

water bodies (APHIS 2010, p. 1). A review of aerial photos within our files shows that the nearest known Leona's little blue butterfly locations are separated from rangeland by both forests and residential communities. Aerial application is of greatest concern for pesticide drift (Ghassemi *et al.* 1982, p. 510). APHIS has strict requirements when conducting aerial applications, including a requirement that they must not spray when winds exceed 10 miles per hour (mph) and that application will not occur when it is raining, or foggy, when foliage is wet, when there is air turbulence, when a temperature inversion exists in the project area, or when the temperature exceeds 80 Fahrenheit degrees (26.7 °C) (Mauer 2010, p. 3). In addition, all boundaries and buffers will be clearly marked, all airplanes will be equipped with global positioning systems to guide the pilots, and free flying is not allowed (Mauer 2010, p. 3). APHIS will also conduct monitoring to ensure that they are in compliance with the protective measures, including dye cards to monitor the extent and concentration of pesticide drift (Mauer 2010, p. 3 and APHIS 2010 Environmental Monitoring Plan, p. 3). In order to minimize the risk to nontarget terrestrial invertebrate species, APHIS uses only diflubenzuron spray or carbaryl bait whenever possible (APHIS 2009, p. 33). These chemicals are only toxic to invertebrates when they are in their immature stages (APHIS 2009, p. 12). In addition, diflubenzuron is normally only applied prior to the third week of June, as its efficacy decreases by the first week of July as a result of grasshopper development (APHIS 2009, p. 12). The Leona's little blue butterfly emerges from its chrysalis as an adult in mid-June through mid-July, and its immature stages occur 2 to 6 weeks after the adults emerge (mid-July to August) (Ross 2008, pp. 1, 4, 8). In addition, a monitoring study of carbaryl bait application indicated that the maximum particle drift was 150 feet (46 meters) in crosswinds of 13 mph (APHIS 2010, p. 7). Therefore, the immature stage of Leona's little blue butterfly is not at risk from APHIS' current diflubenzuron application program, because of the timing of its development and APHIS' pesticide application methods.

While information suggests that APHIS' pesticide application methods may not harm the Leona's little blue butterfly, we recognize that APHIS' low-impact method is a voluntary program (APHIS 2009, p. 1). A review of the petition and our files does not indicate to what extent private landowners near

the known Leona's little blue butterfly locations and habitat are utilizing APHIS' methods. As a result, the impacts of private-rangeland pesticide application to the Leona's little blue butterfly are unknown. Therefore, there is not substantial information to indicate that the petitioned action may be warranted due to direct mortality by the application of pesticides by the KMNWR, APHIS, and private landowners in Klamath County, Oregon. However, we will further evaluate information about this activity's potential impact to the species in our status review.

In summary, we find that the information provided in the petition, as well as other information in our files, presents substantial scientific and commercial information indicating that the petitioned action may be warranted due to other natural and manmade factors relating to limited range and small population size and vulnerability to stochastic events. We will further evaluate information relating to events and activities addressed under this factor in our status review of the species.

Finding

On the basis of our determination under section 4(b)(3)(A) of the Act, we find that the petition presents substantial scientific or commercial information indicating that listing the Leona's little blue butterfly throughout its entire range may be warranted. This finding is based on information provided under Factors A (present or threatened destruction, modification, or curtailment of the species' habitat or range) and E (other natural or manmade factors affecting the species' continued existence). Specifically, we find that the following may pose threats to the Leona's little blue butterfly throughout all or a significant portion of its range, such that the petitioned action may be warranted: The encroachment of lodgepole pine trees into the Leona's little blue butterfly habitat and the loss of habitat and individuals from catastrophic fire and stochastic events. We determine that the information provided under Factors B (overutilization for commercial, recreational, scientific or educational purposes), C (disease or predation), and D (the inadequacy of existing regulatory mechanisms) is not substantial. However, we will further evaluate all information related to these factors in our status review of the species.

Because we have found that the petition presents substantial information indicating that listing the Leona's little blue butterfly may be

warranted, we are initiating a status review to determine whether listing the Leona's little blue butterfly under the Act is warranted.

The "substantial information" standard for a 90-day finding differs from the Act's "best scientific and commercial data" standard that applies to a status review to determine whether a petitioned action is warranted. A 90-day finding does not constitute a status review under the Act. In a 12-month finding, we will determine whether a petitioned action is warranted after we have completed a thorough status review of the species, which is conducted following a substantial 90-day finding. Because the Act's standards for 90-day and 12-month findings are different, as described above, a substantial 90-day finding does not mean that the 12-month finding will result in a warranted finding.

References Cited

A complete list of references cited is available on the Internet at <http://www.regulations.gov> and upon request from the Klamath Falls Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

Author

The primary authors of this notice are the staff members of the Klamath Falls Fish and Wildlife Office.

Authority

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: August 4, 2011.

David Cottingham,

Acting Director, U.S. Fish and Wildlife Service.

[FR Doc. 2011-20864 Filed 8-16-11; 8:45 am]

BILLING CODE 4310-55-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 110606316-1463-01]

RIN 0648-BB15

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Reef Fish Fishery of the Gulf of Mexico; Amendment 26 and Amendment 29 Supplement

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes to supplement the regulations implementing Amendments 26 and 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). Amendment 26 established an individual fishing quota (IFQ) program for the red snapper commercial sector of the reef fish fishery in the Gulf of Mexico (Gulf exclusive economic zone (EEZ)).

Amendment 29 established a multi-species IFQ program for the grouper and tilefish component of the commercial sector of the reef fish fishery in the Gulf EEZ. If implemented, this rule would implement transferability measures for the red snapper IFQ program contained in Amendment 26 that are required to be effective as of January 1, 2012. This rule would also require all Gulf IFQ applicants and participants to certify their status as U.S. citizens or permanent resident aliens to meet current Gulf IFQ program and Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) requirements. Additionally, this rule would make revisions to the codified text to remove outdated language specific to the Gulf IFQ programs. The intent of this rule is to specify the process for the general public to participate in the Gulf red snapper IFQ program and ensure efficient functioning of both IFQ programs in the Gulf of Mexico.

DATES: Written comments on this proposed rule must be received no later than 5 p.m., eastern time, on September 16, 2011.

ADDRESSES: You may submit comments on the proposed rule identified by “NOAA–NMFS–2011–0178” by any of the following methods:

- *Electronic submissions:* Submit electronic comments via the Federal e-Rulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.
- *Mail:* Catherine Bruger, Southeast Regional Office, NMFS, 263 13th Avenue South, St. Petersburg, FL 33701.

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

To submit comments through the Federal e-rulemaking portal: <http://www.regulations.gov>, click on “submit a comment,” then enter “NOAA–NMFS–2011–0178” in the keyword search and click on “search.” To view posted comments during the comment period, enter “NOAA–NMFS–2011–0178” in the keyword search and click on “search.” NMFS will accept anonymous comments (enter N/A in the required field if you wish to remain anonymous). You may submit attachments to electronic comments in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

Comments received through means not specified in this rule will not be considered.

Electronic copies of Amendments 26 and 29, which include a final environmental impact statement (FEIS), a regulatory impact review (RIR), and a regulatory flexibility act analysis may be obtained from the Southeast Regional Office Web site at <http://sero.nmfs.noaa.gov/sf/GulfReefFishIFQ.htm>.

Comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this proposed rule may be submitted in writing to Rich Malinowski, Southeast Regional Office, NMFS, 263 13th Avenue South, St. Petersburg, FL 33701; and OMB, by e-mail at OIRASubmission@omb.eop.gov, or by fax to 202–395–7285.

FOR FURTHER INFORMATION CONTACT: Catherine Bruger, telephone 727–824–5305, e-mail Catherine.Bruger@noaa.gov.

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 Act.

Background

On November 22, 2006, NMFS published a final rule (71 FR 67447) to implement Amendment 26 to the Reef Fish FMP (Amendment 26), which established the Gulf of Mexico Red Snapper Individual Fishing Quota (IFQ) program. The program became effective on January 1, 2007. In addition to the initial implementation of the Gulf red snapper IFQ program, Amendment 26 implemented a provision to allow general public participation within the red snapper IFQ program 5 years after program implementation. The general public participation provision becomes effective on January 1, 2012. The intent of this provision was to give commercial

reef fish fishermen the opportunity to better understand their individual fishing quota’s economic value prior to January 1, 2012, and after January 1, 2012, to allow the general public the opportunity to enter the red snapper IFQ program and receive transferred shares and allocation from current IFQ participants, thus expanding the transferability of red snapper shares and allocation.

As described in Amendment 26, on January 1, 2012, all U.S. citizens and permanent resident aliens will be eligible to acquire red snapper IFQ shares and allocation in the Gulf red snapper IFQ program through transfer. Prior to January 1, 2012, only participants with a valid commercial Gulf reef fish permit can establish IFQ online accounts and hold red snapper quota shares and allocation. Therefore, beginning on January 1, 2012, any U.S. citizen or permanent resident alien, after completing and submitting an information collection regarding citizenship status, will be eligible to acquire red snapper IFQ shares and allocation through transfer. However, the possession of a valid commercial Gulf reef fish permit and applicable red snapper IFQ allocation remains a requirement to possess, land, or sell Gulf IFQ red snapper. This rule would specify the process for the general public to participate in the Gulf red snapper IFQ program beginning on January 1, 2012.

In 2009, NMFS published a final rule implementing Amendment 29 to the Reef Fish FMP (74 FR 44732, August 31, 2009), which established the Gulf of Mexico IFQ program for groupers and tilefishes. The reauthorized Magnuson-Stevens Act of 2006, requires any participant in an IFQ program to be a U.S. citizen or permanent resident alien. Currently, information regarding an IFQ participant’s status as a U.S. citizen or permanent resident alien is not collected on Federal Gulf reef fish permit applications or through the Gulf IFQ system. If enacted, this rule would require that all Gulf IFQ program participants certify their citizenship status to participate in a Gulf IFQ program.

Management Measures Contained in This Proposed Rule

This rule would establish an information collection to meet the January 1, 2012 requirements of the Gulf red snapper IFQ program outlined in Amendment 26, and meet the requirements of the reauthorized Magnuson-Stevens Act for the grouper-tilefish IFQ program. This rule also describes the procedures that are

necessary for all qualified entities to apply for and maintain an IFQ online account. Additionally, this rule would make revisions to the codified text to remove outdated language for the red snapper and grouper-tilefish IFQ programs. Specifically, this rule would remove regulatory language that was applicable to the initial implementation of the red snapper and grouper-tilefish IFQ programs and is no longer needed to be included in the regulations.

Collection of Information for Gulf IFQ Applicants and Participants

If implemented, this rule would require Gulf IFQ program applicants to establish an IFQ online account to participate in the program. In order to establish an IFQ online account and in accordance with the regulations implemented for Amendments 26 and 29 to the Reef Fish FMP, information about the participants must be collected prior to establishing an IFQ online account for the applicant. This collection-of-information is necessary to identify participants for the effective monitoring, enforcement, and management of the Gulf IFQ programs established through Amendments 26 and 29 to the Reef Fish FMP. Specifically, this rule would establish the requirement that any new applicant and all current participants in a Gulf IFQ program must submit an application for an IFQ online account, certifying their status as either a U.S. citizen or permanent resident alien, to obtain and maintain an IFQ online account. The information requested will include contact information (name, address, and phone number), date of birth, certification of citizenship status, tax identification number, and corporate shareholder information where appropriate. Account holders would be required to update and confirm their account information every 2 years to keep their online IFQ account valid.

Revision and Reorganization of Gulf IFQ Language

This rule would remove language in both the red snapper and the grouper-tilefish IFQ programs that was applicable to the initial implementation of these programs and is no longer relevant. In addition to the removal of obsolete language, §§ 622.16 (red snapper IFQ program) and 622.20 (grouper-tilefish IFQ program) have been renumbered and reorganized to provide for a more clear and concise arrangement of the codified text.

Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the NMFS

Assistant Administrator has determined that this proposed rule is consistent with Amendments 26 and 29, other provisions of the Magnuson-Stevens Act, and other applicable law, subject to further consideration after public comment.

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

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this rule, if adopted, would not have a significant economic impact on a substantial number of small entities. The factual basis for this determination is as follows:

The purpose of this rule is to establish an administrative requirement for the collection of information necessary to effectively monitor and manage the Gulf of Mexico IFQ programs, pertinent to the January 1, 2012 requirements. The objective of this rule is to maximize the net benefits to society of the red snapper and grouper-tilefish commercial components of the reef fish fishery in the Gulf of Mexico. The Magnuson-Stevens Act provides the statutory basis for this action.

With the exception of one group of entities, it is not feasible to identify, quantify, or describe all of the small entities to which this rule would apply. This rule, if implemented, would apply to all entities that currently have an IFQ online account for participation in a Gulf of Mexico IFQ program and any entity that is a U.S. citizen or permanent resident alien that wishes to acquire red snapper IFQ shares or allocation through transfer beginning January 1, 2012. The group of entities that wish to acquire red snapper IFQ shares or allocation through transfer beginning January 1, 2012 consists of an unidentifiable and unquantifiable number of entities, both small and large. Small and large entities, as well as individual citizens, may be motivated to acquire IFQ shares or allocation for short- or long-term economic gain, speculation, or environmental protection. As a result, prospective entities may be businesses, nonprofit organizations, or even government jurisdictions, particularly if it is assumed that the restriction limiting IFQ harvest to vessels with valid Federal commercial reef fish permits will be eliminated at some point in the future. As such, prospective entities could include marinas, chambers of commerce, recreational angler clubs and organizations, bait and tackle shops, and hotels and motels, in addition to environmental groups, student clubs,

and other groups. Narrowing this list to one or a few groups of entities reasonably expected to apply for an IFQ online account is not possible with available information. Most of these entities are assumed to be, for the purpose of this analysis, small entities.

The group of entities consisting of those who currently have an IFQ online account can be identified, quantified, and described. Because all commercial reef fish permit holders can currently establish an IFQ online account, all entities that possess a valid or renewable commercial reef fish permit are assumed to comprise the universe of entities with an IFQ online account. On May 12, 2011, 927 entities possessed a valid or renewable commercial reef fish permit. Average annual total revenues for vessels with a commercial reef fish permit are estimated to be less than \$100,000 (2008 dollars).

The Small Business Administration has established size criteria for all major industry sectors in the U.S., including fish harvesters. 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 its affiliated operations worldwide. Based on the average annual gross revenue estimate provided above, all commercial reef fish vessels expected to be directly affected by this proposed rule are determined for the purpose of this analysis to be small business entities.

This rule would require all entities that currently possess an online IFQ account, and all entities who wish to establish an online IFQ account to acquire red snapper IFQ shares or allocation beginning January 1, 2012, to submit an application containing contact information (name, address, and phone number), date of birth, certification of citizenship status, tax identification number, and corporate shareholder information, where appropriate. Account holders would be required to update and confirm their account information every 2 years to keep their online IFQ account valid. No special professional skills would be required to prepare and submit the application or periodic update. Other than the request for information, this rule would impose no new requirements, obligations, restrictions or limits on any of the affected entities.

No duplicative, overlapping, or conflicting Federal rules have been identified.

This rule would not be expected to significantly reduce the profits of any small entities. This rule would establish an insignificant administrative requirement for current and future participants in the red snapper and grouper-tilefish IFQ programs. The economic burden of this administrative requirement would consist of the minor time and postage costs of completing and submitting a short application, estimated to take approximately 10 minutes to complete. Participants would be required to update and confirm their IFQ online account information every 2 years. No application or processing fee would be required for the initial application or periodic update and confirmation. Because the individual economic burden would be expected to be minor, no substantive costs or reduction in profits for any small entities is expected to be incurred.

Because this rule, if implemented, is not expected to have a direct adverse economic impact on any small entities, an initial regulatory flexibility analysis is not required and none has been prepared.

Notwithstanding any other provision of law, no person is required to respond to, nor shall a person be subject to a penalty for failure to comply with, a collection-of-information subject to the requirements of the Paperwork Reduction Act (PRA), unless that collection-of-information displays a currently valid Office of Management and Budget (OMB) control number.

This proposed rule contains a collection-of-information requirement subject to the PRA applicable to participants in the Gulf IFQ programs, namely, a requirement to complete and submit an IFQ Online Application to certify a participant's U.S. citizenship status and to update and confirm their application every 2 years.

This requirement has been submitted to OMB for approval. The public reporting burden for this collection-of-information is estimated to average 10 minutes per applicant/participant every 2 years. This estimate of the public reporting burden includes the time for reviewing instructions, gathering and maintaining the data needed, and completing and reviewing the collection-of-information. Public comment is sought regarding: Whether this proposed collection-of-information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; the accuracy of the burden estimate; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection-

of-information, including through the use of automated collection techniques or other forms of information technology. Send comments regarding the burden estimate or any other aspect of the collection-of-information requirement, including suggestions for reducing the burden, to NMFS and to OMB (see **ADDRESSES**).

List of Subjects in 50 CFR Part 622

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

Dated: August 12, 2011.

Samuel D. Rauch III,

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

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

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

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

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

2. Revise § 622.16 to read as follows:

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

(a) *General.* This section establishes an IFQ program for the commercial red snapper component of the Gulf reef fish fishery. Shares determine the amount of Gulf red snapper IFQ allocation, in pounds gutted weight, a shareholder is initially authorized to possess, land, or sell in a given calendar year. As of January 1, 2012, IFQ shares and allocation can only be transferred to U.S. citizens and permanent resident aliens. See § 622.16(b)(9) regarding eligibility to participate in the Gulf red snapper IFQ program as of January 1, 2012. Shares and annual IFQ allocation are transferable. 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. 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 regarding the harvest and possession of Gulf IFQ red snapper 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.

(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 or 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 mailed 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 red snapper 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. As of January 1, 2012, all U.S. citizens and permanent resident aliens are eligible to establish an IFQ online account. As of January 1, 2012, all current IFQ participants must complete and submit the application for an IFQ Online Account to certify their citizenship status and ensure their account information (*e.g.*, mailing address, corporate shareholdings, etc.) is up to date. See § 622.16(b)(9) regarding requirements for the application for an 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.

(4) *IFQ allocation.* IFQ allocation is the amount of Gulf red snapper, in pounds gutted weight, an IFQ shareholder or allocation holder is authorized to possess, land, or sell during a given fishing year. IFQ allocation is derived at the beginning of each year by multiplying a shareholder's IFQ share times the annual commercial quota for Gulf red snapper. If the quota is increased after the beginning of the fishing year, then IFQ allocation is derived by multiplying a shareholder's IFQ share at the time of the quota increase by the amount the annual commercial quota for red snapper is increased.

(5) *Initial shareholder IFQ account setup information.* As soon as possible after an IFQ Online Account is established, the RA will provide IFQ account holders information pertinent to the IFQ program. This information will include:

(i) General instructions regarding procedures related to the IFQ online system; and

(ii) A user identification number—the personal identification number (PIN) was provided in a subsequent letter.

(6) *Dealer notification and IFQ account setup information.* As soon as possible after November 22, 2006, the RA mailed 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 Web site at

<https://ifq.sero.nmfs.noaa.gov> once an IFQ account has been established. The information package included general information about the IFQ program and instructions for accessing the IFQ Web site and establishing an IFQ dealer account.

(b) *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 (b)(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 Web site at <https://ifq.sero.nmfs.noaa.gov> at the time of the transaction in accordance with the reporting form(s) and instructions provided on the Web site. This report includes, but is not limited to, date, time, and location of transaction; weight and actual ex-vessel price 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 Web site 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) must initiate a landing transaction correction form to correct the landing transaction. This form is available via the IFQ Web site at <https://>

ifq.sero.nmfs.noaa.gov. 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 as described in the Magnuson-Stevens Act. 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 price of Gulf red snapper landed per trip 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 Web site 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 IFQ Customer Service 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 Web site at <https://ifq.seo.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 (b)(1)(iii) of this section and, thus, will

preclude issuance of the required transaction approval code.

(ii) *Time restriction on offloading.* For the purpose of this paragraph, offloading means to remove IFQ red snapper from a vessel. 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 Web site at <https://ifq.seo.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 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.

(B) Landing locations must be publicly accessible by land and water, and must satisfy the following criteria:

(1) Vehicles must have access to the site via public roads;

(2) Vessels must have access to the site via navigable waters;

(3) No other condition may impede free and immediate access to the site by an authorized law enforcement officer. Examples of such conditions include,

but are not limited to: A locked gate, fence, wall, or other barrier preventing 24-hour access to the site; a gated community entry point; a guard animal; a posted sign restricting access to the site; or any other physical deterrent.

(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 only to a 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 Web site. An IFQ shareholder must initiate a share transfer request by logging onto the IFQ Web site at <https://ifq.seo.nmfs.noaa.gov>. Following the instructions provided on the Web site, 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 (b)(6) of this section. Thereafter, share transferee eligibility will only 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 cannot 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 Web site. An IFQ account holder must initiate an allocation transfer by logging onto the IFQ Web site at <https://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 online system will provide a transaction approval code to the transferor and transferee confirming the transaction.

(5) *Restricted transactions during the 20-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 2 p.m. Eastern Time the following fishing year. The remaining 6 hours prior to the end of the fishing year, and the 14 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 20 hours. An advance notice of landing may still be submitted during the 20-hour maintenance window by using the vessel's VMS unit or 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 and at the time of renewal of the application for an IFQ Online Account.

(7) *Redistribution of shares resulting from permanent revocation.* If a shareholder's IFQ shares have been permanently revoked, 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 Web site at <https://ifq.seo.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 shares. 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 (b)(1)(ii) of this section. IFQ participants can monitor the status of their shares and allocation throughout the year via the IFQ Web site.

(9) *Eligibility to participate in the Gulf red snapper IFQ program as of January 1, 2012.* The provisions of paragraph (b)(9) of this section apply to all eligible participants for the Gulf red snapper IFQ program beginning January 1, 2012. In addition to eligible participants who already participate in the Gulf red snapper IFQ program, as of January 1, 2012, all U.S. citizens and permanent resident aliens who are in compliance with the provisions of this section are eligible and may participate in the Gulf red snapper IFQ program as shareholders and allocation holders. The requirements to meet the definition of a U.S. citizen are described in the Immigration and Nationality Act of 1952, as amended, and permanent resident aliens are those individuals who have been lawfully accorded the privilege of residing permanently in the U.S. in accordance with U.S. immigration laws. In order to harvest and possess Gulf IFQ red snapper, the requirements for a Gulf red snapper IFQ vessel account, as specified in § 622.4(a)(2)(ix), or a Gulf IFQ dealer endorsement, as specified in § 622.4(a)(4)(ii) apply.

(i) *Gulf red snapper IFQ program participation for current red snapper IFQ account holders.* A current participant in the red snapper IFQ program must complete and submit the application for an IFQ Online Account that is available on the Web site <http://seo.nmfs.noaa.gov>, to certify status as a U.S. citizen or permanent resident alien. The IFQ account holder must also complete and submit any other information on this form that may

be necessary for the administration of the IFQ online account. A person with an established IFQ online account must update and confirm the account information every 2 years. IFQ online accounts are updated through the submission of the application for an IFQ Online Account. Accounts must be updated prior to the account validity date (expiration date of the account) that is displayed on each account holder's IFQ online account page. The RA will provide each participant who has established an online account, with an application approximately 2 months prior to the account validity date. A participant who is not provided an application at least 45 days prior to the account validity date must contact IFQ Customer Service at 1-866-425-7627 and request an application. Failure to submit a completed application prior to the account validity date will lead to the suspension of the participant's IFQ online account until a completed application is submitted. After January 1, 2012, participants who certify that they are either not U.S. citizens or permanent resident aliens will be ineligible to receive shares or allocation through transfer.

(ii) *Gulf red snapper IFQ program participation for entities that do not currently possess an IFQ online account.* The following procedures apply to U.S. citizens or permanent resident aliens who are not otherwise described in either paragraphs (a) or (b)(9)(i) of this section.

(A) To establish an IFQ online account, a person must first complete the application for an IFQ Online Account that is available on the Web site <http://sero.nmfs.noaa.gov>. An applicant for an IFQ online account under this paragraph must provide the following:

(1) Name; address; telephone number; date of birth; tax identification number; certification of status as either a U.S. citizen or permanent resident alien; and if a corporation, a list of all officers, directors, shareholders, and registered agents of the business; and other identifying information as specified on the application.

(2) Any other information that may be necessary for the establishment or administration of the IFQ online account.

(B) Completed applications and all required supporting documentation must be submitted to the RA. There is no fee to access the Web site or establish an IFQ online account. An applicant that submits an incomplete application will be contacted by the RA to correct any deficiencies. If an applicant fails to correct the deficiency within 30 days of

being notified of the deficient application, the application will be considered abandoned.

(C) After an applicant submits a completed application for an IFQ online account, the RA will mail the applicant general instructions regarding procedures related to the IFQ online system, including how to set up an online account and a user identification number—the personal identification number (PIN) will be provided in a subsequent letter.

(D) A participant who has established an IFQ online account must notify the RA within 30 days after there is any change in the information submitted through the application for an IFQ Online Account. The IFQ online account is void if any change in the application information is not reported within 30 days.

(E) A person who has established an IFQ online account must update and confirm the account information every 2 years. IFQ online accounts are updated through the submission of the application for an IFQ Online Account. Accounts must be updated prior to the account validity date (expiration date of the account) that is displayed on each account holder's IFQ online account page. The RA will mail each participant who has established an online account an application approximately 2 months prior to the Account Validity Date. A participant who does not receive an application at least 45 days prior to the Account Validity Date must contact IFQ Customer Service at 1-866-425-7627 and request an application. Failure to submit a completed application prior to the account validity date will lead to the suspension of the IFQ online account until a completed application is submitted.

(F) For information regarding transfer of IFQ shares and allocation, the IFQ share cap, and the annual recalculation and notification of IFQ shares and allocation, see paragraphs (b)(4), (b)(6), and (b)(8) of this section, respectively.

(G) Participation in the Gulf red snapper IFQ program beyond transferring IFQ shares and allocation is explained in paragraphs (a) through (b)(8) of this section.

3. Revise § 622.20 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 or 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. All current IFQ participants must complete and submit the application for an IFQ Online Account to certify their citizenship status and ensure their account information (e.g., mailing address, corporate shareholdings, etc.) is up to date. See § 622.20(b)(9) regarding requirements for the application for an 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.

(4) *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. If a quota is increased after the beginning of the fishing year, then IFQ allocation is derived by multiplying a shareholder's IFQ share at the time of the quota increase by the amount the annual commercial quota is increased.

(5) *Red grouper and gag multi-use allocation—(i) 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.

(ii) *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 (b)(4)(iv) of this section.

(6) *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.

(7) *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.

(8) *Initial shareholder and IFQ account setup information.* On or about October 1, 2009, the RA mailed 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 included:

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

(ii) 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;

(iii) 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;

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

(v) Instructions for appeals;

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

(vii) A user identification number; and a personal identification number (PIN) that was provided in a subsequent letter.

(9) *Dealer notification and IFQ account setup information.* On or about October 1, 2009, the RA mailed 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 Web site at <https://ifq.seo.nmfs.noaa.gov> once an IFQ account has been established. The information package included general information about the IFQ program and instructions for accessing the IFQ Web site and establishing an IFQ dealer account.

(b) *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 (b)(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 Web site at <https://ifq.sero.nmfs.noaa.gov> at the time of the transaction in accordance with reporting form and instructions provided on the Web site. This report includes, but is not limited to, date, time, and location of transaction; weight and actual ex-vessel price 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) must initiate a landing transaction correction form to correct the landing transaction. This form is available via the IFQ Web site at <https://ifq.sero.nmfs.noaa.gov>. 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 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 as described in the Magnuson-Stevens Act. 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 price of Gulf groupers and tilefishes landed per trip 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 Web site 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 IFQ Customer Service 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 Web site at <https://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 (b)(1)(iii) of this section and, thus, will preclude issuance of the required transaction approval code.

(ii) *Time restriction on offloading.* For the purpose of this paragraph, offloading means to remove IFQ groupers and tilefishes from a vessel. IFQ groupers or 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 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 or 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 Web site at <https://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 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.

(B) Landing locations must be publicly accessible by land and water, and must satisfy the following criteria:

(1) Vehicles must have access to the site via public roads;

(2) Vessels must have access to the site via navigable water;

(3) No other condition may impede free and immediate access to the site by an authorized law enforcement officer. Examples of such conditions include, but are not limited to: A locked gate, fence, wall, or other barrier preventing 24-hour access to the site; a gated community entry point; a guard; animal; a posted sign restricting access to the site; or any other physical deterrent.

(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 only to a 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 Web site. An IFQ shareholder must initiate a share transfer request by logging onto the IFQ Web site at <https://ifq.sero.nmfs.noaa.gov>. An IFQ shareholder who is subject to a sanction under 15 CFR part 904 is prohibited from initiating a share transfer. An IFQ shareholder who is subject to a pending sanction under 15 CFR part 904 must disclose in writing to the prospective transferee the existence of any pending sanction at the time of the transfer. Following the instructions provided on the Web site, 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 (b)(6) of this section. Thereafter, share transferee eligibility will only 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 Web site. An IFQ account holder must initiate an allocation transfer by logging onto the IFQ Web site at <https://ifq.sero.nmfs.noaa.gov>, entering the required information, including but not limited to, the 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 Web site will provide a transfer approval code to the transferor and transferee confirming the transaction.

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

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

(5) *Restricted transactions during the 20-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 2 p.m. Eastern Time the following fishing year. The remaining 6 hours prior to the end of the fishing year, and the 14 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 and tilefishes have changed, and update shares and allocations for the upcoming fishing year. No electronic IFQ transactions will be available during these 20 hours. An advance notice of landing may still be submitted during the 20-hour maintenance window by using the vessel's VMS unit or 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 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 and at the time of renewal of the application for an IFQ Online Account.

(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 revocation*. If a shareholder's IFQ shares have been permanently revoked, the RA will redistribute the IFQ shares 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 Web site at <https://ifq.sero.nmfs.noaa.gov>, of their IFQ shares and allocations, for each of the five share categories, for the upcoming fishing year. These updated share values will reflect the results of applicable share transfers and any redistribution of shares (subject to cap restrictions)

resulting from permanent revocation of IFQ shares. 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 Web site.

(9) *Gulf grouper and tilefish IFQ program participation for current grouper and tilefish IFQ account holders*. A current participant in the Gulf grouper and tilefish IFQ program must complete and submit the application for an IFQ Online Account that is available on the Web site <http://sero.nmfs.noaa.gov>, to certify status as a U.S. citizen or permanent resident alien. The account holder must also complete and submit any other information on this form that may be necessary for the administration of the IFQ online account. A person with an established IFQ online account must update and confirm the account information every 2 years. IFQ online accounts are updated through the submission of the application for an IFQ Online Account. Accounts must be updated prior to the account validity date (expiration date of the account) that is displayed on each account holder's IFQ online account page. The RA will provide each participant who has established an online account an application approximately 2 months prior to the account validity date. A participant who is not provided an application at least 45 days prior to the account validity date must contact IFQ Customer Service at 1-866-425-7627 and request an application. Failure to submit a completed application prior to the participant's account validity date will lead to the suspension of the participant's access to his IFQ online account until a completed application is submitted. Participants who certify that they are either not a U.S. citizens or permanent resident alien will be ineligible to receive shares or allocation through transfer.

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