

limited the number of participants in the fishery.

Comment: One of the commenters requested that NMFS further review all landings data submitted for the ITQ program-qualifying period.

Response: NMFS does not agree that the additional review of qualifying landings data, as requested by the commenter, is necessary. The red snapper landings data for the 1990–92 qualifying period submitted to NMFS by the cutoff date (established under Amendment 9) were carefully reviewed by NMFS before being accepted as a basis for calculating individual percentage shares of the commercial quota. Persons submitting data showing landings during the 1990–92 eligibility period were given an opportunity to review NMFS' landings figures. Finally, Amendment 8 establishes a Council advisory panel to consider written requests from persons who contest their tentative allocations of shares or determinations of historical captain status.

Congressional Action and User Fees

Comment: The minority report and two fishing association representatives stated that Amendment 8 should not be approved because it would be "in defiance of the Congressional mandate to develop appropriate guidelines for ITQs." The minority report also stated that Amendment 8 should not be approved, since the user fee schedule currently being considered in a proposed amendment to the Magnuson Act is unknown. According to the minority report, the user fee issue would have a bearing on industry's evaluation of the effects of the proposed rule.

Response: NMFS acknowledges the possibility that an amendment to the Magnuson Act or other Congressional action could affect continuation of the ITQ system under Amendment 8. NMFS also acknowledges the potential importance of user fees to persons involved in fishery business decisions. However, what final action Congress will take in amending the Magnuson Act regarding the establishment of ITQ programs or the application of user fees in fisheries management is unknown. Until such time as the Magnuson Act is amended, it authorizes the development and implementation of ITQ programs for fisheries under Federal management.

Costs of Implementing the ITQ System

Comment: Four of the commenters, including a representative of a fishing association, complained about the high costs of implementing and enforcing the ITQ system. One comment indicated

that costs should be one of the factors considered before implementing ITQs.

Response: The regulatory impact review (RIR) prepared by the Council estimates that Amendment 8 will increase annual administration and enforcement costs on a continuing basis between \$659,000 and \$1,749,000, depending on the level of law enforcement efforts. However, it further indicates that annual benefits include increased revenues of \$2.5 to \$4.1 million and a decrease in the total cost of harvesting. While the RIR clearly points out that costs of the ITQ system are higher than for other management systems considered, the ITQ system should provide the largest increase in net economic benefits to the fishery of any of the management options for red snapper considered by the Council.

Duration of Implementing Regulations

Comment: One of the commenters supported the ITQ system and the 4-year evaluation period, noting that an evaluation might give the Council an opportunity to develop a more comprehensive ITQ system after the 4-year period. Another commenter supported the ITQ system and a 4-year evaluation as a flexible approach that will benefit the fishery in terms of achieving the goals of Amendment 8. That commenter stated that 4 years was an appropriate time period for monitoring and evaluation, without imposing an unnecessarily long time period that encourages windfall profits.

Response: NMFS agrees with these comments and has approved the Council's proposed measure to evaluate the ITQ system no later than 4 years after initial implementation.

Comment: The minority report stated that the proposed 4-year evaluation period would preclude the industry from making business decisions. One of the commenters stated that the time limitation creates uncertainty in the ITQ system. Another commenter stated that the mandatory evaluation is not needed, because the Council already has the authority to evaluate the ITQ system and make changes as appropriate. Another commenter expressed a preference for an indefinite duration for the ITQ program.

Response: The 4-year evaluation period was selected by the Council after consideration of various time periods. The Council was aware of the potential that fewer economic benefits might result from having an ITQ program with a fixed time period compared to a system of indefinite duration, but decided that a 4-year evaluation period was necessary to minimize windfall profits and speculation while still

allowing a sufficiently long period to test the effectiveness of the program.

NMFS agrees with the Council's decision to select a 4-year ITQ program period with an evaluation of its effectiveness at that time. This approach will allow the Council and NMFS to terminate the program at that time if it does not produce the expected benefits. The mandatory evaluation, while unavoidably creating a degree of uncertainty in the industry, is needed in order that the Council may identify and propose necessary changes to the ITQ program for achieving the greatest possible level of benefits.

Comment: One of the commenters also objected to treating fish as private property, and stated that the ITQ program is a bad idea and should not be approved.

Response: NMFS disagrees. The ITQ system will remain in effect for 4 years from the date the system is implemented, while the effectiveness of the system is monitored and evaluated. Based on the evaluation, the system will be modified, or terminated. This temporary harvest privilege is not a transfer of the resource, but a revocable license to take a specified amount of the resource. There are no private property rights to wild fish before they have been reduced to one's possession.

Comment: One commenter suggested that each permit holder be issued transferable ITQ coupons in an allotted percentage based on their previous records of red snapper landings, and be given 1 year to use their coupons.

Response: This suggestion is already provided for by the provisions of the ITQ program. The Regional Director will provide each shareholder with ITQ coupons in various denominations on an annual basis, the total of which equals his or her ITQ share.

Comment: Two of the commenters responded to the request in the proposed rule for specific comments on the possibility of a quota overrun if the states do not enact compatible regulations. Those two comments indicated that each state should enact specific compatible regulations for waters under their jurisdiction, since large quantities of landings are made from state waters off Texas and Louisiana.

Response: NMFS shares the concerns expressed by these comments about the adverse effects of a quota overrun and a fishery closure before all ITQ coupons are used, if compatible state regulations are not enacted to prevent catch by non-permitted vessels in state waters. As noted above, NMFS has received reasonable assurance that all Gulf coastal states will enact or have in place