

comments opposing the proposed rule were identical in content. Specific responses follow each comment, and are separated by general category.

Information Used in Amendment 8

Comment: The minority report claimed that an ITQ program is unnecessary, because the fishery conditions that the program proposes to correct do not actually exist. The report argues that both recreational and commercial user groups have concluded that the scientific stock assessment is flawed, because it is based on allegedly erroneous information and that the stock is in the best condition they can recall in their fishing experience. The report also stated that the authors have no confidence in the reliability of the recreational landings data collected under the Marine Recreational Fishery Statistical Survey.

Response: The NMFS stock assessment has undergone extensive peer review and was found by the Southeast Fisheries Science Center (Center) to be based on the best available scientific information. The Center also reviewed Amendment 8 and concluded that the amendment is based on the best available scientific information. The stock assessment does indicate some recovery of the red snapper stock condition during the period under Federal management; however, the assessment also indicates that the stock is still overfished and that continuing harvest restrictions are required for the FMP's long-term stock rebuilding program.

NMFS agrees, however, with the need to continually update the stock assessment database used in formulating management decisions. Appropriate updates to the database will be made as data become available.

Comment: A fishing association representative noted that the Council's Scientific and Statistical Committee (SSC) previously had voted for no new regulatory actions (i.e., discontinuance of the current red snapper permit endorsement program at the end of 1995 and no ITQ program beginning in 1996) based on the lack of a feasibility study at that time. The commenter questioned the need for an ITQ program after noting the SSC position. The commenter did acknowledge that the SSC had subsequently concluded that sufficient evaluation had been completed for the Council to select one of the identified management program alternatives (i.e., ITQs, license limitations, or no new regulatory action).

Response: NMFS does not dispute the comment, but notes that the SSC vote

for no regulatory action was based on an earlier version of Amendment 8.

Comment: The minority report and one commenter stated that the erroneous information created an unfair and inequitable commercial/recreational allocation ratio of 51/49 for red snapper. These commenters also objected to the FMP's provision that requires closure of the annual commercial fishery for the rest of the fishing year once the annual commercial quota is projected to be met, while potentially allowing recreational fishermen to exceed their allocation. The commenters claim that this penalizes the commercial sector to the benefit of the recreational sector and stated that Amendment 8 would continue this inequitable distribution of the allocation, particularly when the stock is recovered and total allowable catch (TAC) may safely be increased.

Response: The FMP provides for a commercial/recreational allocation ratio of 51/49 for red snapper, and has a requirement that the commercial sector be closed for the remainder of the year once the annual commercial quota is met or is projected to be met. These measures were found to be fair and equitable and consistent with the national standards based on the best available information, as originally set forth in Amendment 1. These provisions are not modified under Amendment 8 or its implementing regulations. Changes to either the allocation ratio or closure provision, therefore, are not actions within the scope of Amendment 8 and would require an additional FMP amendment.

Comment: One of the commenters stated that Amendment 8 violates National Standard 2, since NMFS did not use available social assessments, and the Council and NMFS did not adequately consider the "human factor," or social and economic effects.

Response: NMFS does not agree. The Council conducted extensive analyses and used all available data sources in developing Amendment 8, including the most current landings data, economic, social, and biological information. Amendment 8 includes a social impact assessment, and also references extensive Council deliberations on avoiding social impacts.

Comment: The minority report also stated that the ITQ program is based on the NMFS concept that such a program will improve the economic conditions of the industry.

Response: The Council selected ITQs as the preferred option, principally because it should result in the largest increase in net economic benefits, achieve optimum yield (OY), and address many of the major problems in

the fishery. In particular, the approved measures of the Amendment 8 ITQ program are expected to resolve the problems of a harvest capability that is larger than necessary to produce the commercial quota in an economically efficient manner. The ITQ program also is expected to resolve the problems associated with the derby fishery, including depressed prices, fishing in dangerous weather conditions, and increased total costs of production. In approving Amendment 8, NMFS agreed with the Council's rationale and objectives for the ITQ program.

Historical Captains

Comment: A representative of a commercial fishing association expressed concern regarding historical captains being included as initial shareholders. The commenter recommended that only persons who qualified for red snapper permit endorsements should be initial recipients of ITQ shares and noted that vessel owners provide the vessels and have the principal legal responsibility for their operation.

Response: Initial shareholders in the ITQ system include vessel owners or operators, depending on whose earned income qualified for the reef fish permit, and historical captains. The Council concluded that the unique status of historical captains as independent contractors who operated vessels under share agreements warranted their inclusion as initial shareholders. Unlike earned income qualifying operators, however, the initial share of a historical captain is divided with the vessel owner, based on the terms of the share agreement. NMFS finds no basis for disapproval of the Council's allocation of initial shares to historical captains.

Additional Issues Related to National Standards

Comment: The minority report and three of the commenters claimed that the ITQ system was unfair and inequitable because initially entitled fishery participants would be allocated excessive shares or because allocated shares would not be issued to all historical participants or in appropriate allocation ratios. One of the commenters stated that the ITQ system was unfair and inequitable, but did not provide specific rationale as the basis for this comment.

Response: Amendment 8 addresses the allocation issues raised by these comments. For example, Amendment 8 lists the factors that the Council took into account in establishing the ITQ system to limit access to the fishery and to achieve optimum yield (OY)