or tilefishes. The owner or operator of a vessel landing IFQ groupers or tilefishes will 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 is allowed only between 6 a.m. and 6 p.m.

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) 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 will 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 SWG, 376 vessels harvested 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. 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, cost and return information derived from an earlier survey of commercial reef fish fishermen in the Gulf of Mexico was used. 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 \$28,000 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 will 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 will 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 are 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 and tilefishes 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 because 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 \$222,000; Louisiana, with 270,000 lb (122,476 kg) worth \$592,000; and, Texas, with 434,000 lb (196,859 kg) worth \$1.03 million. The rest of the 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 is 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 will 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 final rule may be classified as small entities.

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

The various measures in this final rule have varying effects on small entities. Adoption of an IFQ program for the grouper and tilefish component of the commercial Gulf reef fish fishery has been estimated to result in variable cost savings to the fishing industry of \$2.23 to \$3.24 million per year. There will also be some unknown reductions in fixed costs. In addition, possible increases in revenues could result as

improved product quality will most likely command higher prices.

Permit stacking will 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 tends 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 will 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 also tends to speed up the process of consolidation in the fishery, a result that allows 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, provides a higher likelihood that active participants in the fishery are allotted IFQ shares in accordance with the extent of their participation in the fishery. This tends to preserve the historical landings status of eligible participants, so the initial impacts on their profits are not diminished. As the IFQ program progresses, their profits may increase depending on 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 introduces certain flexibility as IFQ participants have some leeway 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 is. The final rule limits 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 is unlikely to bring about cost increases, it does 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 final rule to set the share cap to the maximum assigned to a participant during initial apportionment allows every participant to at least maintain their existing scale of operation. Costs of operation and possibly revenues are expected to remain the same. Over time, all participants, except the highest one, will 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 will not have the same opportunity as the others.

The same reasoning provided in the preceding paragraph for a share cap also applies to the establishment of 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 final rule allocates 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 an appeals process will generate. The added provision to set aside three percent of the quota to settle appeals prevents 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) undoubtedly

imposes 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 three-percent cost recovery fee based on total revenues could translate into larger reductions in profits, particularly for small fishing operations.

Requiring pre-approved landing sites where fishermen are obligated to land their IFQ catches may increase the cost of fishing operations. Fishermen may need to travel farther to land their catch, if for some reasons, such as weather conditions or fishing opportunities, the closest landing site is not pre-approved. This could, however, enhance the enforcement of the IFQ program, which may help ensure that benefits from the program are not impaired.

It is expected that the combined effects of the final rule will result in significant changes to the profitability status of fishing operations in the grouper and tilefish component of the commercial Gulf reef fish 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 contained in the final rule. For purposes of the succeeding discussion, each of the Council's preferred alternatives is termed final action.

Three alternatives, including no action, were considered for establishment of an IFQ program. The first alternative (no action) to the final 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 final 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 final 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 final 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 final action would classify speckled hind as both SWG and DWG while the third alternative to the final 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 final action.

Four alternatives, including no action, were considered for initial eligibility in the IFQ program. The first alternative (no action) to the final 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 final 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 final 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 final action would not provide any guidance in initially apportioning IFQ shares. The second alternative to the final action would proportionately allocate IFQ shares based on average annual landings during 1999–2004. This alternative is less flexible than the final action where eligible participants can drop one year in calculating annual average landings. The third alternative to the final 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 final action would not establish IFQ shares and is therefore not a viable alternative under an IFQ system. The second alternative to the final 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 final action would establish separate IFQ shares for the DWG complex, the SWG 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 final 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 final 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 final 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 final action is the provision in the latter that transfers be allowed only among holders of commercial reef fish permits during

the first five years of the IFQ program. Over the long-run, then, the two alternatives would have the same economic effects. The final 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/allocation, before opening up the market to a broader pool of participants. The second alternative to the final 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/allocation over a long time.

Three alternatives, including no action, were considered for caps on IFQ share ownership. The first alternative (no action) to the final 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 final 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 percentage 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 final action was to achieve consistency with similar provisions in the red snapper IFQ program, and this would not be achieved under the two alternatives to the final action. A sub-option under the final 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 final 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 final action would impose an allocation cap of an additional one percent, two percent, or five 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 final 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 the 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 final 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 final 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 final 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 final 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, with no

corresponding benefits. Besides, this alternative would mainly provide board members' advice to the RA on appeals matters. The three-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 final 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 final 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 final action, several sub-options were also considered but rejected. The first such sub-option 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 final 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 IFQ program for groupers and tilefishes. The second alternative to the final action would require that landing sites be certified by the Office for 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 IFQ program for groupers and tilefishes. Under the final 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 final action in identifying landing sites for certification purposes.

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 states that, for each rule or group

of related rules for which an agency is required to prepare a FRFA, the agency shall publish one or more guides to assist small entities in complying with the rule, and shall designate such publications as “small entity compliance guides.” As part of the rulemaking process, NMFS prepared a fishery bulletin, which also serves as a small entity compliance guide. The fishery bulletin will be sent to all vessel permit holders for the Gulf Reef Fish fishery.

This final rule contains collection-of-information requirements subject to the Paperwork Reduction Act (PRA) and which have been approved by OMB under control number 0648–0587. 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 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. Send comments regarding these burden estimates or any other aspect of this data collection, including suggestions for reducing the burden, to NMFS (see ADDRESSES) and by e-mail to David_Rostker@omb.eop.gov, or fax to 202–395–7285.

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

List of Subjects

15 CFR Part 902

Reporting and recordkeeping requirements.

50 CFR Part 622

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

Dated: August 26, 2009.
John Oliver,
Deputy Assistant Administrator for Operations, National Marine Fisheries Service.

■ For the reasons set out in the preamble, 15 CFR Chapter IX and 50 CFR Chapter VI are amended as follows:
 Chapter IX

PART 902—NOAA INFORMATION COLLECTION REQUIREMENTS UNDER THE PAPERWORK REDUCTION ACT: OMB CONTROL NUMBERS

■ 1. The authority citation for part 902 continues to read as follows:

Authority: 44 U.S.C. 3501 *et seq.*

■ 2. In § 902.1, paragraph (b), under “50 CFR”, the entry “622.20” is added in numerical order to read as follows:

§ 902.1 OMB control numbers assigned pursuant to the Paperwork Reduction Act.

(b) * * *

CFR part or section where the information collection requirement is located	Current OMB control number the information (All numbers begin with 0648–)
* * * * *	* * * * *
50 CFR * * * * *	* * * * *
622.20 * * * * *	–0587 * * * * *

50 CFR Chapter VI

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

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

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

■ 4. 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. ^{1,5,6}

¹ Regulated area includes adjoining state waters for purposes of data collection and quota monitoring.
⁵ 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.
⁶ 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.

■ 5. In § 622.2, the definitions of “Deep-water grouper (DWG)” and “Shallow-water grouper (SWG)” are revised to read as follows:

§ 622.2 Definitions and acronyms.

* * * * *
Deep-water grouper (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 grouper (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).

* * * * *

■ 6. 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. 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.sero.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 gutted 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.sero.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.

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(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. * * *

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■ 7. 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.

* * * * *

■ 8. 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.seiro.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.seiro.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* 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* 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. 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, 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. 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, 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, 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.

■ 9. 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, blueline 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 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 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. 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 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 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 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 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. 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, 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.seo.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.seo.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.

(3) *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.serono.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.

■ 10. In § 622.42, paragraph (a)(1)(ii) and the first sentence of paragraph (a)(1)(iii) introductory text 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]

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

[FR Doc. E9-20954 Filed 8-28-09; 8:45 am]

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 16 and 118

[Docket No. FDA-2000-N-0190] (formerly Docket No. 2000N-0504)

RIN 0910-AC14

Egg Safety; Final Rule for Prevention of Salmonella Enteritidis in Shell Eggs During Production, Storage, and Transportation; Public Meetings

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public meetings.

The Food and Drug Administration (FDA) is announcing two public meetings to discuss the final rule concerning the prevention of *Salmonella* Enteritidis (SE) in shell eggs during production, storage, and transportation. The purpose of the public meetings is to explain the requirements of the rule and how to comply with it, and to provide the public an opportunity to ask questions.

DATES, TIMES, AND LOCATIONS: See "How to Participate in the Meetings" in the **SUPPLEMENTARY INFORMATION** section of this document for dates and times of the meetings, closing dates for advance registration, requesting special accommodations due to disability, and other information regarding meeting participation.

CONTACT PERSON: For general questions about the meetings or for special accommodations due to a disability, contact Juanita Yates, Center for Food Safety and Applied Nutrition (HFS-009), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, 301-436-1731, e-mail: juanita.yates@fda.hhs.gov.

SUPPLEMENTARY INFORMATION:

I. How to Participate in the Meetings

Table 1 of this document provides information on participation in the meetings.

TABLE 1.

	Date	Address	Electronic Address	Other Information
First public meeting	September 30, 2009, from 1 p.m. to 5 p.m.	Hyatt Regency Chicago, 151 East Wacker Dr., Chicago, IL 60601		
Advance registration	By September 21, 2009	We encourage you to use electronic registration if possible. ¹	http://www.fda.gov/Food/NewsEvents/WorkshopsMeetingsConferences/default.htm	There is no registration fee for the public meetings. Early registration is recommended because seating is limited.
Request special accommodations due to a disability	By September 21, 2009	See <i>Contact Person</i>		