§ 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 account. See §622.4(a)(4)(ii) regarding a requirement for a Gulf IFQ dealer endorsement. Details regarding eligibility, applicable landings history, account setup and transaction requirements, constraints on transferability, and other provisions of this IFQ system are provided in the following paragraphs of this section.

(1) Scope. The provisions of this section apply to Gulf red snapper in or from the Gulf EEZ and, for a person aboard a vessel with a Gulf red snapper IFQ vessel account as required by §622.4(a)(2)(ix) or for a person with a Gulf IFQ dealer endorsement as required by §622.4(a)(4)(ii), these provisions apply to Gulf red snapper regardless of where harvested or possessed.

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

(3) Electronic system requirements. (i) The administrative functions associated with this IFQ program, e.g., registration and account setup, landing transactions, and transfers, are designed to be accomplished online; therefore, a participant must have access to a computer and Internet access and must set up an appropriate IFQ online account to participate. 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
Fishery Conservation and Management § 622.16

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 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 November 22, 2006. 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.

(3) Shareholder notification regarding landings history, initial determination of IFQ shares and allocations, and IFQ account setup information. (i) As soon as possible after November 22, 2006, 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 by December 22, 2006 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 December 22, 2006. 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 April 1, 2007 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 November 22, 2006, 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 at ifq.sero.nmfs.noaa.gov once an IFQ account has been established. The information package will include general information about the IFQ program and instructions for accessing the IFQ website and establishing an IFQ dealer account.

(c) IFQ operations and requirements—
(1) IFQ Landing and transaction requirements. (i) Gulf red snapper subject to this IFQ program can only be possessed or landed by a vessel with a Gulf red snapper IFQ vessel account with allocation at least equal to the pounds of red snapper on board, except as provided in paragraph (c)(1)(ii) of this section. Such red snapper can only be received by a dealer with a Gulf IFQ dealer endorsement.

(ii) A person on board a vessel with an IFQ vessel account landing the shareholder’s only remaining allocation, can legally exceed, by up to 10 percent, the shareholder’s allocation remaining on that last fishing trip of the fishing year, i.e., a one-time per fishing year overage. Any such overage will be deducted from the shareholder’s applicable allocation for the subsequent fishing year. From the time of the overage until January 1 of the subsequent fishing year, the IFQ shareholder must retain sufficient shares to account for the allocation that will be deducted the subsequent fishing year. Share transfers that would violate this requirement will be prohibited.

(iii) The dealer is responsible for completing a landing transaction report for each landing and sale of Gulf red snapper via the IFQ website at ifq.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.

(iv) If there is a discrepancy regarding the landing transaction report after approval, the dealer or vessel account holder (or his or her authorized agent) may initiate a landing transaction correction form to correct the landing transaction. This form is available via the IFQ website at ifq.sero.nmfs.noaa.gov. Both parties must validate the landing correction form by entering their respective PIN numbers, i.e. vessel account PIN or dealer account PIN. The dealer must then print out the form, both parties must sign it, and the form must be mailed to NMFS. The form must be received by NMFS no later than 15 days after the date of the initial landing transaction.

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

(i) Payment responsibility. The IFQ allocation holder specified in the documented red snapper IFQ landing transaction report is responsible for payment of the applicable cost recovery fees.
(ii) Collection and submission responsibility. A dealer who receives Gulf red snapper subject to the IFQ program is responsible for collecting the applicable cost recovery fee for each IFQ landing from the IFQ allocation holder specified in the IFQ landing transaction report. Such dealer is responsible for submitting all applicable cost recovery fees to NMFS on a quarterly basis. The fees are due and must be submitted, using pay.gov via the IFQ system at the end of each calendar-year quarter, but no later than 30 days after the end of each calendar-year quarter. Fees not received by the deadline are delinquent.

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

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

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

(B) On or about the 91st day after the end of each calendar-year quarter, the RA will refer any delinquent IFQ dealer cost recovery fees to the appropriate authorities for collection of payment.

(3) Measures to enhance IFQ program enforceability—(i) Advance notice of landing. For the purpose of this paragraph, landing means to arrive at a dock, berth, beach, seawall, or ramp. The owner or operator of a vessel landing IFQ red snapper is responsible for ensuring that NMFS is contacted at least 3 hours, but no more than 12 hours, in advance of landing to report the time and location of landing, estimated red snapper landings in pounds gutted weight, vessel identification number (Coast Guard registration number or state registration number), and the name and address of the IFQ dealer where the red snapper are to be received. The vessel landing red snapper must have sufficient IFQ allocation in the IFQ vessel account, at least equal to the pounds in gutted weight of red snapper on board (except for any overage up to the 10 percent allowed on the last fishing trip) from the time of the advance notice of landing through landing. Authorized methods for contacting NMFS and submitting the report include calling NMFS Office for Law Enforcement at 1-866-425-7627, completing and submitting to NMFS the notification form provided through the VMS unit, or providing the required information to NMFS through the web-based form available on the IFQ website at ifq.sero.nmfs.noaa.gov. As new technology becomes available, NMFS will add other authorized methods for complying with the advance notification requirement, via appropriate rulemaking. Failure to comply with this advance notice of landing requirement is unlawful and will preclude authorization to complete the landing transaction report required in paragraph (c)(1)(iii) of this section and, thus, will preclude issuance of the required transaction approval code.

(ii) Time restriction on offloading. For the purpose of this paragraph, offloading means to remove IFQ red snapper from a vessel. IFQ red snapper may be offloaded only between 6 a.m. and 6 p.m., local time.

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

(iv) Requirement for transaction approval code. If IFQ red snapper are offloaded to a vehicle for transportation to a dealer or are on a vessel that is trailer for transport to a dealer, on-site capability to accurately weigh the fish and to connect electronically to the online IFQ system to complete the transaction and obtain the transaction approval code is required. After a landing transaction has been completed, a transaction approval
code verifying a legal transaction of the amount of IFQ red snapper in possession and a copy of the dealer endorsement must accompany any IFQ red snapper from the landing location through possession by a dealer. This requirement also applies to IFQ red snapper possessed on a vessel that is trailered for transport to a dealer.

(v) Approved landing locations. Landing locations must be approved by NMFS Office for Law Enforcement prior to landing or offloading at these sites. Proposed landing locations may be submitted online via the IFQ website at ifq.sero.nmfs.noaa.gov, or by calling IFQ Customer Service at 1–866–425–7627, at any time, however, new landing locations will be approved only at the end of each calendar-year quarter. To have a landing location approved by the end of the calendar-year quarter, it must be submitted at least 45 days before the end of the calendar-year quarter. NMFS will evaluate the proposed sites based on, but not limited to, the following criteria:

(A) Landing locations must have a street address. If there is no street address on record for a particular landing location, global positioning system (GPS) coordinates for an identifiable geographic location must be provided.

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

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

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

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

(4) Transfer of IFQ shares and allocation. Until January 1, 2012, IFQ shares and allocations can be transferred only to a person who holds a valid commercial vessel permit for Gulf reef fish; thereafter, IFQ shares and allocations can be transferred to any U.S. citizen or permanent resident alien. However, a valid commercial permit for Gulf reef fish, a Gulf red snapper IFQ vessel account, and Gulf red snapper IFQ allocation are required to possess (at and after the time of the advance notice of landing), land or sell Gulf red snapper subject to this IFQ program.

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

(ii) Share transfer procedures. Share transfers must be accomplished online via the IFQ website. An IFQ shareholder must initiate a share transfer request by logging onto the IFQ website at ifq.sero.nmfs.noaa.gov. Following the instructions provided on the website, the shareholder must enter pertinent information regarding the transfer request including, but not limited to, amount of shares to be transferred, which must be a minimum of 0.0001 percent; name of the eligible transferee; and the value of the transferred shares. An IFQ shareholder who is subject to a sanction under 15 CFR part 904 is prohibited from initiating a share transfer. An IFQ shareholder who is subject to a pending sanction under 15 CFR part 904 must disclose in writing to the prospective transferee the existence of any pending sanction at the time of the transfer. For the first 5 years this IFQ program is in effect, an eligible transferee is a person who has a valid commercial vessel permit for Gulf reef fish; is in compliance with all reporting requirements for the Gulf
reef fish fishery and the red snapper IFQ program; is not subject to sanctions under 15 CFR part 904; and who would not be in violation of the share cap as specified in paragraph (c)(6) of this section. Thereafter, share transferee eligibility will be extended to include U.S. citizens and permanent resident aliens who are otherwise in compliance with the provisions of this section. The online system will verify the transfer information entered. If the information is not accepted, the online system will send the shareholder an electronic message explaining the reason(s) why the transfer request cannot be completed. If the information is accepted, the online system will send the transferee an electronic message of the pending transfer. The transferee must approve the share transfer by electronic signature. If the transferee approves the share transfer, the online system will send a transaction approval code to both the transferor and transferee confirming the transaction. All share transfers must be completed and the transaction approval code received prior to December 31 at 6 p.m. eastern time each year.

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

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

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

(6) IFQ share cap. No person, including a corporation or other entity, may individually or collectively hold IFQ shares in excess of 6.0203 percent of the total shares. For the purposes of considering the share cap, a corporation’s total IFQ share is determined by adding the applicable IFQ shares held by the corporation and any other IFQ shares held by a corporation(s) owned by the original corporation prorated based on the level of ownership. An individual’s total IFQ share is determined by adding the applicable IFQ shares held by the individual and the applicable IFQ shares equivalent to the corporate share the individual holds in a corporation. Initially, a corporation must provide the RA the identity of the shareholders of the corporation and their percent of shares in the corporation, and provide updated information to the RA within 30 days of when changes occur. This information must also be provided to the RA any time a commercial vessel permit for Gulf reef fish is renewed or transferred.
§ 622.17 South Atlantic golden crab controlled access.

(a) General. In accordance with the procedures specified in the Fishery Management Plan for the Golden Crab Fishery of the South Atlantic Region, initial commercial vessel permits have been issued for the fishery. All permits in the fishery are issued on a fishing-year (calendar-year) basis. No additional permits may be issued except for the northern zone as follows:

(1) The RA will issue up to two new vessel permits for the northern zone. Selection will be made from the list of historical participants in the South Atlantic golden crab fishery. Such list was used at the October 1995 meeting of the South Atlantic Fishery Management Council and was prioritized based on pounds of golden crab landed, without reference to a specific zone. Individuals on the list who originally received permits will be deleted from the list.

(2) The RA will offer in writing an opportunity to apply for a permit for the northern zone to the individuals highest on the list until two individuals accept and apply in a timely manner. An offer that is not accepted within 30 days after it is received will no longer be valid.

(3) An application for a permit from an individual who accepts the RA's offer must be received by the RA no later than 30 days after the date of the individual's acceptance. Application forms are available from the RA.

(4) A vessel permit for the northern zone issued under paragraph (a)(1) of this section, and any successor permit, may not be changed to another zone. A successor permit includes a permit issued to that vessel for a subsequent owner and a permit issued via transfer from that vessel to another vessel.

(b) Fishing zones—(1) Designation of fishing zones. The South Atlantic EEZ is divided into three fishing zones for golden crab as follows:

(i) Northern zone—the South Atlantic EEZ north of 28° N. lat.

(ii) Middle zone—the South Atlantic EEZ from 28° N. lat. to 25° N. lat.

(iii) Southern zone—the South Atlantic EEZ south of 25° N. lat.

(2) Authorization to fish in zones. Each vessel permit indicates one of the zones specified in paragraph (b)(1) of this section. A vessel with a permit to fish for golden crab in the northern zone or the middle zone may fish only in that zone. A vessel with a documented length overall greater than 65 ft (19.8 m) with a permit to fish for golden crab in the southern zone may fish in that zone, consistent with the provisions of paragraph (b)(3) of this section. A vessel may possess golden crab only in a zone in which it is authorized to fish, except...