Tab B, No. 6(c)
9/18/17

Referendum Eligibility Requirements for Amendment 42 to the Fishery Management Plan for Reef Fish Resources in the Gulf of Mexico

TABLE OF CONTENTS

1. Introduction 1
2. Description of the Economic Environment 2
    2.1 Commercial Sector 2
    2.2 Recreational Sector 2
3. Eligibility Criteria 5
4. Expected Impacts 9
5. Next Steps 9
APPENDIX A 11
APPENDIX B 13

1. Introduction

The Gulf of Mexico Fishery Management Council (Council) is considering alternative management measures for the for-hire component of the recreational sector of the reef fish fishery in the Gulf of Mexico (Gulf). Amendment 42 to the Fishery Management Plan for Reef Fish Resources in the Gulf of Mexico (Amendment 42) proposes to establish a catch share program for vessels that have a landings history through the Southeast Region Headboat Survey (SRHS). These vessels will be referred to as landings history vessels (LHV). The program would include five species: red snapper, gray triggerfish, greater amberjack, gag, and red grouper. The two types of programs being considered are an individual fishing quota (IFQ) program and a permit fishing quota (PFQ) program. In an IFQ program shares are allocated to an individual while in a PFQ program shares are allocated to a permit and cannot be transferred separately from that permit.

Section 303A(c)(6)(D) of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) stipulates that the Council may not submit, and the Secretary of Commerce (Secretary) may not approve, an IFQ program that has not first been approved by a majority of those voting in a referendum among eligible permit holders. The Magnuson-Stevens Act further stipulates that for multi-species permits in the Gulf, only those participants who have substantially fished the species proposed to be included in the program are eligible to vote in the referendum. NOAA General Counsel has determined both the IFQ and PFQ programs proposed in Amendment 42 would require a referendum. Because the Reef Fish Charter/Headboat Permit is a multi-species permit, the Council must define which participants have substantially fished for the five species proposed to be included in the program.

This document specifies eligibility criteria for participation in the referendum that must be conducted prior to the Council's decision to submit Amendment 42 for Secretarial review. Eligibility criteria under consideration, which identify individuals that have substantially fished for the five proposed species, are in terms of average annual landings thresholds. The thresholds are for all five species combined and are expressed in numbers of fish. Landings for each potential participant are based on reports submitted to the SRHS during the years 2011-2015. A description of the recreational sector of the reef fish fishery, focusing specifically on the five proposed species, and the Council's rationale for selecting its preferred referendum eligibility criteria and qualifying period are provided in subsequent sections.

2. Description of the Economic Environment

2.1 Commercial Sector

This proposed action would only apply to a portion of the recreational sector (selected headboats). As a result, a description of the economic environment for the commercial sector is not provided.

2.2 Recreational Sector

This proposed action would only apply to a subset of the federally permitted for-hire component of the recreational sector. As a result, a description of the economic environment for the charter and private angler portions of the recreational sector is not provided.

Angler Effort
Estimates of headboat angler effort in the Gulf for 2011-2015 are provided in Table 2.1. These estimates are derived from the SRHS. Headboat angler effort is calculated as angler days, which are a standardized count of trips that result from the combination of partial-day, full-day, and multiple-day trips. The SRHS includes some vessels that do not possess a federal for-hire permit. Thus, the estimates of headboat angler days, like the estimates of effort on charter vessels, do not reflect effort for just federally permitted vessels.

Table 2.1 Gulf headboat angler days, by state, 2011–2015.

	Angler Days				
	West Florida	**Florida and Alabama[1]**	**Mississippi and Louisiana[2]**	**Texas**	**Total**
2011	79,722	77,303	3,657	47,284	207,966
2012	84,205	77,770	3,680	51,776	217,431
2013	94,752	80,048	3,406	55,749	233,955
2014	102,841	88,524	3,257	51,231	245,853
2015	107,910	86,473	3,587	55,135	253,105
Average	93,886	82,024	3,517	52,235	231,662

Source: SRHS. West Florida = Florida from the Dry Tortugas through the Florida Middle Grounds, Florida/Alabama = Northwest Florida and Alabama. [1]For 2013, SRHS data was reported separately for NW Florida and Alabama, but has been combined here for consistency with previous years.
[2]Mississippi and Louisiana are combined for confidentiality purposes.

Permits
A federal charter/headboat (for-hire) vessel permit is required for fishing in federal waters for Gulf reef fish. The Gulf for-hire permits are limited access permits. On November 23, 2015, there were 1,314 vessels with a valid (non-expired) or renewable Gulf for-hire reef fish permit

(including historical captain permits). A renewable permit is an expired limited access permit that cannot be used for fishing, but is renewable for up to one year after expiration. In the Gulf, the National Marine Fisheries Service (NMFS) issues one reef fish for-hire permit that does not distinguish between headboats and charter vessels. Vessels reporting to the SRHS are discussed in this section.

The SRHS collects catch and effort data from selected headboats in the southeast region, thereby producing a landings history for each vessel included in the survey. In the Gulf, for the purpose of reporting (as specified in 50 C.F.R. § 622.26(b)), the SRHS considers a for-hire vessel to be a headboat if it meets these criteria:

1) Vessel is licensed to carry 15 or more passengers (as indicated on the vessel's certificate of inspection;
2) Vessel fishes in the exclusive economic zone or state and adjoining waters for federally managed species; and
3) Vessel charges primarily per angler (i.e., by the "head").

The SRHS has been conducted in the Gulf since 1986[1]. However, detailed catch histories by individual vessels were only recorded starting from 2004. For fishery managers, the SRHS continues to be the sole source for effort and landings estimates for the headboat component as a whole. The universe of vessels considered in Reef Fish Amendment 42 is defined as vessels that have valid or renewable Gulf reef fish for-hire permits with individual landings histories recorded by the SRHS as of the control date of December 31, 2015. For the Gulf, the number of vessels by state between 2011 and 2015 is provided in Table 2.2.

Table 2.2. Number of vessels reporting landings to the SRHS by Gulf state, 2011-2015.

Year	AL	FL	LA	MS	TX	Total
2011	8	35	4	5	17	69
2012	8	35	4	5	16	68
2013	8	36	3	5	16	68
2014	7	37	2	5	16	67
2015	9	36	2	5	15	67

Source: NMFS SRHS database 010516

Economic Value

Economic value for for-hire vessels can be measured by producer surplus (PS) per passenger trip (the amount of money that a vessel owner earns in excess of the cost of providing the trip). Estimates of the PS per headboat passenger trip are not available. Instead, the net operating revenue (NOR), which is the return used to pay all labor wages, returns to capital, and owner profits, is used as a proxy for PS. The estimated NOR value per headboat angler trip is $53 (2015 dollars) (C. Liese, NMFS SEFSC, pers. comm.).

[1] The SRHS also includes vessels with South Atlantic for-hire permits and some state licensed vessels.

Business Activity

Recreational fishing generates economic activity as consumers spend their income on various goods and services needed for recreational fishing. This spurs economic activity in the region where recreational fishing occurs. It should be noted that, in the absence of the opportunity to fish, the income would presumably be spent on other goods and services and these expenditures would similarly generate economic activity in the region where the expenditure occurs. As a result, estimates of the business activity represent a distributional analysis only.

Recreational fishing generates business activity (economic impacts). Business activity for the recreational sector is characterized in the form of full- and part-time jobs, output (sales) impacts (gross business sales), and value-added impacts (difference between the value of goods and the cost of materials or supplies). However, estimates of the business activity associated with headboat effort are not available. Headboat vessels are not covered in the Marine Recreational Information Program in the Gulf, which periodically collects angler expenditure data for charter, private boat, and shore anglers. As a result, estimation of the appropriate business activity coefficients for headboat effort has not been conducted. Beginning in August 2014, socio-economic data fields were added to the SRHS electronic logbook. However, these data refer to the vessel operation and not angler expenditures, which are the basis for estimating the business activity associated with the different recreational sector modes.

3. Eligibility Criteria

The decision to identify participants who have substantially fished in terms of average annual harvest does not consider dependency on the fishery as a criterion. A fishery participant may not meet the average annual landings threshold, but still be dependent on the fishery as a source of income. However, the Council interprets Section 303A(c)(6)(D)(i) to indicate "substantially fished" to represent substantial contribution to the overall fishery production in total harvest, which contrasts with requirements in Section 303A(c)(6)(D)(v) for a New England referendum to consider participant eligibility based on those who derive a significant percentage of their total income from the fishery. Further, the Council proposes using annual harvest as the metric for assessing participation, rather than some other means such as days fished or hook hours. This decision is based on the fact that annual harvest, in combination with the persistence demonstrated by maintaining a high level of harvest over the period 2011-2015, is the most straight forward, readily identifiable, and accurate means of identifying whether a participant has substantially fished for the five proposed species. The Council is considering the following alternatives for eligibility in the referendum:

Alternative 1: No Action – Do not specify eligibility for referendum participation.

Preferred Alternative 2: Restrict participation in the referendum to persons who have a valid or renewable federal reef fish for-hire permit issued to a landings history vessel (LHV) and who have substantially fished for red snapper, gray triggerfish, greater amberjack, red grouper, or gag based on landings submitted to the SRHS during the qualifying years. A vessel qualifies as a LHV if it has individual landings history recorded by the Southeast Region Headboat Survey by December 31, 2015. For-hire federal permit holders whose vessels landed an annual average of at least **100 fish** of all species combined are considered as having substantially fished. Annual average landings are based on landings recorded by the SRHS between 2011 and 2015.

Option a: Votes will be weighted by the participant's vessel catch history.
Preferred Option b: Each eligible permit will have one vote regardless of the relative size of the vessel's catch history.

Alternative 3: Restrict participation in the referendum to persons who have a valid or renewable federal reef fish for-hire permit issued to a landings history vessel (LHV) and who have substantially fished for red snapper, gray triggerfish, greater amberjack, red grouper, or gag based on landings submitted to the SRHS during the qualifying years. A vessel qualifies as a LHV if it has individual landings history recorded by the Southeast Region Headboat Survey by December 31, 2015. For-hire federal permit holders whose vessels landed an annual average of at least **400 fish** of all species combined are considered as having substantially fished. Annual average landings are based on landings recorded by the SRHS between 2011 and 2015.

Option a: Votes will be weighted by the participant's vessel catch history.
Option b: Each eligible permit will have one vote regardless of the relative size of the vessel's catch history.

Alternative 4: Restrict participation in the referendum to persons who have a valid or renewable federal reef fish for-hire permit issued to a landings history vessel (LHV) and who have substantially fished for red snapper, gray triggerfish, greater amberjack, red grouper, or gag based on landings submitted to the SRHS during the qualifying years. A vessel qualifies as a LHV if it has individual landings history recorded by the Southeast Region Headboat Survey by December 31, 2015. For-hire federal permit holders whose vessels landed an annual average of at least **1,000 fish** of all species combined are considered as having substantially fished. Annual average landings are based on landings recorded by the SRHS between 2011 and 2015.

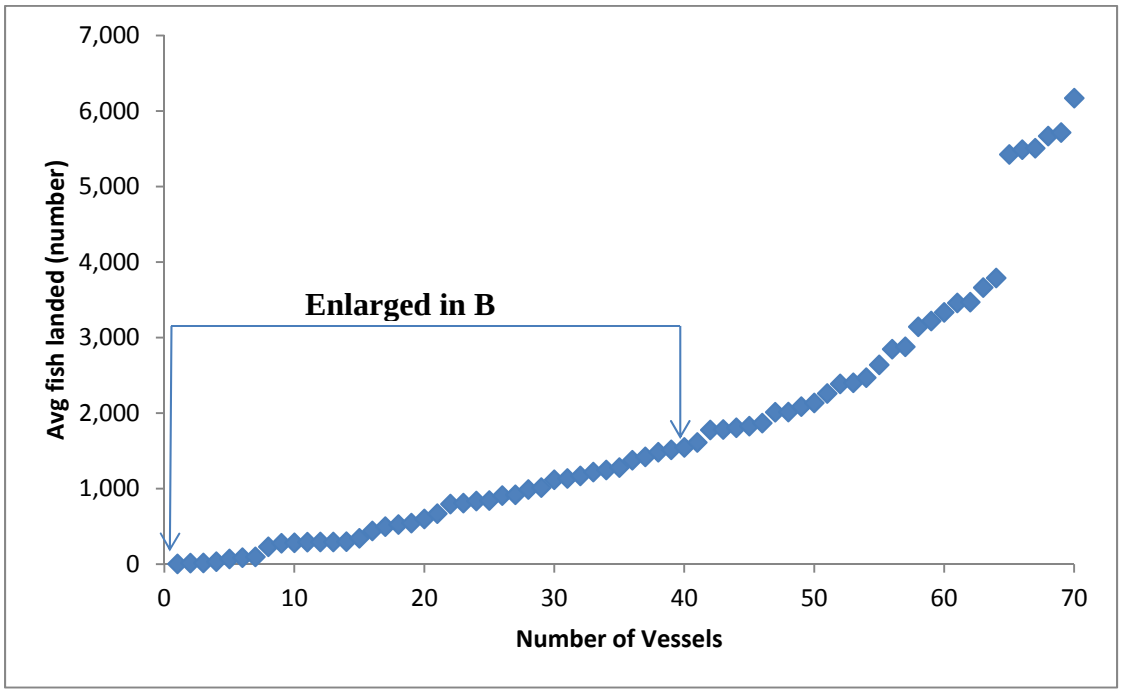
Option a: Votes will be weighted by the participant's vessel catch history.
Option b: Each eligible permit will have one vote regardless of the relative size of the vessel's catch history.

The no action alternative (**Alternative 1**) would consider all permit holders eligible for participation in the referendum. This alternative would not be consistent with provisions of the Magnuson-Stevens Act requiring that referendum participation be restricted to eligible permit holders who substantially fished the species included in the individual fishing quota program. Remaining alternatives consider various landings thresholds to determine eligibility to participate in the referendum.

The landings thresholds were based on a review of landings by potential voters (Figure 3.1). The pool of potential voters was determined to be those vessel owners holding a valid or renewable Reef Fish For-hire Permit as of September 1, 2016, who had landings during 2011-2015, as recorded by the SRHS. This pool of 71 voters may change before the referendum is conducted if permit ownership changes before the effective date of the rule establishing the referendum criteria. Further, the eligible participants for the catch share program, if approved, may differ from the pool of potential voters if permit ownership changes before the effective date of the program.

The qualifying period selected for referendum eligibility, 2011-2015, is consistent with the years that would be used for initial share apportionment (see Amendment 42, Action 7). Only landings from 2011 and later can be used to calculate initial shares because an official vessel identifier is needed to link the SRHS landings to a permit. Prior to 2011, while the SRHS identified vessels uniquely identified vessels, it did not record the official vessel identifier (US Coast Guard or State documentation numbers); therefore, landings cannot be assigned to a particular permit. Landings after 2015 would not be used, consistent with the control date set by the Council, which states that participation and landings in the SRHS after December 31, 2015, may not be considered.

A



B

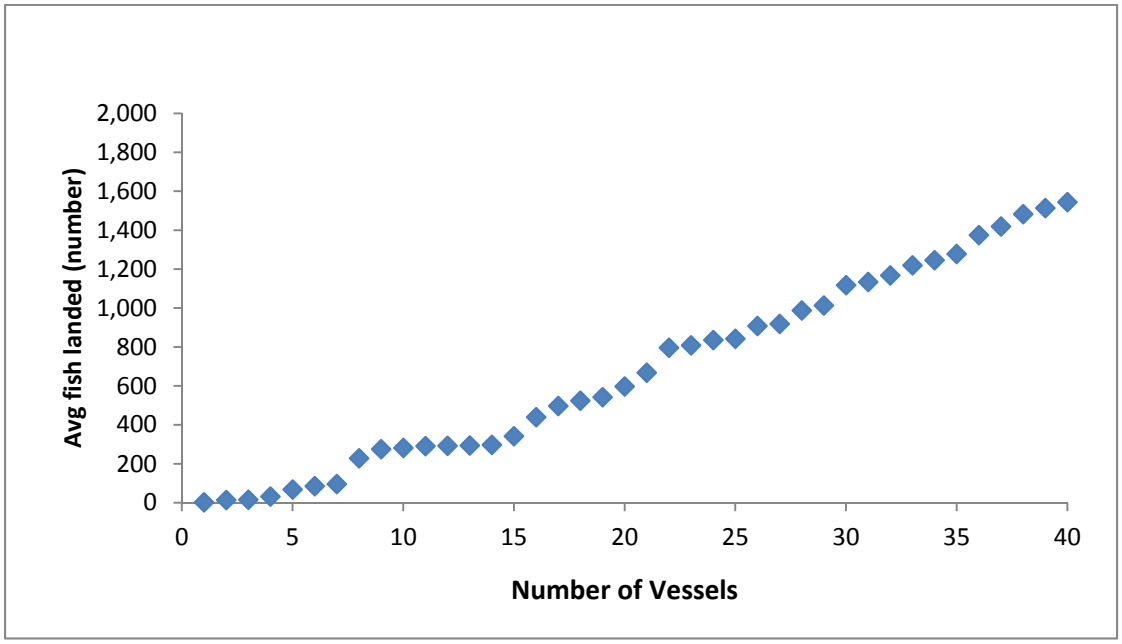


Figure 3.1. Average annual landings by vessel of red snapper, gray triggerfish, greater amberjack, gag, and red grouper for 2011-2015. A. All eligible vessels as of September 1, 2016. B. Enlarged portion of A showing the 40 vessels with the lowest landings.
Source: SRHS database, NMFS

The number of eligible voters under each proposed landings threshold is shown in Table 3.1. Of the 71 potential voters, 7 would not qualify to vote under **Preferred Alternative 2**, 15 would not qualify under **Alternative 3**, and 28 would not qualify under **Alternative 4**. Although **Alternative 4** would allow the fewest voters, those voters would account for 91% of the landings of the proposed species.

Table 3.1. Number of voters eligible at each landings threshold (based on eligibility as of September 1, 2016), the percent of the potential voting pool they represent, and the percent of the total landings (red snapper, gray triggerfish, greater amberjack, gag, and red grouper) they represent.

Threshold (Number of fish)	Number of Voters	Percent of Voting Pool	Percent of Landings
Alternative 1 0	71	100	100
Preferred Alternative 2 100	64	90.1	99.8
Alternative 3 400	56	78.9	98.2
700	50	70.4	95.7
Alternative 4 1,000	43	60.6	91.3
1,300	36	50.7	84.7
1,700	30	42.3	78.8
2,000	25	35.2	72.7
3,000	14	19.7	51.8
5,000	7	9.9	32.5

For **Alternatives 2-4**, **Option a** and **Preferred Option b** would weight votes based on each participant's catch history or assign one vote per qualified participant, regardless of catch history, respectively. Relative to **Option a**, **Preferred Option b** would be more likely to establish fair and equitable referendum participation criteria and to preclude an individual from controlling an excessive share of the votes. Given the wide dispersion of annual average landings, weighting the votes would allow the top producers to control a large share of the votes. Assuming that they all voted the same way, the 14 top producers, which account for 51.8 percent of the landings, would determine the outcome of the referendum even if everybody else voted in the opposite direction. It would be difficult to consider such a referendum as fair and equitable. Furthermore, should the proposed allocation-based program be approved, assigning one vote per participant would result in an allocation-based program with more legitimacy in the eyes of fishermen.

4. Expected Impacts

Establishing eligibility for referendum participants is an essentially administrative action, and is not expected to directly or indirectly affect the physical, biological, or ecological environments. The determination of eligibility requirements for referendum participation is not expected to result in direct or indirect economic or social effects. Limited effects on the administrative environment are expected due to costs associated with identifying eligible voters and administering the referendum.

5. Next Steps

The Council must select all preferred alternatives for the program in Amendment 42 before the referendum takes place, but cannot take final action on Amendment 42 until after the referendum is completed. After voting for the eligibility requirements, the Council would request NMFS publish a proposed rule. NMFS would take comments on the proposed eligibility requirements and then, if appropriate, publish a final rule.

On the effective date of the final rule, NMFS would determine the final pool of eligible voters and mail ballots. Voters would have one month to return their signed ballots to NMFS. After compiling the votes, NMFS would inform the Council of the results. A majority of those voting in the referendum must approve the program. If the referendum fails, the Council may modify the program and request another referendum. If the referendum passes, the Council would then consider taking Final Action and submit Amendment 42 to the Secretary of Commerce for review. If the Council changes the preferred alternatives, then a new referendum would be necessary. During Secretarial review, NMFS would solicit comments on the amendment. NMFS would also publish a proposed rule with regulations for an allocation-based management program that would be implemented if the amendment is approved. Comments on the amendment and the proposed rule would be considered by NMFS before approval of the amendment and publication of the final rule to implement the chosen allocation-based management program. The steps for implementing Amendment 42 and its referendum are listed in the following page. For reference a sample cover letter and ballot from the referendum for Reef Fish Amendment 29 are included in Appendix A and Appendix B, respectively.

Steps for Amendment 42 and its Referendum

- **Council approves referendum criteria**
- **Council approves Public Hearing/Environmental Impact Statement Draft**
- **Council conducts additional Public Hearings**
- **Council chooses final preferred alternatives in the amendment**
- **Council determines amendment is essentially complete**
- **Council sends letter requesting initiation of referendum**
- NMFS drafts Referendum Proposed Rule package
- Referendum Proposed Rule publishes
- One month comment period
- NMFS drafts Referendum Final Rule package with response to comments
- Referendum Final Rule publishes
- Referendum effective 30 days later
- NMFS mails ballots
- Ballots due one month later
- NMFS presents referendum results to Council
- **Council takes final action on amendment and votes to submit it to the Secretary**
- **Council transmits final amendment to NMFS**
- NMFS drafts Proposed Rule/NOAA package
- NOAA/Proposed Rule publishes
- NOAA 45-day comment period/Proposed Rule 30-day comment period, concurrent
- NMFS begins initial shares calculation
- NMFS drafts Final Rule package with response to comments
- Final Rule publishes
- Rule effective 30 days later
- Program begins

APPENDIX A

Southeast Regional Office

263 13th Avenue South

St. Petersburg, Florida 33701-5505

(727) 824-5305; FAX (727) 824-5308
http://sero.nmfs.noaa.gov

December 5, 2008 F/SER24:SG

CERTIFIED MAIL; RETURN RECEIPT REQUESTED

TO: ELIGIBLE VOTER NAME:_____
ADDDRESS: _____
CITY/ STATE/ZIPCODE_____

Dear Eligible Individual Fishing Quota (IFQ) Referendum Voter:

Section 303A(c)(6)(D)(i) of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) provides that the Gulf of Mexico Fishery Management Council (Council) may not submit a fishery management plan or amendment that creates an IFQ program unless such a program has been approved by a majority of those voting in a referendum among eligible permit holders. The Magnuson-Stevens Act also stipulates that for multispecies permits in the Gulf of Mexico, only those participants who have substantially fished the species proposed to be included in the IFQ program shall be eligible to vote in a referendum.

The Council proposed that only commercial reef fish permit holders who have combined average annual grouper and tilefish landings from logbooks during the qualifying years of at least 8,000 pounds gutted weight (per permit) be considered as having substantially fished. Qualifying years selected by the Council cover 1999-2004, with the allowance for dropping one year. To be eligible for the referendum, permits must be valid or renewable (within one year of the grace period immediately following expiration). By sending this letter, NOAA Fisheries Service acknowledges your eligibility to vote in the referendum under the criteria selected by the Council.

The enclosed CD contains the final rule, which NOAA Fisheries Service published in the *Federal Register* on October 30, 2008, that further explains the referendum process. Also on the CD is Reef Fish Amendment 29, which outlines the proposed IFQ program for grouper and tilefish fisheries in the Gulf of Mexico, and the letter from the Council to NOAA Fisheries Service requesting a referendum and explaining the eligibility criteria.

Your voting ballot with tracking number for voting under the referendum is enclosed. You must check either the "yes" or "no" box on the ballot that indicates your approval or disapproval of the IFQ program developed by the Council. The ballot must be signed by one of the permit holders listed above or an officer in the corporation listed.

DO NOT RETURN THIS LETTER WITH YOUR BALLOT; SAVE THIS LETTER FOR YOUR RECORDS. The enclosed ballot (no photocopies allowed) must be signed and mailed to Sarah DeVido, Southeast Regional Office, NMFS, 263 13th Avenue S., St. Petersburg, FL 33701-5505, and must be received by 4:30 p.m., eastern time, January 5, 2008. For further information, please contact Sarah DeVido, telephone: 727-824-5305, fax: 727-824-5308, e-mail: sarah.devido@noaa.gov.

Sincerely

Roy E. Crabtree, Ph.D.

Regional Administrator

Enclosures

APPENDIX B

GULF OF MEXICO GROUPER AND TILEFISH
INDIVIDUAL FISHING QUOTA (IFQ)
REFERENDUM BALLOT
TRACKING #_____

****

QUESTION: Do you approve of an Individual Fishing Quota (IFQ) program for the grouper and tilefish fisheries as outlined in Reef Fish Amendment 29?

___ Yes (check one) ___No

****
****

Eligible Voter Signature_____

Date _____

****
****

THIS BALLOT MUST BE SIGNED

This original ballot (no copies) must be mailed to Sarah DeVido, NMFS, Southeast Regional Office, 263 13th Avenue S., St. Petersburg, FL 33701, and must be received by 4:30 p.m., eastern time, January 5, 2009.

The National Marine Fisheries Service uses this information for the conservation and management of marine fishery resources. The data reported will be used to develop, implement, and monitor fishery management activities for a variety of other uses. All data submitted will be handled as confidential material in accordance with NOAA Administrative Order 216-100, Protection of Confidential Fishery Statistics.

This document is exempt from the Paperwork Reduction Act under Section 303A(c)(6)(D)(ir) of the Magnuson-Stevens Fishery Conservation and Management Act.

SAMPLE