

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

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

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

2. In § 622.1, paragraph (b), Table 1, footnote 5 is revised, and footnote 6 is added to read as follows:

§ 622.1 Purpose and scope.

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(b) * * *

Table 1--FMPs Implemented Under Part 622

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

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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.

3. 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.

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(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, 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. 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]

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(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 (except for any overage up to the 10 percent allowed on the last fishing trip,

see (c)(1)(ii) of this section for details regarding this provision), for the fish to be landed. 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 IFQ fees required under paragraph (c)(2) of this section, 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.

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(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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4. 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.

5. In § 622.16, revise the fifth and sixth sentences in the introductory text of paragraph (a); revise paragraphs (a)(1), (b)(3)(i)(G), (c)(1)(i), (c)(1)(ii); add paragraph (c)(1)(iv); revise the second to last sentence in paragraph (c)(2)(ii); revise paragraph (c)(2)(iv)(A); remove paragraph (c)(2)(iv)(B) and redesignate paragraph (c)(2)(iv)(C) as paragraph (c)(2)(iv)(B); remove paragraph (c)(2)(v); revise the second sentence and add a new sentence after the second sentence in paragraph (c)(3)(i); add paragraph (c)(3)(v); revise the introductory text of paragraph (c)(4); revise paragraph (c)(4)(ii); add two sentences to the end of paragraph (c)(4)(iii); revise paragraph (c)(4)(iv); remove paragraph (c)(4)(v); revise paragraph (c)(5); revise the second and third

sentences in paragraph (c)(6) and add two more sentences to this paragraph; revise the first sentence of paragraph (c)(7); and revise the second sentence of paragraph (c)(8) 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.

* * * * *

(b) * * *

(3) * * *

(i) * * *

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

* * * * *

(c) * * *

(1) * * *

(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.

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(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) * * *

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(ii) * * * 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. * * *

(iv) * * *

(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.

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(3) Measures to enhance IFQ program enforceability--(i) Advance notice of landing. * * * 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) at the time of the advance notice of landing. * * *

* * * * *

(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 30 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 notification of landing), land or sell Gulf red snapper subject to this IFQ program.

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(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 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 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. * * * 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. 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 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. * * *

(8) * * * 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. * * *

6. Section 622.20 is added 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, however, 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, however, 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 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 drop 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, 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) at the time of the advance notice of 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 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. 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, must accompany any IFQ groupers and tilefishes from the landing location through possession by 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 30 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 notification of landing), land or sell Gulf groupers or tilefishes subject to this IFQ program.

(i) Share transfers. Share transfers are permanent, i.e., they remain in effect until subsequently transferred. Transfer of shares will result in the corresponding allocation being automatically transferred to the person receiving the transferred share beginning with the fishing year following the year the transfer occurred. However, within the fishing year the share transfer occurs, transfer of shares and associated allocation are independent--unless the associated allocation is transferred separately, it remains with the transferor for the duration of that fishing year. A share transfer transaction that remains in

pending status, i.e., has not been completed and verified with a transaction approval code, after 30 days from the date the shareholder initiated the transfer will be cancelled, and the pending shares will be re-credited to the shareholder who initiated the transfer.

(ii) Share transfer procedures. Share transfers must be accomplished online via the IFQ website. An IFQ shareholder must initiate a share transfer request by logging onto the IFQ website at ifq.sero.nmfs.noaa.gov. An IFQ shareholder who is subject to a sanction under 15 CFR part 904 is prohibited from initiating a share transfer. An IFQ shareholder who is subject to a pending sanction under 15 CFR part 904 must disclose in writing to the prospective transferee the existence of any pending sanction at the time of the transfer. Following the instructions provided on the website, the shareholder must enter pertinent information regarding the transfer request including, but not limited to: amount of shares to be transferred, which must be a minimum of 0.000001 percent; name of the eligible transferee; and the value of the transferred shares. For the first 5 years this IFQ program is in effect, an eligible transferee is a person who has a valid commercial vessel permit for Gulf reef fish; is in compliance with all reporting requirements for the Gulf reef fish fishery and the IFQ program for Gulf groupers and tilefishes; is not subject to sanctions under 15 CFR part 904; and who would not

be in violation of the share or allocation caps as specified in paragraph (c)(6) of this section. Thereafter, share transferee eligibility will be extended to include U.S. citizens and permanent resident aliens who are otherwise in compliance with the provisions of this section. The online system will verify the information entered. If the information is not accepted, the online system will send the shareholder an electronic message explaining the reason(s). If the information is accepted, the online system will send the transferee an electronic message of the pending transfer. The transferee must approve the share transfer by electronic signature. If the transferee approves the share transfer, the online system will send a transfer approval code to both the shareholder and transferee confirming the transaction. All share transfers must be completed and the transaction approval code received prior to December 31 at 6 p.m. eastern time each year.

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

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

(B) Multi-use allocation transfer restrictions--(i) 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.

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

(5) Restricted transactions during the 12-hour online

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

(6) IFQ share and allocation caps. A corporation's total IFQ share (or allocation) is determined by adding the applicable IFQ shares (or allocation) held by the corporation and any other IFQ shares (or allocation) held by a corporation(s) owned by the original corporation. An individual's total IFQ share is determined by adding the applicable IFQ shares held by the individual and the applicable IFQ shares equivalent to the corporate share the individual holds in a corporation. An individual's total IFQ allocation is determined by adding the individual's total allocation to the allocation derived from the IFQ shares equivalent to the corporate share the individual holds

in a corporation.

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

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

(7) Redistribution of shares resulting from permanent permit

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

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

prior fishing year overages as specified in paragraph (c)(1)(ii) of this section. IFQ participants can monitor the status of their shares and allocation throughout the year via the IFQ website.

§ 622.44 [Amended]

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

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

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

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

2. In § 622.1, paragraph (b), Table 1, footnote 5 is 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} |

* * * * *

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.

3. 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, 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. 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 (except for any overage up to the 10 percent allowed on the last fishing trip,

see (c)(1)(ii) of this section for details regarding this provision), for the fish to be landed. 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 IFQ fees required under paragraph (c)(2) of this section, 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.

* * * * *

(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. * * *

* * * * *

4. 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.

5. In § 622.16, revise the fifth and sixth sentences in the introductory text of paragraph (a); revise paragraphs (a)(1), (b)(3)(i)(G), (c)(1)(i), (c)(1)(ii); add paragraph (c)(1)(iv); revise the second to last sentence in paragraph (c)(2)(ii); revise paragraph (c)(2)(iv)(A); remove paragraph (c)(2)(iv)(B) and redesignate paragraph (c)(2)(iv)(C) as paragraph (c)(2)(iv)(B); remove paragraph (c)(2)(v); revise the second sentence and add a new sentence after the second sentence in paragraph (c)(3)(i); add paragraph (c)(3)(v); revise the introductory text of paragraph (c)(4); revise paragraph (c)(4)(ii); add two sentences to the end of paragraph (c)(4)(iii); revise paragraph (c)(4)(iv); remove paragraph (c)(4)(v); revise paragraph (c)(5); revise the second and third

sentences in paragraph (c)(6) and add two more sentences to this paragraph; revise the first sentence of paragraph (c)(7); and revise the second sentence of paragraph (c)(8) 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.

* * * * *

(b) * * *

(3) * * *

(i) * * *

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

* * * * *

(c) * * *

(1) * * *

(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.

* * * * *

(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) * * *

* * * * *

(ii) * * * 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. * * *

(iv) * * *

(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.

* * * * *

(3) Measures to enhance IFQ program enforceability--(i) Advance notice of landing. * * * 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) at the time of the advance notice of landing. * * *

* * * * *

(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 30 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 notification of landing), land or sell Gulf red snapper subject to this IFQ program.

* * * * *

(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 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 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. * * * 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. 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 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. * * *

(8) * * * 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. * * *

6. Section 622.20 is added 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, however, 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, however, 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 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 drop 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, 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) at the time of the advance notice of 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 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. 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, must accompany any IFQ groupers and tilefishes from the landing location through possession by 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 30 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 notification of landing), land or sell Gulf groupers or tilefishes subject to this IFQ program.

(i) Share transfers. Share transfers are permanent, i.e., they remain in effect until subsequently transferred. Transfer of shares will result in the corresponding allocation being automatically transferred to the person receiving the transferred share beginning with the fishing year following the year the transfer occurred. However, within the fishing year the share transfer occurs, transfer of shares and associated allocation are independent--unless the associated allocation is transferred separately, it remains with the transferor for the duration of that fishing year. A share transfer transaction that remains in

pending status, i.e., has not been completed and verified with a transaction approval code, after 30 days from the date the shareholder initiated the transfer will be cancelled, and the pending shares will be re-credited to the shareholder who initiated the transfer.

(ii) Share transfer procedures. Share transfers must be accomplished online via the IFQ website. An IFQ shareholder must initiate a share transfer request by logging onto the IFQ website at ifq.sero.nmfs.noaa.gov. An IFQ shareholder who is subject to a sanction under 15 CFR part 904 is prohibited from initiating a share transfer. An IFQ shareholder who is subject to a pending sanction under 15 CFR part 904 must disclose in writing to the prospective transferee the existence of any pending sanction at the time of the transfer. Following the instructions provided on the website, the shareholder must enter pertinent information regarding the transfer request including, but not limited to: amount of shares to be transferred, which must be a minimum of 0.000001 percent; name of the eligible transferee; and the value of the transferred shares. For the first 5 years this IFQ program is in effect, an eligible transferee is a person who has a valid commercial vessel permit for Gulf reef fish; is in compliance with all reporting requirements for the Gulf reef fish fishery and the IFQ program for Gulf groupers and tilefishes; is not subject to sanctions under 15 CFR part 904; and who would not

be in violation of the share or allocation caps as specified in paragraph (c)(6) of this section. Thereafter, share transferee eligibility will be extended to include U.S. citizens and permanent resident aliens who are otherwise in compliance with the provisions of this section. The online system will verify the information entered. If the information is not accepted, the online system will send the shareholder an electronic message explaining the reason(s). If the information is accepted, the online system will send the transferee an electronic message of the pending transfer. The transferee must approve the share transfer by electronic signature. If the transferee approves the share transfer, the online system will send a transfer approval code to both the shareholder and transferee confirming the transaction. All share transfers must be completed and the transaction approval code received prior to December 31 at 6 p.m. eastern time each year.

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

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

(B) Multi-use allocation transfer restrictions--(i) 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.

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

(5) Restricted transactions during the 12-hour online

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

(6) IFQ share and allocation caps. A corporation's total IFQ share (or allocation) is determined by adding the applicable IFQ shares (or allocation) held by the corporation and any other IFQ shares (or allocation) held by a corporation(s) owned by the original corporation. An individual's total IFQ share is determined by adding the applicable IFQ shares held by the individual and the applicable IFQ shares equivalent to the corporate share the individual holds in a corporation. An individual's total IFQ allocation is determined by adding the individual's total allocation to the allocation derived from the IFQ shares equivalent to the corporate share the individual holds

in a corporation.

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

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

(7) Redistribution of shares resulting from permanent permit

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

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

prior fishing year overages as specified in paragraph (c)(1)(ii) of this section. IFQ participants can monitor the status of their shares and allocation throughout the year via the IFQ website.

§ 622.44 [Amended]

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

