

including: Present participation in the fishery; historical fishing practices in, and dependence on, the fishery; the economics of the fishery; the capability of fishing vessels used in the fishery to engage in other fisheries; and the cultural and social framework relevant to the fishery.

The ITQ system provides for issuance of initial shares that more closely track the actual harvest during the qualifying years than the current endorsement system. For example, the endorsement provisions established a trip limit of 2,000 lb (907 kg) for fishermen with endorsements on their permits (i.e., caught at least 5,000 lb (2,268 kg) in any 2 of the 3 years between 1990–1992). Vessels without an endorsement were limited to a 200 lb (91 kg) trip limit. In effect, the endorsement system provided only two levels of harvest based on applicants meeting a minimum threshold. Persons who landed substantively more than the threshold were not provided a larger trip limit than those who landed only 5,000 lb (2,268 kg). This system resulted in inequities, as stated in several of the comments.

In contrast, the initial ITQ shares to be issued under Amendment 8 will correspond to the actual harvests accepted by NMFS under Amendment 9 during the qualifying period for shares. Moreover, the overall benefits of the ITQ system to the economic integrity of the fishery are expected to accrue over time. For example, the allowance for ITQ share transfers to any U.S. citizen or permanent resident alien starting October 1, 1997, will provide access to those ineligible for an initial share. This should result in significantly increased flexibility regarding who may participate in the fishery.

Amendment 8 explicitly reflects the requirements of NMFS' Guidelines for Fishery Management Plans; Subpart B—National Standards (National Standard Guidelines) regarding the application of National Standard 4 (allocation of fishing privileges) (see 50 CFR 602.14(c)(3)(i)). Specifically, Amendment 8 states that to be "fair and equitable," an allocation should be rationally connected with the achievement of OY or with the furtherance of an FMP objective; otherwise, the inherent advantaging of one group to the detriment of another would be without adequate justification. Also, Amendment 8 indicates that an allocation of fishing privileges may impose hardship on one group if this hardship is outweighed by the total benefits received by another group. Although the ITQ program will not prevent any person who is a U.S. citizen

or permanent resident alien from entering the red snapper fishery, those persons who receive an initial allocation of harvesting privileges (initial shares) will have a competitive advantage over subsequent participants by not having to pay for those privileges. Any such competitive advantage would be constrained by the mandatory 4-year evaluation period, which the Council believes was necessary to minimize windfall profit and speculation.

According to the National Standard Guidelines, an allocation of fishing privileges must be designed to avoid creating conditions that foster the acquisition by any person of an inordinate share of fishing privileges or control by buyers and sellers that would not otherwise exist (see 50 CFR 602.14(c)(3)(iii)). Although the National Standard Guidelines do not specifically define an "excessive share," they imply conditions of monopoly or oligopoly. The Council does not believe that a monopoly will occur and expects that owners/operators will remain the dominant entities in the fishery. Therefore, the Council recommended no limit on ownership of ITQ shares. It is anticipated that this will not lead to overall market control of the fishery. Also, the Council can recommend, and NMFS approve and implement, a different allocation scheme by FMP amendment at any time if it meets the requirements of the Magnuson Fishery Conservation and Management Act and other applicable law.

NMFS acknowledges the Amendment 8 discussion of these allocation issues and agrees with the Council that the ITQ program is consistent with National Standard 4 requirements that allocations of fishing privileges be fair and equitable and be carried out in such manner that no particular individual, corporation, or other entity acquires an excessive share.

#### *Effects of ITQ System on Red Snapper Resource Status*

*Comment:* The minority report states that the ITQ system does not promote conservation. One commenter opposed the ITQ system indicating that it may contribute to overfishing. Another commenter stated that he would benefit from a relatively high ITQ share, but that he opposed the ITQ system because possible unlawful and unreported landings (landings without ITQ coupons) would result in exceeding the red snapper annual quota because these landings would go unrecorded. He argued that these circumstances would cause overfishing of the red snapper resource and undermine the long-term rebuilding of this overfished species.

*Response:* NMFS disagrees with these comments. The current red snapper management program provision for an automatic commercial fishery closure once the commercial quota is met was intended to ensure that the quota is not exceeded, thereby ensuring the recovery of the overfished red snapper resource under its rebuilding program. However, red snapper discarded during closed fishery periods are not counted against the commercial quota; some of these closed fishery periods have been considerably long such as the one that occurred after the April 15, 1995, fishery closure. Since the ITQ program is expected to minimize closed fishery periods, it should correspondingly reduce unaccounted for incidental catch mortality of red snapper. Reducing the magnitude of this fishing morality during fishery closures is expected to allow a larger proportion of the red snapper harvested to be retained and counted against the commercial quota that occurs currently. Accordingly, the ITQ program should both reduce the total fishing mortality of red snapper as well as provide a more accurate estimate of it. The slower-paced fishery that is anticipated under the ITQ program will be easier for NMFS to monitor, particularly with fewer fishermen operating over a longer season. Also, ITQ program participants will have an interest in ensuring the continued viability of the fishery and the ITQ program, and are expected to assist in reported illegal activities or under-reporting. Overall, these ITQ program results should significantly enhance conservation benefits.

#### *Industry Opinions on Amendment 8*

*Comment:* Two representatives of fishing associations noted that most public comments at the Council meetings opposed ITQs. One of these commenters noted the various votes of the Council's Red Snapper and Reef Fish Advisory Panels against ITQs. The minority report and one fishing association representative stated that the majority of the red snapper industry opposes Amendment 8. They argued that approval of Amendment 8 and its implementing rule is inconsistent with what they perceive to be NMFS' policy that no proposed ITQ program would be implemented over industry objections.

*Response:* NMFS disagrees with these comments and believes that a majority of the fishing industry participants supports the ITQ program. As with any controversial action, some commenters opposed Amendment 8. However, the ITQ system appears to be supported by a majority of the fishery participants as providing for better red snapper fishery