

FOR FURTHER INFORMATION CONTACT For clarification of content, contact Ms. Cecelia Davis, Procurement Analyst, at (202) 219-0202. The TTY Federal Relay Number for further information is 1-800-877-8973. For information pertaining to status or publication schedules, contact the FAR Secretariat at (202) 501-4755. Please cite FAR case 2005-041.

SUPPLEMENTARY INFORMATION:

A. Background

The internet protocol is one of the primary mechanisms that define how and where information moves across networks, e.g., voice, video, and text. Currently Internet Protocol Version 4 (IPv4) is the industry standard used and has about 4.3 billion address spaces. Key characteristics of IPv6 are designed to significantly increase internet address space, promote flexibility and functionality, and enhance security. Agencies can reduce costly upgrades and the complexity of transitioning to IPv6 by proactively integrating IPv6 requirements into Federal contracts.

On August 2, 2005, OMB issued a memo (Memorandum M-05-22, Transition Planning for Internet Protocol Version 6 (IPv6)) giving guidance to agencies to transition from IPv4 to IPv6, and required agencies to implement full use of IPv6 in network backbones by June 2008. OMB further requires, to the maximum extent practicable, all new IT procurements include IPv6 capable products and systems. Any exceptions to the use of IPv6 will require advance written approval from the agency CIO.

This rule proposes amending the FAR by—

- 1. Adding a new paragraph (A)(2) in FAR 7.105 (b)(4)(ii) to ensure agency planners comply with the Internet Protocol Version 6 (IPv6) capability requirements as a part of acquisition planning;
2. Adding paragraph (e) to FAR 12.202 to state that requirements documents for information technology shall include Internet Protocol Version 6 (IPv6) capable products and services; and
3. Adding paragraph (e) to FAR 39.101 to state when acquiring information technology, agencies shall include the appropriate requirements for Internet Protocol Version 6 (IPv6) capable products and services, and for agencies to establish procedures for granting exceptions.

This is not a significant regulatory action and, therefore, was not subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This

rule is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

The Councils do not expect this proposed rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, et seq., because IPv6 requires use of commercially available products, and no new standards or testing is required. An Initial Regulatory Flexibility Analysis has, therefore, not been performed. We invite comments from small businesses and other interested parties. The Councils will consider comments from small entities concerning the affected FAR Parts 7, 12, and 39 in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 601, et seq. (FAR case 2005-041), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the proposed changes to the FAR do not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, et seq.

List of Subjects in 48 CFR Parts 7, 12, and 39

Government procurement.

Dated: August 16, 2006.

Ralph De Stefano,

Director, Contract Policy Division.

Therefore, DoD, GSA, and NASA propose amending 48 CFR parts 7, 12, and 39 as set forth below:

- 1. The authority citation for 48 CFR parts 7, 12, and 39 continues to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 7—ACQUISITION PLANNING

- 2. Amend section 7.105 by revising paragraph (b)(4)(ii)(A) to read as follows:

7.105 Contents of written acquisition plans.

- (b) \* \* \*
(4) \* \* \*
(ii) \* \* \*

(A) For information technology acquisitions—

- (1) How the capital planning and investment control requirements of 40 U.S.C. 11312 and OMB Circular A-130 will be met (see 7.103(t) and Part 39); and
(2) How the acquisition will comply with the Internet Protocol Version 6

(IPv6) capability requirements as outlined in OMB Memorandum M-05-22, Transition Planning for Internet Protocol Version 6 (IPv6), and additional requirements for IPv6 at http://www.cio.gov.
\* \* \* \* \*

PART 12—ACQUISITION OF COMMERCIAL ITEMS

- 3. Amend section 12.202 by adding paragraph (e) to read as follows:

12.202 Market research and description of agency need.

\* \* \* \* \*

(e) Requirements documents for information technology solutions must include Internet Protocol Version 6 (IPv6) capability as outlined in the OMB Memorandum M-05-22, Transition Planning for Internet Protocol Version 6 (IPv6), and additional requirements for IPv6 at http://www.whitehouse.gov/omb/memoranda/fy2005/m05-22.pdf.

PART 39—ACQUISITION OF INFORMATION TECHNOLOGY

- 4. Amend section 39.101 by adding paragraph (e) to read as follows:

39.101 Policy.

\* \* \* \* \*

(e) In acquiring information technology solutions, agencies must include the appropriate Internet Protocol Version 6 (IPv6) capability requirements as outlined in the OMB Memorandum M-05-22, Transition Planning for Internet Protocol Version 6 (IPv6). Agencies must establish procedures for exceptions.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 060731206-6206-01; I.D. 072806A]

RIN 0648-AS67

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

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

ACTION: Proposed rule; request for comments.

**SUMMARY:** NMFS issues this proposed rule that would implement Amendment 26 to the Fishery Management Plan for the Reef Fish Fishery of the Gulf of Mexico (FMP). Amendment 26 would establish an individual fishing quota (IFQ) program for the commercial red snapper sector of the reef fish fishery in the Gulf of Mexico. Initial participants in the IFQ program would receive percentage shares of the commercial quota of red snapper based on specified historical landings criteria. The percentage shares of the commercial quota would equate to annual IFQ allocations. Both shares and IFQ allocations would be transferable. The intended effect of this rule is to manage the commercial red snapper sector of the reef fish fishery to preserve its long-term economic viability and to achieve optimum yield from the fishery.

**DATES:** Written comments must be received on or before September 28, 2006.

**ADDRESSES:** You may submit comments on the proposed rule by any of the following methods:

- E-mail: 0648-

AS67. *Proposed@noaa.gov*. Include in the subject line the following document identifier: 0648-AS67.

- Federal e-Rulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments.

- Mail: Phil Steele, Southeast Regional Office, NMFS, 263 13th Avenue South, St. Petersburg, FL 33701.
- Fax: 727-824-5308; Attention: Phil Steele.

Copies of Amendment 26, which includes a supplemental environmental impact statement (SEIS), a regulatory impact review (RIR), and an initial regulatory flexibility analysis (IRFA), may be obtained from the Gulf of Mexico Fishery Management Council, 2203 N. Lois Avenue, Suite 1100, Tampa, FL 33607; telephone: 813-348-1630; fax: 813-348-1711; e-mail: *gulfcouncil@gulfcouncil.org*. In addition, copies of the final SEIS, a revised RIR, and a revised IRFA, prepared by NMFS are also available from the Council at the address above. Copies of all of these documents may also be downloaded from the Council's website at *www.gulfcouncil.org*.

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

**FOR FURTHER INFORMATION CONTACT:** Phil Steele, telephone 727-824-5305; fax 727-824-5308; e-mail *Phil.Steele@noaa.gov*.

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

### Background

A red snapper individual transferable quota (ITQ) program, proposed in Amendment 8 to the FMP and approved by NMFS in 1995, was never implemented because of action taken through the 1996 Sustainable Fisheries Act to place a moratorium on the development or implementation of new ITQ programs until October 1, 2000. The Council and commercial fishermen remained concerned about the continuing problems associated with overcapacity in the fishery and the adverse impacts associated with the derby fishery, i.e., the competitive race for available fish. This proposed rule would implement an IFQ program to address these issues.

### IFQ Program

#### Scope

The provisions of this IFQ program would 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 endorsement or for a person with a Gulf red snapper IFQ dealer endorsement, these provisions would apply to Gulf red snapper regardless of where harvested or possessed.

#### Duration

The IFQ program would remain in effect until it is modified or terminated; however, the program would be evaluated by the Council every 5 years.

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

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 would have to have access to a computer and Internet access and set up an appropriate IFQ online account to participate. Assistance with online functions would be 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.

The IFQ program would provide for use of paper-based components for basic

required functions as a backup only during catastrophic conditions. The Regional Administrator, Southeast Region, NMFS, (RA) would 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 would provide timely notice to affected participants via publication of notification in the **Federal Register**, NOAA weather radio, fishery bulletins, and other appropriate means and would authorize the affected participants' use of paper-based components for the duration of the catastrophic conditions. NMFS would provide each IFQ dealer the necessary paper forms. The paper forms would also be available from the RA. The program functions available to participants or geographic areas deemed affected by catastrophic conditions would be limited under the paper-based system. There would 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 would be available via IFQ Customer Service 1-866-425-7627 Monday through Friday between 8 a.m. and 4:30 p.m. eastern time.

As soon as possible after publication of the final rule that would implement Amendment 26, the RA would mail an IFQ information package to eligible IFQ participants. The package would include information for accessing the online IFQ system at *ifq.seo.nmfs.noaa.gov* and establishing an online account, general instructions related to online transaction procedures and requirements, and where appropriate, information regarding historical landings and initial IFQ shares and allocation.

#### IFQ Shares and Allocation

An IFQ share is the percentage of the commercial quota of red snapper proportioned to each eligible person based on specified landings data. An IFQ allocation is the actual poundage of red snapper, measured in gutted weight, each IFQ shareholder is ensured the opportunity to land during a given fishing year. The allocation granted each IFQ shareholder would be derived by multiplying their IFQ share times the annual red snapper commercial quota. A person would be required to have an annual allocation or portion thereof, to harvest, possess, or sell red snapper. IFQ shares and annual allocations can be transferred separately or together to other eligible persons.

### *Adjustments in Commercial Quota and Allocation*

The Council periodically reviews and adjusts the commercial quota for Gulf red snapper in response to new data and information, which generally take the form of new or updated red snapper stock assessments. As the quota is adjusted, shareholder's IFQ allocations would be proportionately adjusted based on the IFQ share each shareholder has at the time of the adjustment.

### *Special Procedure for Initial Calculation of 2007 IFQ Allocations*

Because of uncertainty regarding the 2007 commercial quota for Gulf red snapper and the timing of its implementation and to avoid the possibility of having to revoke some proportion of initial allocation if the quota was subsequently reduced, the RA may initially calculate the 2007 IFQ allocations based on a proxy commercial quota. If a commercial quota adjustment for Gulf red snapper has not been submitted for review by the Secretary of Commerce in time for calculation of 2007 IFQ allocations, the RA would initially calculate 2007 allocations based on a proxy commercial quota of 2.55 million lb (1.16 million kg). Alternatively, if a commercial quota adjustment for Gulf red snapper has been submitted for review by the Secretary of Commerce in time to allow calculation of 2007 IFQ allocations, the RA would base 2007 IFQ allocations on the proposed quota. Under either scenario, as soon as the actual 2007 commercial quota is final, but no later than July 1, 2007, the RA would adjust the 2007 IFQ allocations, as necessary, consistent with the actual quota.

### *IFQ Share Eligibility and Share Calculation*

Eligibility for initial issuance of IFQ shares would be restricted to persons who own a Class 1 or Class 2 license as of the date of publication of the final rule implementing Amendment 26. An owner of a license is defined as the person who actually controls transfer of the Class 1 or Class 2 license and is listed as the qualifier on the face of the license. NMFS would calculate initial IFQ shares based on the highest average annual landings of Gulf red snapper associated with each shareholder's current Class 1 or Class 2 license(s) during the applicable landings history unless the shareholder selects other years of landings consistent with the applicable landing history. For a Class 1 license holder whose license was not issued based on historical captain

status, the 10 consecutive years between 1990 and 2004 with the highest average landings would be used. For a Class 1 license holder whose license was issued on the basis of historical captain status, all years of landings data from 1998 through 2004 would be used. For a Class 2 license holder, the 5 years between 1998 and 2004 with the highest average landings would be used.

All landings associated with a current Class 1 or Class 2 license for the applicable landings history, including those reported by a person who held the license prior to the current license owner, would be attributed to the current license owner. Only legal landings reported in compliance with applicable state and Federal regulations would be accepted. Each shareholder's initial IFQ share would be 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 IFQ shares would not be issued in denominations of less than 0.0001 percent.

### *Appeals Process*

The only items subject to appeal under this IFQ system would be initial eligibility for IFQ shares based on ownership of a Class 1 or Class 2 license, the accuracy of the amount of landings, and correct assignment of landings to the license owner. The RA would review, evaluate, and render final decisions on appeals. Appeals would have to be submitted to the RA postmarked no later than 90 days after the effective date of the final regulations implementing the IFQ program and would have to contain documentation supporting the basis for appeal. Hardship arguments would not be considered. Landings data from 1990 through 1992 would not be subject to appeal. Landings records appeals for 1993–2004 would be based on NMFS logbook data. If NMFS logbooks are not available; state landings records or data submitted on or before June 30, 2005, could be used. During the first year of the IFQ program only, the RA initially would reserve a 3-percent IFQ share, prior to initial distribution of shares, to be used to resolve appeals. Any portion of the 3-percent share reserve remaining after the appeals process has been completed would be proportionately distributed back to the initial recipients as soon as possible that year. If resolution of appeals requires more than a 3-percent share, the shares of all initial shareholders would be reduced proportionately to accommodate the

required shares in excess of the 3-percent reserve.

### *IFQ Share Cap—NMFS Solicits Public Comment*

To prevent any entity from obtaining excessive shares under this IFQ program, as mandated by National Standard 4 of the Magnuson-Stevens Act, a share cap would be established. No person would be allowed to own at any time IFQ shares exceeding the maximum share initially issued to any person for the 2007 fishing year, as of the date appeals are resolved and shares are adjusted accordingly. NMFS estimates this would cap ownership of shares at approximately 8 percent of total shares. If an ownership cap is too high, market power may become too consolidated and produce an unduly anti-competitive market. However, setting the limit too low can also have adverse effects on the price of fish. This can happen in cases where it is less costly overall for fewer entities to each catch more fish than it is for lots of entities to each catch smaller amounts of fish.

Aside from considerations of controlling the undue consolidation of market power and maintaining a fair level of competition, Section 303(b)(6) of the Magnuson-Stevens Act requires consideration of several factors in establishing a limited access program such as the red snapper IFQ program. Those factors include, but are not limited to: present participation in the fishery, historical fishing practices in, and dependence on, the fishery; the economics of the fishery; and the cultural and social framework relevant to the fishery and any affected fishing communities. Although the approximately 8 percent cap may not result in consolidation that rises to the level of presenting an undue concentration of market power or chilled competition, a higher cap could result in levels of consolidation producing effects that are problematic under the Magnuson-Stevens Act. Examples would include potentially eliminating numerous small-scale historical participants, adversely affecting the social and cultural framework of the fishery by adversely affecting working conditions and wages for crew, and potentially adversely affecting prices.

NMFS is seeking comments on whether the proposed cap of approximately 8 percent is appropriate. According to the "Horizontal Merger Guidelines" (Guidelines) issued jointly by the Department of Justice and the Federal Trade Commission (<http://www.usdoj.gov/atr/public/guidelines/>

*hmg.pdf*, see especially pp 15–17), even under conservative assumptions a limit of 10 percent (or possibly higher under less restrictive assumptions) would be unlikely to have adverse competitive effects. Accordingly, NMFS seeks specific comments on the appropriateness and magnitude of the proposed ownership cap.

#### *Permit and IFQ Endorsement Requirements*

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, regardless of where harvested or possessed, a Gulf red snapper IFQ vessel endorsement would have to be issued to the vessel and be on board, and such person would have to hold or be assigned sufficient IFQ allocation to account for all red snapper on board or landed. As a condition of the IFQ vessel endorsement, a person aboard such vessel would have to comply with the requirements of the IFQ program regardless of where red snapper are harvested or possessed.

All dealers who purchase red snapper from an IFQ share/allocation holder would be required to possess a valid Federal dealer permit for Gulf reef fish and a red snapper IFQ dealer endorsement without which possessing, transporting, selling, purchasing, or processing red snapper would be prohibited.

The red snapper IFQ vessel endorsement and red snapper IFQ dealer endorsement would be available for download from the IFQ website, [ifq.sero.nmfs.noaa.gov](http://ifq.sero.nmfs.noaa.gov), at no cost to those individuals who possess a valid Gulf reef fish permit or a valid Gulf reef fish dealer permit, respectively, and request the endorsements. If such individuals do not have an IFQ online account, they would have to 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. The red snapper IFQ vessel endorsement and dealer endorsement would remain valid as long as the individual possesses a valid Gulf reef fish permit or reef fish dealer permit, respectively, abides by all reporting and cost recovery requirements of the IFQ program, and is not subject to sanctions under 15 CFR part 904. The IFQ vessel endorsement and the dealer endorsement are not transferable.

#### *Fleet Management and Assignment of Allocation*

An IFQ shareholder or IFQ allocation holder who owns more than one vessel

with a valid Gulf reef fish vessel permit and a valid Gulf red snapper IFQ vessel endorsement may assign IFQ allocation to a person aboard such vessel and provide that person the IFQ account information necessary to conduct landing transactions. This assignment of allocation, which does not constitute a transfer or sale of allocation, can be accomplished by the shareholder or allocation holder online via the IFQ website.

#### *Electronic Reporting of IFQ Transactions*

IFQ share and allocation transactions would be tracked using an online accounting system developed by NMFS, in which the IFQ share/allocation holder, IFQ dealer, and appropriate NOAA personnel would participate. The IFQ share/allocation holder and IFQ dealer accounts would record IFQ share/allocation transactions into the online system using unique user ID numbers and personal identification numbers (PIN) issued to them by NMFS. Transaction approval codes obtained from NMFS via the online accounting system would be required for the following transactions: (1) share transfers; (2) allocation transfers; and (3) landings/sales transactions. The transaction approval code would verify the IFQ share/allocation holders involved in the transaction are eligible participants and, in the case of landings/sale, have sufficient allocation to conduct the sales transaction.

Data managed through the online accounting system would include, but not be limited to:

1. The identities and certificate numbers of IFQ share holders and their associated vessel ID numbers;
2. The identities of persons and corporations holding and fishing IFQ allocations and their associated vessel ID numbers;
3. The dates, times, and types of IFQ share and allocation transactions;
4. The identities and locations of IFQ dealerships;
5. The dates, times, and places of landing/sales transactions;
6. The identities of the dealers and fishermen conducting landing/sales transactions;
7. The price of red snapper recorded during each landing/sales transaction; and
8. The biological data recorded during each landing/sales transaction.

#### *Landings/Sale Transactions*

At the time of landing/sale of IFQ red snapper, the dealer would be responsible for initiating transactions in the online accounting system. The

fisherman would validate the transaction online by entering his unique PIN number at the point of transaction submittal. The information required to be recorded in the online accounting system for each landing/sale transaction at the point of sale would include, but not be limited to:

1. The date and time of landing/sale;
2. The weight of red snapper purchased;
3. The share/allocation holder account number from which the catch should be debited;
4. The ID number of the vessel used to harvest the fish;
5. The IFQ endorsement number of the authorized dealer;
6. The PIN numbers of both the dealer and fishermen; and
7. The actual ex-vessel unit price of the red snapper.

#### *Limited Landings Overage Allowance*

On the last fishing trip of the fishing year permitted by the shareholder's annual allocation, a shareholder would be permitted to land up to 10 percent more than the remaining allocation, without purchasing additional allocation. Any such overages would be deducted from the next year's allocation associated with the shareholder's IFQ share.

This carryover provision would not apply to a person who only possesses IFQ allocation and no IFQ shares because there would be no reliable mechanism for compensating for the overage in the following fishing year. Such a person would not be permitted to land any red snapper in excess of his/her current allocation.

#### *Cost Recovery*

Section 304(d)(2)(A) of the Magnuson-Stevens Act requires the Secretary of Commerce to establish a fee to assist in recovering the actual costs directly related to the management and enforcement of any IFQ program. Currently, such a fee may not exceed 3 percent of the ex-vessel value of fish harvested under any such program, and must be collected at either the time of landing, filing of a landing report, or sale of such fish during a fishing season or in the last quarter of the calendar year in which the fish is harvested. Fees collected must be in addition to any other fees charged under the Magnuson-Stevens Act and must be deposited in the Limited Access System Administration Fund (LASAF) established under Section 305(h)(5)(B) of the Magnuson-Stevens Act. Initially, the fee would be 3 percent of the actual ex-vessel value of Gulf red snapper landed under the IFQ program, as

documented at the time of sale in each landings transaction report. The RA would review the cost recovery fee annually to determine if a downward adjustment is warranted. Factors considered in the review would 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 would publish a notification of the fee adjustment in the **Federal Register**.

The IFQ shareholder or allocation holder whose IFQ allocation is debited for a Gulf red snapper landing would be responsible for paying the associated IFQ cost recovery fees. The IFQ dealer who receives such landing would be responsible for collecting the applicable fee from the shareholder/allocation holder and submitting the applicable fee to NMFS using *pay.gov* via the IFQ system no later than 30 days after the end of each calendar-year quarter; however, fees may be submitted at any time before that deadline. Authorized payment methods would be credit card, debit card, or automated clearing house (ACH). Payment by check would be authorized only if the RA has determined that the geographical area or an individual(s) is affected by catastrophic conditions. Fees not received by the deadline would be considered delinquent and would be resolved through the fee reconciliation process as specified in § 622.16(c)(2)(iv) of this proposed rule. Failure to resolve payment of delinquent fees may result in annulment of the applicable IFQ permit and/or IFQ endorsement and submission of the matter to appropriate authorities for resolution.

#### *IFQ Share/Allocation Transferability*

During the first 5 years of the IFQ program, IFQ shares or allocations could only be transferred to a person with a valid commercial vessel permit for Gulf reef fish; thereafter, shares and allocations could be transferred to U.S. citizens and permanent resident aliens.

#### *Share Transfer Transactions*

IFQ share transfers would require NMFS' approval of a share transfer application. The person transferring the share would be responsible for initiating the transfer request by using the online red snapper IFQ website at *ifq.sero.nmfs.noaa.gov*. Following the instructions provided on the website, the transferor would be required to enter pertinent information regarding the

transfer request including, but not limited to:

1. The name, address, and certificate number of the individual or corporation transferring the IFQ share;

2. The identity of the purchaser or transferee;

3. The amount of the IFQ share being transferred; and

4. The monetary value of the transfer. If the information is accepted, the online system would send the transferor an initial transaction approval code and make an application for share transfer available for downloading and printing. The transferor and transferee would be required to complete the application, have their signatures notarized, and mail the signed application to the RA at least 30 days prior to the date on which the applicant desires to have the transfer effective. Share transfers would be prohibited during December of each year to allow NMFS the time necessary for end-of-year program management; therefore, any signed application would have to be received by the RA prior to December 1. If the RA approves the application for transfer, the online system would send the transferor and transferee an electronic message acknowledging the approval; a transfer would be effective upon receipt of the message. The adjusted shares resulting from a transfer could be viewed online by each shareholder. If the RA does not approve the transfer application, the RA would return the application to the transferor with an explanation and instructions for correcting any deficiencies.

#### *Allocation Transfer Transactions*

Unlike share transfers which require a notarized application for transfer, allocation transfers could be accomplished online via the red snapper IFQ website. An allocation holder could initiate an allocation transfer by logging on to the red snapper IFQ website at *ifq.sero.nmfs.noaa.gov*, and entering the required information including, but not be limited to:

1. The name, address, and share certificate number (if applicable) of the individual or corporation transferring the IFQ allocation;

2. The identity of the eligible purchaser or transferee;

3. The amount of the IFQ allocation being transferred; and

4. The monetary value of the transfer.

An allocation transfer would be valid only for the remainder of the fishing year in which it occurs; it would not carry over to the subsequent fishing year. Transfer of allocation is not prohibited during December. Any

allocation that is unused at the end of the fishing year would be void.

#### *Redistribution of Shares Resulting from Permanent Permit or Endorsement Revocation*

If a shareholder's commercial vessel permit for Gulf reef fish or Gulf red snapper IFQ vessel endorsement has been permanently revoked under provisions of 15 CFR part 904, the RA would redistribute the IFQ shares held by that shareholder proportionately among remaining shareholders based upon the amount of shares each held just prior to the redistribution. During December of each year, the RA would determine the amount of revoked shares, if any, to be redistributed, and the shares would be distributed at the beginning of the subsequent fishing year.

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

On or about January 1 each year, IFQ shareholders would be notified, via the IFQ website, of their IFQ share and allocation for the upcoming fishing year. These updated share values would reflect the results of applicable share transfers and any redistribution of shares resulting from permanent revocation of applicable permits or endorsements under 15 CFR part 904. Allocation is calculated by multiplying IFQ share times the annual red snapper commercial quota. Updated allocation values would reflect any change in IFQ share, any change in the annual commercial quota for Gulf red snapper, and any debits required as a result of prior fishing year overages. IFQ participants would be able to monitor the status of their shares and allocation throughout the year via the IFQ website.

#### *Measures to Enhance Enforceability*

The following measures are proposed to enhance enforceability of the IFQ program. Fishermen participating in the IFQ program would be required to offload their red snapper landings to permitted IFQ dealers and only between 6 a.m. and 6 p.m. daily. Any person landing IFQ red snapper would be required to notify NMFS' Office of Law Enforcement by calling 1-866-425-7627, at least 3 hours in advance of landing and specify the time and location of landing and the name and address of the dealer where the fish would be received. Possession of IFQ red snapper from the time of transfer from a vessel through possession by a dealer would be prohibited unless the IFQ red snapper are accompanied by a transaction approval code verifying a legal transaction of the amount of IFQ

red snapper in possession. For red snapper offloaded to a truck for transportation to a dealer, this would require on-site capability to accurately weigh the fish and to connect electronically to the online IFQ system to complete the transaction and obtain the transaction approval code. At-sea or dockside vessel-to-vessel transfers of fish on board IFQ vessels would be prohibited.

#### Changes Proposed by NMFS

In this proposed rule, NMFS has clarified the distinction between IFQ shareholders and IFQ allocation holders, and more clearly distinguished the roles and responsibilities of these two IFQ participant types. This clarification was necessary for proper implementation of the IFQ program.

NMFS has also determined that it is not necessary to prohibit transfer of allocation during December as Amendment 26 proposed. Allocation is only valid for a given fishing year; does not carry over to the subsequent year; and, thus, does not affect agency calculations and implementation for the following year. Therefore, consistent with the Council's intent to maximize flexibility among eligible participants, NMFS has modified the proposed rule to only prohibit transfer of IFQ shares during December of each year.

In addition, NMFS has structured the proposed rule to require an IFQ vessel endorsement rather than an IFQ endorsement issued to an individual as discussed by the Council. The primary purpose of the endorsement requirement is to enhance enforceability. NMFS has determined that a vessel endorsement would provide the necessary enforceability; be less restrictive for participants; and be consistent with endorsement provisions in current regulations for other fisheries in the Southeast Region.

NMFS also has clarified in this proposed rule that the IFQ allocation holder specified in the landing transaction report is responsible for payment of the applicable cost recovery fee, not necessarily the shareholder. In some cases, the shareholder may also be the allocation holder, but in other cases, the shareholder may have transferred allocation to a non-shareholder. In all cases, the allocation holder is ultimately responsible for payment of the fee.

Finally, this proposed rule does not include the vessel monitoring system (VMS) requirement for vessels with a Gulf reef fish vessel permit that was proposed in Amendment 26. Amendment 26 acknowledged that a comparable VMS requirement was proposed in Amendment 18A to the

FMP. Amendment 26 stated that the VMS requirement in Amendment 26 would be unnecessary if Amendment 18A was approved by NMFS. NMFS has approved Amendment 18A and the associated VMS requirement; therefore, this proposed rule would not implement any additional VMS requirement.

#### Classification

At this time, NMFS has not determined that Amendment 26 is consistent with the Magnuson-Stevens Act and other applicable laws. NMFS, in making that determination, will take into account the data, views, and comments received during the comment periods on Amendment 26 and this proposed rule.

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

NMFS prepared a final supplemental environmental impact statement (FSEIS) for this amendment; a notice of availability was published on August 2, 2006 (71 FR 43706).

NMFS prepared an IRFA, as required by section 603 of the Regulatory Flexibility Act, for this proposed rule. The IRFA describes the economic impact this proposed rule, if adopted, would have on small entities. A description of the action, why it is being considered, and the legal basis for this action are contained at the beginning of this section in the preamble and in the **SUMMARY** section of the preamble. A copy of the full analysis is available from the Council (see **ADDRESSES**). A summary of the IRFA follows.

The Magnuson-Stevens Act provides the statutory basis for the proposed rule. The proposed rule will establish an IFQ program for the commercial red snapper fishery in the Gulf. Specifics for this IFQ program include the following: (1) no limit on the duration of the program, but a program evaluation is required every 5 years; (2) maximum IFQ share ownership equal to the maximum percentage issued to any initial recipient of IFQ shares; (3) restriction on initial eligibility only to owners of Class 1 or Class 2 license holders; (4) proportionate allocation of initial IFQ shares based on average annual landings for 10 consecutive years during 1990–2004 for Class 1, all years of landings during 1998–2004 for Class 1 historical captains, and any 5 years during 1998–2004 for Class 2; (5) establishment of an appeals process and a set-aside of a 3–percent IFQ share to resolve appeals; (6) restriction on transfers of IFQ shares/allocations only to those with a valid commercial reef fish permit during the first 5 years and to U.S. citizens and permanent resident aliens thereafter; (7)

proportionate allocation of commercial quota adjustments based on percentage of IFQ share holdings at the time of the adjustment and phased-in issuance of IFQ allocations for the 2007 season; and, (8) provision for IFQ cost recovery fees to be paid by IFQ allocation holders who land IFQ red snapper but collected and submitted to NMFS by registered IFQ dealers.

The main objectives of the proposed rule are to address the excess capacity and derby problems in the commercial red snapper fishery. The proposed rule would generally impact two types of businesses in the Gulf reef fish fishery, namely, commercial fishing vessels (including recreational for-hire vessels with commercial reef fish permits) and fish dealers.

At present, the Gulf of Mexico (GOM) commercial reef fish permits are under a limited access program. Commercial reef fish permits are renewable every year subject to the condition the applicant meets the income requirement. Also, the commercial red snapper fishery is presently under a two-tier license limitation program. A Class 1 license entitles the holder a trip limit of 2,000 lb (907.2 kg) of red snapper while a Class 2 license entitles the holder a lower trip limit of 200 lb (90.7 kg). Each type of license is allowed only one trip per day. The proposed IFQ program would replace this two-tier license limitation system in the commercial red snapper fishery, but the limited access program for commercial reef fish permits remains unchanged.

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

There are 1,118 active commercial reef fish permits and 91 others that are currently expired but may be renewed within a year. Thus, a total of 1,209 vessels may be considered to comprise the universe of commercial harvest operations in the GOM reef fish fishery. Of the 1,209 commercial permittees, 136 entities hold red snapper Class 1 licenses and 628 entities hold red snapper Class 2 licenses. Of the 136 Class 1 licenses, seven have been issued on the basis of the historical captain criterion. All original owners of Class 1 historical captain licenses have sold their licenses. Reported average annual gross receipts (in 2004 dollars) of commercial reef fish vessels in the GOM range from \$24,095 for low-volume vertical line vessels to \$116,989 for high-volume longline vessels which primarily target grouper. The corresponding annual net incomes range from \$4,479 for low-volume vertical line vessels to \$28,466 for high-volume vertical line vessels. Permit records

indicate there are 17 Class 1 fleet operations owning a total of 58 licenses. In 2004, the top three fleet operations landed a total of 987,532 lb (447,937 kg) of red snapper, or an average of 329,177 lb (149,312 kg) per fleet operation. At the 2004 average red snapper ex-vessel price of \$2.83 per pound, the average pounds landed convert to ex-vessel revenues of \$931,571. No fleet information is available for Class 2 licenses, but it is reasonable under the circumstances to assume that if ever a Class 2 fleet operation exists, it would generate much less revenues than its Class 1 counterparts.

There currently exists a permitting requirement for dealers to buy or sell reef fish, including red snapper, caught in the GOM. This permitting requirement remains under the proposed IFQ program, but in addition a red snapper endorsement would be required of dealers to buy or sell red snapper. Based on the permits file, there are 227 dealers possessing permits to buy and sell reef fish species. However, based on logbook records, there are 154 reef fish dealers actively buying and selling red snapper. It is possible, though, that some of the 227 dealers may be handling red snapper in one year but not in another. Dealers in Florida purchased about \$1.8 million of red snapper, followed by dealers in Louisiana with purchases of \$1.4 million and dealers in Texas with purchases of \$1.3 million. Dealers in Mississippi purchased \$174,000 worth of red snappers and those in Alabama, \$88,000. These dealers may hold multiple types of permits, and because we do not know 100 percent of the business revenues, it is not possible to determine what percentage of their business comes from buying and selling red snapper.

Average employment information per reef fish dealer in the GOM is unknown. Although dealers and processors are not synonymous entities, a recent study reported total employment for reef fish processors in the Southeast at approximately 700 individuals, both part and full time. NMFS assumes all processors must be dealers, yet a dealer need not be a processor. Further, processing is a much more labor intensive operation than dealing. Therefore, given the employment estimate for the processing sector, it is likely the average dealer employment would be low.

The Small Business Administration (SBA) defines a business as a small business if it is independently owned and operated and not dominant in its field of operation, and if it has annual receipts not in excess of \$4.0 million in

the case of commercial harvesting entities or \$6.5 million in the case of for-hire entities, or if it has fewer than 500 employees in the case of fish processors, or fewer than 100 employees in the case of fish dealers. Based on the gross revenue and employment profiles presented above, all permitted commercial reef fish vessels (including fleet operations) and reef fish dealers affected by the proposed regulations may be classified as small entities.

The proposed rule would introduce additional reporting and record-keeping requirements involving the tracking of IFQ shares and the corresponding red snapper landings. An electronic reporting system is the planned approach to track IFQ shares and corresponding red snapper landings. The reporting burden would mainly fall on the dealers. An IFQ dealer endorsement would be required of any dealer purchasing red snapper. The IFQ dealer endorsement would be issued at no cost to those individuals who possess a valid GOM reef fish dealer permit and request the endorsement. Although the current GOM reef fish dealer permit must be renewed annually at a cost of \$50 for the initial permit (\$12.50 for each additional permit), the IFQ dealer endorsement would remain valid as long as the individual possesses a valid GOM reef fish dealer permit, abides by all reporting and cost recovery requirements of the IFQ program, and is not subject to sanctions under 15 CFR part 904. As an integral part of the electronic monitoring system, an IFQ dealer would be required to have access to computers and the Internet for inputting, among other data, pounds and value of red snapper purchased by the dealer from an IFQ shareholder. If a dealer does not have current access to computers and the Internet, he or she may have to expend approximately \$1,500 for computer equipment and accessories (one-time cost) and \$300 annual cost for Internet access. Dealers would need some basic computer and Internet skills to input information for all red snapper purchases into the IFQ electronic reporting system. Dealers also have to remit to NMFS on a quarterly basis, the cost recovery fees equivalent to 3 percent of the actual ex-vessel value of red snapper purchased from IFQ shareholders/allocation holders. Although IFQ allocation holders pay this fee, it is the responsibility of dealers to collect and remit these fees to NMFS. In addition to this quarterly remittance, dealers would be required to submit to NMFS a year-end report summarizing all transactions involving the purchase of red snapper. There is currently no

available information to determine how many of the 227 reef fish dealers or of the current 154 red snapper dealers have the necessary electronic capability to participate in the IFQ program. However, demonstration of this capability would be necessary for IFQ program participation by any dealer.

IFQ shareholders/allocation holders also have to use the electronic reporting system to report transfer/assignment of shares and allocation as well as to monitor their outstanding IFQ shares and allocations. Similar skills and equipment needs for dealers also apply to IFQ shareholders/allocation holders. There would be 95 IFQ shareholders based on Class 1 license qualification and as many as 482 IFQ shareholders based on Class 2 license qualification. Over time under the IFQ program, the number of IFQ shareholders is expected to decline.

The 764 vessels (136 Class 1 licenses plus 628 Class 2 licenses) that have Class 1 or Class 2 licenses comprise 64 percent of all vessels with GOM commercial reef fish permits. Also, at least 154, or 68 percent, of the 227 permitted reef fish dealers would be affected. Therefore, the proposed rule would affect a substantial number of small entities.

Because all affected vessel and dealer operations are small entities, the proposed rule would not result in disproportionate impacts where small entities are placed at a significant competitive disadvantage to large entities. Some vessel operations are relatively larger than others. In particular, 17 fleet operations account for as much as 40 percent of the entire commercial quota for red snapper. These 17 fleet operations and another 78 single vessel operations would initially receive about 90 percent of IFQ shares. The other 482 smaller operations would receive the rest of the IFQ shares. And 146 Class 2 vessel operations would likely not receive any initial IFQ shares, because they have no landings history during the qualifying period of 1998–2004 for these licenses.

The proposed rule has varying effects on the profitability of the affected vessel operations. Most likely, it has minimal effects on the profits of the 146 Class 2 vessel operations that have no red snapper landings. These vessels would mainly lose their relatively low-cost entry into the red snapper fishery should the need arise. Under the proposed rule, they would have to buy shares/allocation even if they intend to fish only on a limited basis. Some of the 482 Class 2 vessel operations that may have increasingly relied on red snapper to supplement their overall harvests



may receive small IFQ shares. They would either have to buy more shares/allocations to continue fishing for red snapper or sell their shares. Either way, their overall profits may decline, at least initially, although in selling their IFQ shares they would receive some remuneration. The 136 Class 1 vessel operations and some Class 2 vessel operations that have relatively large red snapper landings are expected to benefit most from the IFQ program. As discussed in the RIR, an IFQ system is expected to improve the profitability of these vessels. This improvement would generally take time, since fishermen would have to adjust their operations in order to achieve the most profitable position. Such adjustment may involve consolidation of multiple vessel operations to lower costs, scheduling of harvests to take advantage of market and weather conditions, negotiation with purchasers to strike a long-term deal at relatively stable prices, or some other arrangements that take advantage of a relatively certain share of a season's quota at the start of the season. Some entities may be successful in making adjustments while others may not. For those that cannot, there is always the option to sell their shares. They may leave the red snapper fishery, but would receive some remuneration for doing so.

The extent to which the IFQ monitoring system, including the collection and remittance of the cost recovery fees, would affect dealers' profitability cannot be determined at this time. For the relatively established dealers, the monetary cost requirement under an electronic monitoring system is probably small, especially if they already have computer systems in place. Smaller operations, however, may totally stay out of the red snapper fishery. On top of the cost the dealer defrays to collect and remit cost recovery fees, participating dealers are also exposed to possibilities of temporarily or permanently losing their red snapper business in the event there are problems with their collection and/or remittance of the full amount of cost recovery fees. To mitigate this potential adverse impact, dealers are granted a 30-day grace period from the end of the quarter to reconcile their cost recovery fee accounts. Arrears in cost recovery fees not settled within the 30-day grace period would lead to suspension of the dealer red snapper endorsement. In this eventuality, dealers are granted another 30 days to settle their accounts before their dealer endorsement is annulled. Note, however, that payment of arrears is sufficient to reinstate the dealer

endorsement within a certain period of time.

This amendment considered several alternatives to the proposed rule. An alternative to the IFQ program is the current limited access and license limitation system. Under this system, overcapacity and derby effects have substantially constrained the profitability of the commercial harvest industry. The proposed IFQ program is expected to effectively address these major issues/problems in the fishery. To partly cushion the impacts of unintended IFQ allocation overruns that may result in penalties, IFQ shareholders are allowed to land up to 10 percent more than their remaining allocations for the fishing year's last fishing trip without having to purchase additional allocation. However, any overages would be deducted from the next year's allocation associated with their IFQ shares.

There are two other alternatives with respect to the duration of the IFQ program. One specifies no duration while the other imposes a term limit on the program. The former has similar effects as the proposed rule, but it does not contain a mandatory evaluation of the program every 5 years. A sunset provision, as in the latter alternative, offers a lower likelihood for the IFQ program to achieve its intended objectives. Also, it would introduce uncertainties into the program due to potential changes in the "rules of the game."

With respect to an ownership cap, two other alternatives have been considered. One places no cap on ownership of IFQ shares while the other places a cap ranging from 2 to 15 percent of the commercial quota. The first alternative provides a fertile ground for consolidation of IFQ shares, but it can also lead to concentration of ownership to a select few at the expense of eliminating historically small-scale operations in the fishery. The second alternative may be too liberal (e.g., 15 percent) as to lead to over-consolidation or too restrictive (e.g., 2 percent) as to penalize the more efficient operations.

Two other alternatives have been considered on the issue of initially eligible persons. The first one does not specify persons eligible to receive initial IFQ shares, and, thus, does not provide guidance for initially allocating IFQ shares. The second restricts initial eligibility to Class 1 license holders. This is too restrictive as to disallow at least 482 Class 2 license holders from continued participation in the fishery at the start of the IFQ program.

Regarding allocating initial IFQ shares, two other alternatives have been

considered. The first does not specify a methodology for allocating initial IFQ shares, and, thus, does not provide guidance for allocating IFQ shares to eligible participants. The second allocates initial IFQ shares equally among all eligible participants. This alternative would penalize the highliners and reward the small-scale operations in the fishery. There are more participants who would benefit from this alternative, but the magnitude of adverse impacts on at least 136 operations would be relatively large.

Regarding the appeals process, three other alternatives have been considered. The first does not establish an appeals process, and, thus, would not provide fishermen an avenue to contest landings information used by NMFS to determine their IFQ shares. The second establishes an appeals board composed of state directors/designees who would advise the RA on appeals. The third establishes an advisory panel composed of IFQ shareholders. The proposed rule is simple and more straightforward than any of the alternatives that establish an appeals board.

There are five other alternatives regarding the transfer of IFQ shares/allocations. The first provides no limit on transfer; the second limits transfers only to those with valid commercial reef fish permits; the third limits transfers only to IFQ shareholders; the fourth allows transfers to U.S. citizens and permanent resident aliens; and, the fifth limits transfers only to IFQ shareholders during the first five years of the IFQ program and those with valid commercial reef fish permits thereafter. With the exception of the first alternative, all others would tend to limit the price an IFQ seller gets, so the resulting IFQ prices would not capture the true value of the resource. In addition, such limitations would constrain the entry of potentially more efficient producers. The proposed rule would be less restrictive than these alternatives but still would be more restrictive than the first alternative that does not impose limits on transfer. However, the proposed rule addresses concerns relative to the preservation of the historical and current participation in the fishery.

On the issue of allocating adjustments in the commercial quota, three other alternatives have been considered. The first does not specify a method for allocating adjustments, so it does not provide adequate guidance for allocating quota changes. The second would allocate quota changes equally among IFQ share holders, and the third would allocate quota changes equally for 50 percent of the change and



proportionately for the other 50 percent. The second alternative would provide smaller operations larger benefits with quota increases and also larger losses with quota decreases. The third alternative would favor smaller operations at the expense of larger operations. One should note, however, that both large and small vessel operations have been considered small entities for SBA purposes.

The proposed rule regarding a cost recovery fee is intended to abide by the § 304(d)(2)(A) provision of the Magnuson-Stevens Act. One other alternative considered in this respect is not to impose a fee, which would not be in compliance with the noted provision. Another alternative considered is similar to the proposed rule, except that collection and submission of fees reside on the IFQ holders and not on the dealers. Under this alternative and the proposed rule, a small entity bears the cost of collecting and remitting the fees. The proposed rule, however, affords a better accounting control for the government. Copies of the RIR and IRFA are available (see ADDRESSES).

This proposed rule contains collection-of-information requirements subject to the Paperwork Reduction Act (PRA). The collection-of-information requirements and associated public reporting burdens, in minutes, are as follows: (1) Dealer account activation--5; (2) Dealer transaction report--7; (3) Shareholder account activation--5; (4) Allocation holder account activation--10; (5) Advance notification of landing--3; (6) Transfer of share--15; and (7) Transfer of allocation--5. These requirements have been submitted to OMB for approval. These estimates of the public reporting burdens include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collections of information. Public comment is sought regarding: Whether these proposed collections of information are necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; the accuracy of the burden estimates; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collections of information, including through the use of automated collection techniques or other forms of information technology. Send comments regarding the burden estimates or any other aspect of the collection-of-information requirements, including suggestions for reducing the burden, to NMFS and to OMB (see ADDRESSES).

Notwithstanding any other provision of law, no person is required to respond to, nor shall a person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB control number.

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

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

Dated: August 18, 2006.

**Samuel D. Rauch III,**

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

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

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

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

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

2. In § 622.1, revise paragraph (a) and the first sentence in paragraph (b), and Table 1 entry “FMP for the Reef Fish Resources of the Gulf of Mexico”, and add footnote 5 to read as follows:

**§ 622.1 Purpose and scope.**

(a) The purpose of this part is to implement the FMPs prepared under the Magnuson-Stevens Act by the CFMC, GMFMC, and/or SAFMC listed in Table 1 of this section.

(b) This part governs conservation and management of species included in the FMPs in or from the Caribbean, Gulf, Mid-Atlantic, South Atlantic, or Atlantic EEZ, unless otherwise specified, as indicated in Table 1 of this section. \* \* \*

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

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

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

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

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

3. In § 622.2, definitions of “Actual ex-vessel value” and “IFQ” are added in alphabetical order to read as follows:

**§ 622.2 Definitions and acronyms.**

\* \* \* \* \*

*Actual ex-vessel value* means the total monetary sale amount a fisherman receives for IFQ landings from a registered IFQ dealer.

\* \* \* \* \*

*IFQ* means individual fishing quota.

\* \* \* \* \*

4. Section 622.4 is amended by:

A. Adding introductory text to the section.

B. Adding a new sentence after the first sentence of paragraph (a)(2)(v).

C. Revising paragraphs (a)(2)(ix), (a)(4), the first sentence of paragraph (d), paragraph (g)(1), and the first sentence of paragraph (h)(1).

D. Removing and reserving paragraph (p).

The additions and revisions read as follows:

**§ 622.4 Permits and fees.**

Paragraphs (p)(1) through (3) and (p)(5) through (6) of this section will no longer be in effect as of January 1, 2007, and paragraph (p)(4) of this section will no longer be in effect as of [DATE OF PUBLICATION OF THE FINAL RULE].

(a) \* \* \*

(2) \* \* \*

(v) \* \* \* See paragraph (a)(2)(ix) of this section regarding an additional IFQ vessel endorsement required to fish for, possess, or land Gulf red snapper. \* \* \*

\* \* \* \* \*

(ix) *Gulf red snapper IFQ vessel endorsement.* 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, regardless of where harvested or possessed, a Gulf red snapper IFQ vessel endorsement must have been issued to the vessel and must be on board. As a condition of the IFQ vessel endorsement issued under this

paragraph (a)(2)(ix), a person aboard such vessel must comply with the requirements of § 622.16 regardless of where red snapper are harvested or possessed. An owner of a vessel with a commercial vessel permit for Gulf reef fish can download an IFQ vessel endorsement from the NMFS IFQ website at *ifq.sero.nmfs.noaa.gov*. If such owner does not have an IFQ online 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 IFQ online account. There is no fee for obtaining this endorsement. The vessel endorsement remains valid as long as the vessel permit remains valid and the vessel owner is in compliance with all Gulf reef fish and Gulf red snapper 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 endorsement is not transferable. See § 622.16 regarding other provisions pertinent to the Gulf red snapper IFQ system.

\* \* \* \* \*

(4) *Dealer permits, endorsements, and conditions*—(i) *Permits*. For a dealer to receive Gulf reef fish, golden crab harvested from the South Atlantic EEZ, South Atlantic snapper-grouper, rock shrimp harvested from the South Atlantic EEZ, dolphin or wahoo harvested from the Atlantic EEZ, or wreckfish, a dealer permit for Gulf reef fish, golden crab, South Atlantic snapper-grouper, rock shrimp, Atlantic dolphin and wahoo, or wreckfish, respectively, must be issued to the dealer.

(ii) *Gulf red snapper IFQ dealer endorsement*. 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 Gulf red snapper subject to the Gulf red snapper IFQ program, as specified in § 622.16(a)(1), or for a person aboard a vessel with a Gulf red snapper IFQ vessel endorsement to sell such red snapper directly to an entity other than a dealer, such persons must also have a Gulf red snapper IFQ dealer endorsement. A dealer with a Gulf reef fish dealer permit can download a Gulf red snapper 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 Gulf red snapper 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 endorsement is not transferable. See § 622.16 regarding other provisions pertinent to the Gulf red snapper IFQ system.

(iii) *State license and facility requirements*. To obtain a dealer permit or endorsement, the applicant must have a valid state wholesaler's license in the state(s) where the dealer operates, if required by such state(s), and must have a physical facility at a fixed location in such state(s).

\* \* \* \* \*

(d) \* \* \* Unless specified otherwise, a fee is charged for each application for a permit, license, or endorsement submitted under this section, for each request for transfer or replacement of such permit, license, or endorsement, and for each fish trap or sea bass pot identification tag required under § 622.6(b)(1)(i)(B). \* \* \*

\* \* \* \* \*

(g) \* \* \*

(1) *Vessel permits, licenses, and endorsements and dealer permits*. A vessel permit, license, or endorsement or a dealer permit or endorsement issued under this section is not transferable or assignable, except as provided in paragraph (m) of this section for a commercial vessel permit for Gulf reef fish, in paragraph (n) of this section for a fish trap endorsement, in paragraph (o) of this section for a king mackerel gillnet permit, in paragraph (q) of this section for a commercial vessel permit for king mackerel, in paragraph (r) of this section for a charter vessel/headboat permit for Gulf coastal migratory pelagic fish or Gulf reef fish, in paragraph (s) of this section for a commercial vessel moratorium permit for Gulf shrimp, in § 622.17(c) for a commercial vessel permit for golden crab, in § 622.18(e) for a commercial vessel permit for South Atlantic snapper-grouper, or in § 622.19(e) for a commercial vessel permit for South Atlantic rock shrimp. A person who acquires a vessel or dealership who desires to conduct activities for which a permit, license, or endorsement is required must apply for a permit, license, or endorsement in accordance with the provisions of this section and other applicable sections of this part. If the acquired vessel or dealership is currently permitted, the application must be accompanied by the original

permit and a copy of a signed bill of sale or equivalent acquisition papers. In those cases where a permit, license, or endorsement is transferable, the seller must sign the back of the permit, license, or endorsement and have the signed transfer document notarized.

\* \* \* \* \*

(h) \* \* \*

(1) \* \* \* Unless specified otherwise, a vessel owner or dealer who has been issued a permit, license, or endorsement under this section must renew such permit, license, or endorsement on an annual basis.

\* \* \* \* \*

5. In § 622.7, paragraphs (gg) and (hh) are added 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.

(hh) Falsify any information required to be submitted regarding the Gulf red snapper IFQ program as specified in § 622.16.

6. The stay of § 622.16 is lifted and the section is revised to read as follows:

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

(a) *General*. This section establishes an IFQ program for the commercial fishery for Gulf red snapper. Under the IFQ program, the RA initially will assign eligible participants IFQ shares equivalent to a percentage of the annual commercial red snapper quota, based on their applicable historical landings. Shares determine the amount of Gulf red snapper IFQ allocation, in pounds gutted weight, a shareholder is initially authorized to possess, land, or sell in a given calendar year. Shares and annual IFQ allocation are transferable. See § 622.4(a)(2)(ix) regarding a requirement for a vessel landing red snapper subject to this IFQ program to have a Gulf red snapper IFQ vessel endorsement. See § 622.4(a)(4)(ii) regarding a requirement for a Gulf red snapper 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 red snapper in or from the Gulf EEZ and, for a person aboard a vessel with a Gulf red snapper IFQ vessel endorsement as required by § 622.4(a)(2)(ix) or for a person with a Gulf red snapper IFQ dealer endorsement as required by § 622.4(a)(4)(ii), these provisions apply

to Gulf red snapper regardless of where harvested or possessed.

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

(3) *Electronic system requirements.* (i) The administrative functions associated with this IFQ program, e.g., registration and account setup, landing transactions, and transfers, are designed to be accomplished online; therefore, a participant must have access to a computer and Internet access and must set up an appropriate IFQ online account to participate. 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 red snapper IFQ dealer endorsement must first contact IFQ Customer Service at 1-866-425-7627 to obtain information necessary to set up the required IFQ online account. 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 own a Class 1 or Class 2 Gulf red snapper license as of the date of publication of the final rule implementing this IFQ system. For the purposes of this paragraph, an owner of a license is defined as the person who controls transfer of the license and is listed as the qualifier on the face of the license. NMFS' permit records are the sole basis for determining eligibility based on Class 1 or Class 2 license history. No more than one initial eligibility will be granted based upon a given Class 1 or Class 2 license.

(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 red snapper associated with each shareholder's current Class 1 or Class 2 license during the applicable landings history. The applicable landings history for a Class 1 license owner whose license was not issued based on historical captain status includes any 10 consecutive years of landings data from 1990 through 2004; for a Class 1 license owner whose license was issued on the basis of historical captain status, all years of landings data from 1998 through 2004; and for a Class 2 license holder, any 5 years of landings data from 1998 through 2004. All landings associated with a current Class 1 or Class 2 license for the applicable landings history, including those reported by a person 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. 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 IFQ shares will not be issued in denominations of less than 0.0001 percent.

(ii) *Initial share set-aside to accommodate resolution of appeals.* During the first year of implementation of this IFQ program only, 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 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, the shares of all initial shareholders 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 red snapper, in pounds gutted weight, an IFQ shareholder or allocation holder is authorized to possess, land, or sell during a given fishing year. IFQ allocation is derived at the beginning of each year by multiplying a shareholder's IFQ share times the annual commercial quota for Gulf red snapper.

(iv) *Special procedure for initial calculation of 2007 IFQ allocations.* Because of uncertainty regarding the 2007 commercial quota for Gulf red snapper and the timing of its implementation and to avoid the possibility of having to revoke some proportion of initial allocation if the quota was subsequently reduced, the RA may initially calculate the 2007 IFQ allocations based on a proxy commercial quota. If a commercial quota adjustment for Gulf red snapper has not been submitted for review by the Secretary of Commerce in time for calculation of 2007 IFQ allocations, the RA will initially calculate 2007 allocations based on a proxy commercial quota of 2.55 million lb (1.16 million kg). Alternatively, if a commercial quota adjustment for Gulf red snapper has been submitted for review by the Secretary of Commerce in time to allow calculation of 2007 allocations, the RA will base 2007 IFQ allocations on the proposed quota. Under either scenario, as soon as the actual 2007 commercial quota is final, but no later than July 1, 2007, the RA will adjust the 2007 IFQ allocations, as necessary, consistent with the actual quota.

(3) *Shareholder notification regarding landings history, initial determination of IFQ shares and allocations, and IFQ account setup information.* (i) As soon as possible after the date of publication of the final rule implementing this IFQ program, the RA will mail each Class 1 or Class 2 red snapper license owner information pertinent to the IFQ program. This information will include—

(A) Gulf red snapper landings associated with the owner's license

during each year of the applicable landings history;

(B) The highest average annual red snapper landings based on the owner's applicable landings history;

(C) The owner's initial IFQ share based on the highest average annual landings associated with the owner's applicable landings history;

(D) The initial 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—the personal identification number (PIN) will be provided in a subsequent letter.

(ii) The RA will provide this information, via certified mail return receipt requested, to the license owner's address of record as listed in NMFS' permit files. A license owner who does not receive such notification from the RA within 30 days after the date of publication of the final rule implementing this IFQ system must contact the RA 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 associated with the owner's applicable landings history; however, a license owner may select a different set of years of landings, consistent with the owner's applicable landings history, for the calculation of the initial IFQ share. The license owner must submit that information to the RA postmarked no later than 30 days after the date of publication of the final rule implementing this IFQ system. 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, 2007. A license owner 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 Class 1 or Class 2 license, the accuracy of the amount of landings, and correct assignment of landings to the license owner. Appeals based on hardship factors will not be considered. Appeals must be submitted to the RA postmarked no later than 90 days after the effective date of the final rule implementing this IFQ system 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 Class 1 and Class 2 licenses are the sole basis for determining ownership of such licenses. 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.* Landings data for 1990 through 1992 are not subject to appeal. Appeals regarding landings data for 1993 through 2004 will be based solely on NMFS' logbook records. If NMFS' logbooks are not available, state landings records or data that were submitted in compliance with applicable Federal and state regulations, on or before June 30, 2005, can be used.

(5) *Dealer notification and IFQ account setup information.* As soon as possible after the date of publication of the final rule implementing this IFQ program, 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 red snapper IFQ dealer endorsement which can be downloaded from the IFQ website [atifq.sero.nmfs.noaa.gov](http://atifq.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 red snapper subject to this IFQ program can only be possessed or landed by a vessel with a Gulf red snapper IFQ vessel endorsement. Such red snapper can only be received by a dealer with a Gulf red snapper IFQ dealer endorsement. The person landing the red snapper must hold or be assigned IFQ allocation at least equal to the pounds of red snapper landed, except as provided in paragraph (c)(1)(ii) of this section.

(ii) An IFQ shareholder or his agent or employee assigned to land the shareholder's allocation can legally exceed, by up to 10 percent, the shareholder's allocation remaining on the last fishing trip of the fishing year. Any such overage will be deducted from the shareholder's allocation for the subsequent fishing year.

(iii) The dealer is responsible for completing a landing transaction report for each landing and sale of Gulf red snapper via the IFQ website at [ifq.sero.nmfs.noaa.gov](http://ifq.sero.nmfs.noaa.gov) at the time of the

transaction in accordance with reporting form and instructions provided on the website. This report includes, but is not limited to, date, time, and location of transaction; weight and actual ex-vessel value of red snapper landed and sold; and information necessary to identify the fisherman, vessel, and dealer involved in the transaction. The fisherman must validate the dealer transaction report by entering his unique PIN number when the transaction report is submitted. After the dealer submits the report and the information has been verified, the website will send a transaction approval code to the dealer and the allocation holder.

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

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

(ii) *Collection and submission responsibility.* A dealer who receives Gulf red snapper subject to the IFQ program is responsible for collecting the applicable cost recovery fee for each IFQ landing from the IFQ allocation holder specified in the IFQ landing transaction report. Such dealer is responsible for submitting all applicable cost recovery fees to NMFS on a quarterly basis. The fees are due and must be submitted, using [pay.gov](http://pay.gov) via the IFQ system, no later than 30 days after the end of each calendar-year quarter; however, fees

may be submitted at any time before that deadline. Fees not received by the deadline are delinquent.

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

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

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

(B) On or about the 61st day after the end of each calendar-year quarter, the RA will mail to a dealer whose cost recovery fee payment remains delinquent, official notice documenting the dealer's IFQ endorsement has been annulled.

(C) 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.

(v) *Annual IFQ dealer ex-vessel value report.* The IFQ online system will generate an annual IFQ Dealer Ex-Vessel Value Report for each IFQ dealer. The report will include quarterly and annual information regarding the amount and value of IFQ red snapper received by the dealer, the associated cost recovery fees, and the status of those fees. The dealer's acceptance of this report constitutes compliance with the annual dealer IFQ reporting requirement.

(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 calling NMFS Office of Law Enforcement at 1-866-425-7627 at least 3 hours in advance of landing to report the time and location of landing and the name and address of the IFQ dealer where the red snapper are to be received.

(ii) *Time restriction on landing and offloading.* IFQ red snapper may be

landed and offloaded only between 6 a.m. and 6 p.m., local time.

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

(iv) *Requirement for transaction approval code.* Possession of IFQ red snapper from the time of transfer from a vessel through possession by a dealer is prohibited unless the IFQ red snapper are accompanied by a transaction approval code verifying a legal transaction of the amount of IFQ red snapper in possession.

(4) *Transfer of IFQ shares and allocation.* Through the date 5 years after the effective date of the final rule implementing this IFQ program, 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 endorsement, and Gulf red snapper IFQ allocation are required to possess, land or sell Gulf red snapper subject to this IFQ program.

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

(ii) *Share transfer procedures.* A shareholder must initiate the request for the RA to transfer IFQ shares by using the online Gulf red snapper 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. 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. NMFS will evaluate and verify the information entered. If the information is not accepted, NMFS will send the shareholder an electronic message explaining the reason(s). If the information is accepted, NMFS will send the shareholder an initial transaction approval code and make an application for share transfer available for downloading and printing. The shareholder and eligible transferee must complete the application, have their signatures notarized, and mail the signed application to the RA at least 30 days prior to the date on which the applicant desires to have the transfer effective. The signed application must be received by the RA prior to December 1. See paragraph (c)(4)(v) of this section regarding a prohibition on transfer during December of each year. If the RA approves the application for transfer, the online system will send the shareholder and the transferee an electronic message acknowledging the approval; a transfer is effective upon receipt of the message. The adjusted shares resulting from a transfer may be viewed online by each shareholder. If the RA does not approve the transfer application, the RA will return the application to the shareholder with an explanation and instructions for correcting any deficiencies.

(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.

(iv) *Allocation transfer procedures.* Unlike share transfers which require a notarized application for transfer, allocation transfers can be accomplished online via the red snapper IFQ website. An IFQ allocation holder can initiate an allocation transfer by logging on to the red snapper 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. If the transfer is approved, the website will provide a transaction approval code to the transferor and transferee confirming the transaction.

(v) *Prohibition of transfer of shares during December each year.* No IFQ shares may be transferred during December of each year. This period is necessary to provide the RA sufficient time to reconcile IFQ accounts, adjust allocations for the upcoming year if the commercial quota for Gulf red snapper has changed, and update shares and allocations for the upcoming fishing year.

(5) *Fleet management and assignment of IFQ allocation.* An IFQ shareholder or IFQ allocation holder who owns more than one vessel with a valid Gulf reef fish vessel permit and a valid Gulf red snapper IFQ vessel endorsement may assign IFQ allocation to a person aboard such vessel and provide that person the IFQ account information necessary to conduct landing transactions.

(6) *IFQ share cap.* No person, including a corporation or other entity, may individually or collectively hold IFQ shares in excess of the maximum share initially issued to a person for the 2007 fishing year, as of the date appeals are resolved and shares are adjusted accordingly. For the purposes of considering the share cap, a

corporation's total IFQ share is defined as the sum of the IFQ shares held by the corporation and the IFQ shares held by individual shareholders of the corporation. A corporation must identify the shareholders of the corporation and their percent of shares in the corporation.

(7) *Redistribution of shares resulting from permanent permit or endorsement revocation.* If a shareholder's commercial vessel permit for Gulf reef fish or Gulf red snapper IFQ vessel endorsement 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 based upon the amount of shares each held just prior to the redistribution. During December of each year, the RA will determine the amount of revoked shares, if any, to be redistributed, and the shares will be distributed at the beginning of the subsequent fishing year.

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

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

**§ 622.34 [Amended]**

7. In § 622.34, paragraph (l) is removed and reserved.

8. In § 622.42, paragraph (a)(1)(i) is revised to read as follows.

**§ 622.42 Quotas.**

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(a) \* \* \*

(1) \* \* \*

(i) Red snapper—4.65 million lb (2.11 million kg), round weight.

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**§ 622.44 [Amended]**

9. In § 622.44, paragraph (d) is removed and reserved.

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