

management including ensuring more reliable monitoring of catches with regards to quotas, avoiding increasingly short fishing seasons and low ex-vessel prices, and improving the enforceability of the management measures. Public commenters that expressed an opinion at area hearings held by the Council in December 1994 supported, in general, the ITQ program (23 in favor, 19 opposed). A stronger majority opinion (15 in favor, 9 opposed) was evidenced at the hearings by commenters who hold a red snapper endorsement on their reef fish vessel permit and who have caught the bulk of the commercial harvest since 1993, when the endorsement provisions were implemented. More recent indications of industry views on the Amendment 8 ITQ program were reflected in the public comments received on the proposed rule that supported the program by a slight margin (17–16), with a much larger margin of support (12 to 3) among commenters with a red snapper endorsement on their reef fish vessel permit. Public support for the ITQ program is expected to increase as more participants become familiar with it and with the benefits to the fishery expected to result from its implementation. Those benefits are expected to accrue over time. Finally, NMFS has not issued a policy regarding the approval and implementation of limited entry programs, including ITQ systems, except for guidance to the Regional Fishery Management Councils contained in the National Standard Guidelines at 50 CFR part 602 regarding the consistency of management measures assigning fishing privileges with National Standard 4. However, NMFS has indicated to the Councils that it is their responsibility to develop and recommend controlled access systems only if there is considerable support from the industries involved. NMFS believes that the controlled access system under Amendment 8 does have this considerable support from the affected industries.

#### *Enforcement Issues*

*Comment:* The minority report and five of the comments cited enforcement concerns. These comments stated that, with current NMFS enforcement capability and recent budget cuts, the ITQ system would be unenforceable.

*Response:* NMFS does not agree that the ITQ program will be unenforceable. First, NMFS anticipates cooperation from all the Gulf coastal states who have indicated that they will implement regulations for their waters consistent with those in the exclusive economic zone. Specifically, Texas and Florida

provided comments in support of Amendment 8 and indicated a capability to enact compatible regulations in waters under their jurisdiction. Alabama, Louisiana, and Mississippi provided similar comments that were received after the end of the comment period, but before NMFS took final action to approve the remaining measures of Amendment 8. Thus, in making its decision to approve and implement the remaining measures of Amendment 8, NMFS obtained reasonable assurance from all the affected states that they will be able to issue compatible state regulations effective on or about the time that Amendment 8 is fully implemented (April 1, 1996). This cooperation will greatly enhance enforcement of the regulations. NMFS also has committed the resources for additional Federal enforcement agents.

Second, the Council and NMFS believe that the ITQ system will be more self-policing than the current management system (permit endorsements with trip limits) because ITQ holders will have a vested interest in seeing that all red snapper landings conform with the ITQ program requirements. ITQ shares will have a value to the holder proportionate to the size of the total commercial quota. Fishermen who hold ITQ shares will have a greater incentive to report to enforcement officials (NMFS Enforcement, the Coast Guard, or state enforcement agencies) any illegal/unreported landings outside the ITQ program (e.g., landings without use of ITQ share coupons), since such landings would eventually result in adverse effects on the stock condition with the likely result of quota reductions.

*Comment:* Two of the commenters indicated that fishermen may illegally sell red snapper to restaurants without using their ITQ shares, thus allowing them to catch large quantities of red snapper outside of the ITQ program.

*Response:* NMFS acknowledges that illegal activity is possible with or without ITQs. Nevertheless, NMFS has determined that such activity can be kept to a minimum with compatible state regulations, which will greatly increase the probability of any fisherman being detected landing fish illegally and thereby risking his/her right to participate in the ITQ program.

*Comment:* One of the commenters stated that ITQ shareholders have an interest in helping the ITQ system succeed and, therefore, may report violations and keep enforcement costs down. That commenter stated that the additional requirement of ITQ coupons

should help enforcement officers to detect chronic violators.

*Response:* NMFS agrees.

#### *Use of Qualifying Years (1990–92)*

*Comment:* Another commenter stated that the qualifying years (1990–92) were atypical of his historic dependence on the fishery, as he stopped fishing due to the derby fishery during that time.

*Response:* The collection of past landings data under Amendment 9 covers all red snapper landings information for the period when data were readily available (i.e., 1990 through 1992). Data were not readily available before 1990, and the vessel permit endorsement provisions, including trip limits, were implemented in 1993. As a result, the years 1990–92 constitute the best available qualifying period for determining eligibility for the ITQ system. The Council, after extensive deliberations and consideration of longer qualifying periods, determined that the 1990–92 period was the most appropriate for determining historical dependence on the fishery. No reliable information or data were provided at Council-held public hearings or during NMFS-held comment periods on Amendment 8 and the proposed rule that convinced the Council or NMFS that this qualifying period was unfair or inappropriate. Based on these considerations, NMFS agreed with the Council's decision about the qualifying period in approving certain measures of both Amendments 8 and 9.

*Comment:* One of the commenters stated that the Amendment 8 proposed rule is inconsistent with the National Standards because it denies access to the red snapper fishery by those who did not have red snapper catches during the years 1990–92; those fishermen will not receive an initial allocation.

*Response:* The rationale for selecting the 1990–92 qualifying period was discussed above. Regarding access to the red snapper resource, a major feature of the ITQ program is allowance of new entrants to participate by buying existing ITQ shares. Hence, the program allows wider participation than the permit endorsement system it will replace.

The choice of the eligibility period (1990–92) to determine access also is consistent with the Council's established control date for the fishery. The published notice of the control date stated that anyone entering the Gulf of Mexico commercial reef fish fishery after November 7, 1989, could not be assured of future access to the reef fish fishery if a management regime were developed and implemented that