

## INITIAL ALLOCATION OF ITQS IN THE GULF OF MEXICO RED SNAPPER FISHERY

W.R. Keithly Jr.  
Coastal Fisheries Institute, Louisiana State University  
Baton Rouge, Louisiana 70803, USA  
<walterk@lsu.edu>

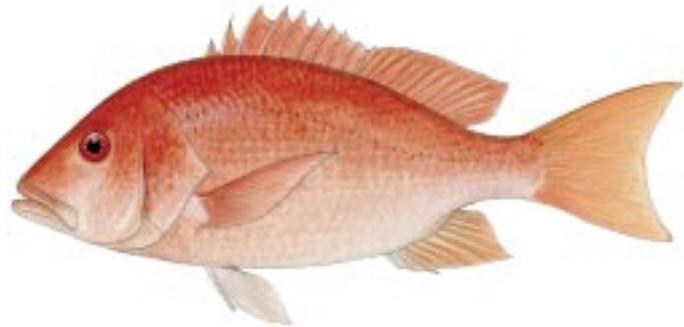
### 1. INTRODUCTION

The U.S. Gulf of Mexico Fishery Management Council (GMFMC, hereafter Council), under provisions of the *Fishery Conservation and Management Act of 1976* (P.L. 94-265), is responsible for management of species within its geographical area of authority: approximately 264 thousand square miles in total with a continental shelf that ranges in width from about 12 miles off the Mississippi River to almost 200 miles off west Florida (Amendment 1). To manage a given species (or groups of species), the Council must first develop a Federal Management Plan (FMP) and submit it to the Secretary of Commerce for approval.

The Reef Fish Fishery Management Plan (RFMP) was one of the first FMPs developed by the Council. It was submitted in August 1981 and approved by the Secretary of Commerce in June 1983. Implementation of the Plan was initiated in November 1984. Reef fish identified and managed under the original Plan included 14 species of snappers (*Lutjanidae*), 15 species of groupers (*Serranidae*), and three species of sea basses (*Serranidae*). Subsequent Amendments to the Plan added five species of tilefishes (*Branchiostegidae*), two species of jacks (*Carangidae*), white grunt (*Haemulon plumieri*), red porgy (*Pagrus pagrus*), and gray triggerfish (*Balistes capricus*). The goal identified in the original Plan was “[t]o manage the reef fish fishery of the United States waters of the Gulf of Mexico to attain the greatest overall benefit to the Nation with particular reference to food production and recreational opportunities on the basis of maximum sustainable yield as modified by relevant economic, social or ecological factors (p. 2)”. Pursuant to this goal, one of the primary objectives set forth in the Plan was to rebuild declining reef fish stocks wherever they occur in the fishery.

While encompassing a large number of species, the majority of the Council’s reef fish management activities have concerned red snapper. The fishery, which is targeted by both commercial and recreational fishermen, is now known to be heavily overfished and evidence of a decline in adult population was documented as early as 1979 at which time the fishery was primarily supported by younger fish of ages one to three (RFMP Amendment 1). The overfished status of the Gulf of Mexico red snapper (*Lutjanus campechanus*) stock is the result not only of an excessive amount of effort but also a high level of bycatch mortality associated with shrimp fishing.

Trends in commercial red snapper landings have recently been provided by Waters (2000). He indicates that published landings are available since the early 1950s on a regular basis and on a less frequent basis back to before the 1930s. He suggests that commercial Gulf of Mexico red snapper landings increased throughout the 1950s and peaked in the mid-1960s to about 14 million pounds annually. Thereafter, landings declined steadily to less than 3 million pounds in 1990 (Figure 1). Reasons for the decline in commercial landings include: loss of fishing privileges in Mexican waters, declining red snapper stocks, and regulations designed to rebuild the declining stocks (Waters 2000). Increases in landings in more recent years reflect the larger quotas given to the commercial fishing industry. The commercial fishery, which had originated in Northwest Florida prior to the Civil War (*i.e.* before 1860) is now primarily concentrated in Louisiana and Texas. Since 1995, landings at ports in Florida have averaged only about five percent of the total Gulf wide production compared to about 50% as recently as the early-to-mid 1980s (Waters 2000).



**Red snapper**  
(*Lutjanus campechanus*)

As indicated by Waters (2000), the ex-vessel inflation-adjusted value of red snapper landings in the Gulf of Mexico during the 1990-95 period averaged less than 40% of the 1983 level, a result of declining landings and declining ex-vessel price. The decline in real dockside price since the early 1990s reflects, at least in part, the “derby effect” that was created in the early 1990s as a result of the Council initiating commercial quotas. Dockside revenues have, however, been increasing since the early 1990s, primarily the result of the increased landings forthcoming with the increased commercial quotas.

Despite its overfished status, red snapper continues to be the largest revenue-generating reef fish in the northern Gulf of Mexico (Waters 2000). In total, commercial fishermen landed \$18.6 million of reef fish in ports along the northern and western Gulf of Mexico. More than one-half of this total was from red snapper with other snappers (primarily vermilion snapper) accounting for almost an additional 20%.



**Part of the red snapper commercial quota**

## **2. THE NATURE OF HARVESTING RIGHTS**

The RFMP, as noted, was implemented in November 1984. There was no attempt at that time to directly limit effort in the red snapper fishery. When the first red snapper stock assessment was conducted in 1988, however, red snapper was determined to be so overfished that reductions in fishing mortality of up to 70% would be required to rebuild the stock to a 20% spawning biomass potential ratio. The stock assessment also indicated shrimp trawl bycatch to be a significant source of juvenile red snapper mortality.

With an increasing awareness of the overfished status of many of the reef fish stocks throughout the Southeast U.S. (*i.e.* the South Atlantic and the Gulf of Mexico), particularly red snapper, the National Marine Fishery Service (NMFS) announced in November 1989 that after 7 November 1989, anyone entering the commercial reef fish fishery in the Gulf of Mexico or South Atlantic may not be assured of future access to the reef fish fishery. While not directly controlling effort, the purpose of this announcement was to establish public awareness of potential eligibility criteria for future access to the reef fish resource; the eligibility criteria being dependent upon the choice of management regime to be developed and implemented at some future date. Hence, one could conclude that this announcement was the initial action taken towards the development of a limited access programme.

The Council, through Amendment 1 to the RFMP, which was implemented in January 1990, established a 3.1 million pound quota for the commercial harvest of red snapper in the Gulf of Mexico as well as a seven-fish bag limit for the recreational sector. In addition, the Amendment implemented a framework procedure, referred to as a Regulatory Amendment, which allows for annual management changes (such as TAC) without going through a Plan Amendment procedure.

The first Regulatory Amendment to the RFMP was implemented in 1991. It set the red snapper TAC at 4.0 million pounds with 2.04 million pounds of the TAC being allocated to the commercial sector and the remaining 1.96 million pound being allocated to the recreational sector.<sup>1</sup>

The 1990 commercial quota of 3.1 million pounds did not prove to be a binding constraint on the commercial harvest for that year which totaled 2.7 million pounds and the fishery remained open during the entire year. The 2.04 million pound quota established for the 1991 year, however, was achieved before the end of the year and the fishery was closed to commercial activities on 23 August, after 235 days of permitted fishing activities. The final reported commercial catch for the year totaled 2.24 million pounds, or about 10% above that permitted under the quota.

Given an increasing stock abundance and an accelerated harvesting rush, the 1992 quota of 2.04 million pounds was reached after only 53 days, resulting in a closure of the commercial season on 22 February. To alleviate economic and social disruptions that occurred as a result of the shortened season, the commercial red snapper season was reopened on 3 April 1992 by an emergency rule implemented by the NMFS at the request of the Council. This emergency rule, which extended through 14 May 1992, limited commercial harvest of red snapper to 1000lb per trip and resulted in an additional harvest of about 600 000lb of red snapper.

The first comprehensive attempt to curtail the expansion of effort in the reef fish fishery of the Gulf of Mexico was enacted under Amendment 4 to the RFMP. This Amendment, implemented in May 1992, established a maximum three-year moratorium on the issuance of new reef fish permits.<sup>2</sup> As identified in the *Problems Requiring Plan Amendment* Section of Amendment 4 (Section 3), “[t]he open access nature of the fishery has resulted in additional fishing effort or changes in the timing of existing effort in response to quotas and in response to actual or anticipated increases in stock levels. The additional effort and the timing of the use of current effort both tend to dissipate the potential net benefits, which were originally forecast to result from the earlier management actions (p.4)”. The moratorium, which permitted the transfer of permits between vessels owned by an individual who is the income qualifier or between individuals when the vessel is transferred, was instituted “to moderate short term future increases in fishing effort and to attempt to stabilize fishing mortality while the Council considers a more comprehensive effort limitation programme (p.4)”<sup>3</sup>. Amendment 4, one should recognize, was general in nature and did nothing to reduce the level of effort that was being directed at the red snapper fishery at the time of its enactment nor did it restrict the movement of fishing effort from vessels fishing reef fish into the red snapper fishery.

The Council recognized the limitations afforded to it by enactment of the reef fish fishery moratorium and in September 1992 requested the NMFS to implement a series of measures to extend the commercial red snapper season by emergency action<sup>4</sup>. The major provisions of the emergency action were to establish a red snapper endorsement for qualified reef fish permittees. To qualify for an endorsement, these people were required to demonstrate they had caught 5000lb of annual red snapper landings in two of the three years 1990-1992. Permitted vessels with this endorsement were allowed a 2000lb possession limit of red snapper. Reef-fish permitted-vessels that did not qualify for the endorsement were allowed to land 200lb of red snapper per trip. During the emergency rule, transfer of the red snapper endorsement to another vessel owned by an income qualifier was allowed but not transfer to another individual. The emergency provision also created an appeals board to handle disputes arising from the 5000lb red snapper landing requirements (Section 5).

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<sup>1</sup> The Regulatory Amendment also contained information on the intent of the Council to reduce red snapper bycatch in the EEZ by the shrimp trawl fleet by 50% in 1994 via technological devices and/or area and seasonal closures.

<sup>2</sup> While the moratorium could have been made retroactive to 7 November 1989, based on the November 1989 announcement by the National Marine Fishery Service, the Council chose not to do so.

<sup>3</sup> The term “income qualifier” refers to an individual who documented that 50% of his earned income was derived from commercial fishing activities and used this documentation for obtaining a reef fish permit.

<sup>4</sup>This section draws heavily on, and is often quoted directly from, Amendment 6 to the Reef Fish Management Plan.

The purpose of the trip limit was to forestall the recurrence of the 1992 derby fishery situation. The red snapper TAC for 1993, established under a Regulatory Amendment, was set at 6.0 million pounds with 3.06 million pounds of the total allocated to the commercial sector, managed under quota. The opening of the 1993 commercial red snapper season was delayed until 16 February to allow the NMFS sufficient time to process and issue the endorsements. The emergency action, initially effective for 90 days, was extended for an additional 90 days with the concurrence of the NMFS and Council. Despite the reef fish vessel moratorium and the red snapper endorsement system, the 1993 quota of 3.06 million pounds was met in less than 95 days. When the fishery was finally closed on 20 May, the actual harvest totaled 3.41 million pounds.

To provide the Council with the time needed to develop a comprehensive effort management programme, Amendment 6, which was implemented in June 1993, extended the provisions of the emergency rule through 1994. The commercial red snapper season, which opened on 10 February, lasted for 78 days. When finally closed on 27 April, total catch was 3.25 million pounds.

A comprehensive effort management programme as originally proposed was to be implemented in the Gulf of Mexico red snapper fishery by early 1995. Due to Council delays in selecting and implementing such a programme, however, the endorsement system was extended through 1995.<sup>5</sup> The season, which opened on 24 February, lasted 51 days and when it closed on 14 April the commercial catch had reached about 3 million pounds.

The 1996 commercial red snapper season, managed under a continuation of the endorsement system, was to open in February under an interim 1.0 million pound quota until 31 March. An ITQ system was to become operational on 1 April 1996. Because of the furlough of NMFS employees in December 1995 and a continuing resolution that provided budget funds for the Department of Commerce, however, the NMFS was unable to complete the work needed prior to implementation of the ITQ programme (see Federal Register, 29 February 1996 for details). The programme was originally suspended for 90 days with the provision of an additional 90 day suspension, if needed. Shortly thereafter, Congress, in its re-authorization of the *Magnuson Act*, placed a moratorium on all new ITQ programmes in the U.S. and retroactive dates on the moratorium that would exclude the Gulf Council from implementing any red snapper ITQ programme.

Because of the pending moratorium on ITQs, the Council, in 1995, developed and submitted to the NMFS Amendment 13 which, among other things, extended the red snapper endorsement system through 1997. Amendment 15, implemented in 1998, formalized the two-tier trip limit system in conjunction with a licence-limitation programme. A total of 134 vessels were granted Class 1 status which permitted them to harvest 2000lb of red snapper per trip when the fishery was open to commercial activities. Another 579 vessels were afforded Class 2 status, which allowed them to land 200lb of red snapper per trip when the season was open.

### **3. THE METHOD OF ALLOCATION**

#### **3.1 Policy objectives**

As identified in Section 6 of Amendment 8 to the *Reef Fish Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico* (RFMP), a number of problems existed that limited the ability of the Gulf of Mexico Fishery Management Council to meet the management objectives for red snapper. As noted in Section 6, most, if not all of the problems were related to the situation whereby the quota management system, implemented as a result of the overfished status of the red snapper stock, created a derby fishery.

Specific problems included (quoted from Section 6 of Amendment 8):

- i. The harvest capability of the current red snapper fleet was larger than that needed to harvest the commercial quota in an economically efficient manner.
- ii. The derby fishery compromised vessel safety by encouraging fishermen to begin or continue trips under adverse weather conditions.
- iii. The total revenue derived from current landings did not achieve the highest level possible because the quota system created a derby, which depressed the average price paid to the fishermen, though lower prices may benefit consumers.
- iv. A derby fishery tends to reduce producer surplus that would otherwise be available from the fishery and has an unknown but limited effect on consumer surplus derived from the fishery.

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<sup>5</sup>See Section 3.2 for details concerning delays in development and implementation of the ITQ programme.

- v. The current management system contains a number of regulations which, in aggregate, lead to high administration costs, difficulties in enforcement and compliance, inefficient production of available quota, frustrations on the part of fishery participants and difficulties in collecting timely data needed to track and manage the fishery.
- vi. The red snapper stock rebuilding programme could be affected by possible quota overruns associated with the derby fishery, and discard mortality during extended closed periods.
- vii. User conflicts are being exacerbated by differential trip limits under the endorsement system and by the short red-snapper quota seasons, which favor those fishermen who are closer to the resource, or have vessels that can operate in inclement weather.
- viii. Net economic benefits were being eroded due to the market glut from the derby fishery and the inability of the industry to provide a red-snapper product year round.
- ix. The red-snapper endorsement system was to finish in 1995 and could not be extended because the system was closed to new entrants. Unless replaced by ITQ or licence-limitation system, management would revert to open access with equal trip limits for each vessel with harvest allowed until the commercial quota is reached. This would have exacerbated the derby fishery.

### **3.2 Process used in determining the allocation**

In November 1990 the National Marine Fisheries Service set a 1 November 1989 control date for future entry into the reef fish fishery. The primary purpose of this proposed control date was not to prevent selection of another date for eligibility or any other method of controlling effort from being proposed and implemented, but rather to establish a public awareness of potential eligibility criteria for future access to the reef fish resources. This notice, because it applied to all reef fish, would, even upon implementation, likely have little impact on the direct control of the targeted red snapper effort.

The Council, having observed the derby development as a result of the commercial quota, recognized the need to institute a long-term effort management programme for the red snapper fishery.<sup>6</sup> As such, the overriding issue confronting the Council was not one of whether to develop an effort management programme but, rather, the type of programme which would be best suited for the fishery. To this end, the Council initiated drafting of an Options Paper to begin evaluation of an effort management programme for red snapper in the Gulf of Mexico. In addition, the Council contracted a socio-anthropologist (Dr. Michael Orbach, East Carolina State University) in March 1992 to conduct a series of workshops. The purpose of the first workshop series, held in June 1992, was "...to discuss with fishermen the problems and issues in the red snapper fishery, and to discuss the different forms of effort management and how they have been used in other fisheries (RFMP Amendment 8, p. 6)".

A second series of workshops was held in August of 1992 whose goal was "...to summarize the results of the first series and to evaluate fishermen's perceptions on the impact of various open and limited access alternatives with respect to fishermen's flexibility, biological, economic and social impacts, enforceability, and administrative impacts (p.6)". To organize discussions, a list of alternative management scenarios was developed as well as a list of criteria with which to evaluate the alternatives (Orbach, letter to the Gulf Council, 27 August 1992). Options considered included: (a) licence-limitation, (b) individual transferable quotas, (c) licence-limitation combined with ITQs, (d) trip limits and temporal openings/closures, and (e) the present management system.<sup>7</sup> The last two alternatives, as noted by Orbach, were included primarily for comparative purposes.

These five choices were evaluated based on seven criteria: (a) fishermen flexibility, (b) biological impacts, (c) economic impacts, (d) sociological impacts, (e) enforceability, (f) administrative impacts, and (g) other [at the suggestion of the participants]. The options, based on the criteria were rated from positive to negative with an attempt to reach consensus.

Some of the relevant findings of this second workshop were as follows. First, participants ranked the existing system low on all criteria. With respect to trip limits and temporal openings/closures, concern, particularly among small boat fishermen, focused on the "...potential for creating "mini-derbies" with adverse economic and sociological (safety and conflict) impacts. With respect to ITQs, concern focused primarily on enforceability and administration largely as result of the complexity of the system's geographic spread and diversity within the fishery. ITQs were

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<sup>6</sup> The need to develop an effort management programme for red snapper was exacerbated by Council goals to rebuild any overfished reef fish stock within a one-and-one-half generation period. The target date for red snapper was 2007.

<sup>7</sup> It was assumed that the 50% income requirement would remain in place for evaluation of each of the alternatives.

generally ranked positively on all other criteria. In general, small-boat fishermen expressed concern that large-boat fishermen would receive a disproportionate share of the overall quota under an ITQ programme. Finally, the licence-limitation alternative was ranked the highest among all possible alternatives. While being ranked the highest among alternatives, there were concerns "...over the potential cost of licences and a great deal of discussion over how the original licences would be distributed at the outset of the system (p.3)". Concern was also expressed that the licence-limitation, by itself, would not solve the derby problem.<sup>8</sup>

Several "special issues" of concern were also raised at the second series of workshops. The first issue was that of enforcement. As stated by Orbach in his letter to the Council, "[t]here was a common concern that it is difficult or impossible to enforce even our current regulations, much less a much more complicated system such as those being considered (p.3)". Orbach further commented that "...virtually all participants agreed that MUCH (emphasis by Orbach) better enforcement capability would be required for proper management. This includes stiffer penalties for violators". Tied to the issue of enforcement, participants expressed concern that either a licence-limitation programme or an ITQ programme would be difficult to enforce without a substantial amount of state cooperation.

A second "special issue" raised at the workshops was that of the original allocation of licences or ITQs. Aspects associated with this issue included: (a) the base period for qualification, (b) the determination of what constitutes having fished in the fishery for purposes of obtaining a licence or minimum landings requirement for obtaining an ITQ, and (c) documentation to determine whether any individual or vessel qualifies under a given rule.

A third "special issue" addressed at the second series of workshops was that of dealer licensing. As stated by Orbach, "[v]irtually all workshop participants agreed that some form of dealer licensing is appropriate, and would be necessary under any form of effort management..". Other "special issues" raised by participants included: (a) extending effort management to all reef fish, (b) development of a limited access programme for professional fishermen, *i.e.* charter and headboat, and (c) concern that the commercial fishing sector would have an effort management programme while the recreational sector does not.

The final series of management workshops was conducted by Orbach in December 1992. The goals of these workshops were to (a) review the results of the previous workshop series and (b) evaluate details of licence-limitation and ITQ programmes, *i.e.* those programmes ranked highest by participants at the previous series of workshops (Orbach, Third Workshop, December 1992). With respect to the licence-limitation programme, primary issues addressed included the issuing of initial licences and whether the licence should be issued to a vessel or individual. With respect to an ITQ programme, major issues addressed included how might the initial ITQ be issued and whether the ITQ should be based on a fixed poundage or percentage of the annual quota. This issue, as noted by Orbach (Third Workshop), would become particularly relevant if the commercial allocation was to be increased over time in association with expansion of the stock.

In January 1993 the Reef Fish Management Committee<sup>9</sup> and the full Council met to discuss a limited access options paper prepared by Council staff and, in particular, red snapper effort management.<sup>10</sup> After considerable discussion, often led by Orbach, the Reef Fish Management Committee passed a motion "that if the Council developed a limited entry system for red snapper, it would be an ITQ system (Minutes of the Reef Fish Management Committee, 13-15 January 1993, p. 25)". Preferred options for implementation of an ITQ system, if this option were to be selected as the preferred alternative, were also selected. The full Council, upon hearing the recommendations by the Reef Fish Management Committee, voted to "...fully develop the ITQ option for effort management, and also to include other options for presentation at the next Council meeting, at which time a preferred option would be selected (RFMP Amendment 8, p.6)". Preferred options for implementation of an ITQ system (*e.g.* duration and initial shares), if this option were to be selected as the preferred alternative, were also considered and selected by the Council. The next Council meeting was scheduled to be held in March 1993.

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<sup>8</sup> Licence-limitation combined with other alternatives (trip limits and temporal openings/closures) was also addressed at some workshops. These combinations, in general, were ranked higher than a "stand alone" licence-limitation programme because they addressed both the number of participants and the derby conditions (Orbach, letter to the Gulf Council, 27 August 1992).

<sup>9</sup> This committee includes some Council members and meets immediately preceding the full Council.

<sup>10</sup> The limited access paper developed by Council staff included a number of different options that would directly or indirectly limit effort. One of these options was an ITQ programme.

Prior to the scheduled March Council meeting, a “Red Snapper Industry Meeting” was held in New Orleans, Louisiana (31 January 1993). Orbach, who attended the Industry meeting, provided a summary of it to the Council at the March meeting. Orbach stated that “...the industry meeting corroborated the general perception at the workshops that the only feasible system for extending the seasons was through an ITQ system; however, there were expressions at the meeting that the industry was simply uncomfortable with ITQs (Minutes of the March 11-12 Council Meeting, pp. 4-5)”. Orbach went on to explain that “...the rationale for the industry’s reluctance (to an ITQ programme) was that it was a complicated system, and the industry was distrustful of anything the Council and the NMFS proposed and would not support such action”. After considerable discussion, the Council “...reviewed the first draft of Reef Fish Amendment 7. This draft Amendment contained limited and open access options for red snapper management, plus the preferred and alternative options for implementation of an ITQ system and the alternatives for implementation of licence-limitation programme (RFMP Amendment 8, p.6)”. The Council, by a vote of 10 to 6, made ITQs the preferred management system. The Council also voted to defer public hearings until after the current red snapper season but before the July Council meeting.

The Reef Fish Advisory Panel<sup>11</sup> met at the end of April 1993 to review the public hearing draft of Reef Fish Amendment 7. In general, many of the concerns raised by this panel mirrored concerns expressed at the workshops conducted by Orbach and the “Red Snapper Industry Meeting” held in January. This was not surprising given the fact that many of the members of the Reef Fish Advisory Panel were extremely active in the management process and had likely attended many of the Council-sponsored workshops and the “Red Snapper Industry Meeting”. One relevant issue that was raised, which had not previously been addressed, however, was that of red snapper ITQs being “bought up” by the recreational fishermen. Specifically, unlike most other established ITQ programmes, the Gulf of Mexico red snapper fishery has a large recreational component. Hence, in an effort to increase its share of the Total Allowable Catch, it was possible that the recreational sector could “buy up” ITQs. The Reef Fish Advisory Panel, after considerable deliberation “...recommended that implementation of a red snapper management system be deferred until industry has had a chance to work on developing a business plan, and Council and industry has had a chance to look at all the ramifications of an ITQ system (RFMP Amendment 8, p. 6)”. When evaluating the ramifications of the ITQ system the Advisory Panel requested a full examination of: (a) enforcement implications, (b) buy-outs by special interest groups, (c) additional distributions from increases in the total allowable catch, and (d) administrative fees (Minutes of the Reef Fish Management Committee, 11 May 1993).

At its May meeting the Council decided to proceed with public hearings of Reef Fish draft Amendment 7. A total of twelve meetings, extending from June 7 to June 18, were scheduled throughout the coastal communities of the Gulf of Mexico. As reported in the *Summary of Public Hearing Comments* by one of the Council staff who attended many of the public hearings, “...only half of the fishermen (who attended the hearings) offered testimony, and the majority of the fishermen that did testify at public hearings, spoke against ITQs (Minutes of the Reef Fish Management Committee, 12 July 1993 (p. 2)”. The Council staff member also indicated that, in his opinion, “...as fishermen learned more about ITQs (from the public hearing process), the views changed from total objection to a desire to learn more about the system (Minutes of the Reef Fish Management Committee, 12 July 1993 (p. 2)”.

The Council convened again in July 1993. By the time of this meeting, it had become clear to a number of Council members and staff that a large number of issues related to a long-term effort management of the Gulf of Mexico red snapper fishery had yet to be resolved and that industry support for the programme was, at best, “marginal”. Such a situation was problematic because certain issues in Amendment 7 pertained to the 1994 season and were not oriented to the issue of long-run effort limitation in the red snapper fishery.<sup>12</sup> Issues relating to the 1994 season would need to be submitted to the Secretary of Commerce before all of the issues related to a long-term effort management programme could be resolved. To this end, the Council voted to “...split Draft Amendment 7 into two amendments. The resulting Amendment 7 consisted of proposals other than those dealing with red snapper effort management and the reef fish permit moratorium. Amendment 8 would deal solely with red snapper fishing effort management and an extension of the reef fish permit moratorium. In addition, the effort management provisions were to be reorganized and simplified to address just three general management options: (a) the current management system as it was prior to the creation of red snapper endorsements, (b) a permanent licence-limitation system based on the red snapper endorsement system and (c), an ITQ system (RFMP Amendment 8, p. 7)”. Finally, the Council, by unanimous vote, recommended that (a) additional workshops be held during the development of Amendment 8, (b) further public hearings be held on the reorganized document [*i.e.* Amendment 8], and (c) a minimum of one meeting of the *Ad Hoc* red snapper advisory panel be convened prior to final Council Action on Amendment 8 (Minutes of the Council Meeting, July 13-14 1993).

<sup>11</sup> The Reef Fish Advisory Panel is largely comprised of commercial fishermen active in the reef fish fishery. As its name would infer, the primary purpose of this panel is to advise the Council regarding proposed regulations.

<sup>12</sup> Many of these issues did not relate directly to red snapper but rather involved issues of fish traps.

The red snapper endorsement system was scheduled to terminate after 1995. It had been the intent of the Council to establish a red snapper effort limitation programme prior to the expiry of the endorsement system (*i.e.* for the 1995 year). At the September 1993 Reef Fish Management Committee meeting, however, the Executive Director of the Council indicated to members of the Committee that fulfillment of all the actions taken at the previous Council meeting (*i.e.* additional public workshops, public hearings, etc.) would delay the implementation of an ITQ system beyond the originally intended start date of 1 January 1995.<sup>13</sup> The Executive Director recognized that implementation of a functional effort management system was not feasible by the originally intended date and proposed two alternatives to the Committee. The first alternative, referred to as the “Fast Track Option”, would allow for implementation of an effort limitation system in March 1995 by combining a number of functions, such as public hearings and workshops. The second alternative, the “More Deliberate Track Option”, would postpone implementation of any effort management system until January 1996. As implied by the Executive Director, the advantage of the second option is that it would have given more time for fishermen to provide input regarding provisions of the amendment through the workshop process and would have allowed more time for the collection of economic information which could be included in the Regulatory Impact Review.<sup>14</sup> The disadvantage of adopting the “More Deliberate Track Option”, according to the Executive Director, was that implementation would be delayed until 1996 and “...the fishery would then be managed in 1995 by only trip limits under the framework procedure (equal limits for all vessels with permits) unless an additional amendment was prepared and implemented before 1995 extending the endorsement system or some modification of it (Minutes of the Reef Fish Management Committee, September 1993, p.21)”. The Committee referred this decision to the full Council who subsequently decided to adopt the “More Deliberate Track Option”.

The adoption of the “More Deliberate Track Option” by the Council was, at least in part, related to divisiveness among Council members and apprehension by the fishing industry regarding implementation of an ITQ system. There was also an impression that fishermen would eventually realize the benefits of an effort limitation programme and become more amenable to implementation of such a system. The Regional Director of the NMFS stated at the September 1993 Council Meeting that it was his opinion that after one more season of trip limits and seasonal closures, “...there would be strong demands (in the next season) towards an ITQ or similar programme (Minutes of the September 15-16 Council meeting, p. 17)”. In selecting the “More Deliberate Track Option”, the Council also voted to establish an *Ad Hoc* Advisory Panel to address allocation issues consisting of owners, owner/operators and historical hired captains.<sup>15</sup>

The Reef Fish Advisory Panel met in early November 1993. The Panel indicated that there remained considerable industry opposition to ITQs and some of the opposition emanated from the fact that the fishermen had no knowledge as to what their individual allotments would be under an ITQ programme. The Panel moved that the Council request that the NMFS require fishermen to submit landings records to be processed by the NMFS in order to determine individual allotments. When it met later in the month, the Council heeded the advice of the Reef Fish Panel and moved that the NMFS initiate the data collection process.<sup>16</sup>

The Council, waiting for the NMFS to collect and analyze red snapper landings records, took little action on Amendment 8 during much of 1994. The information became available to the Council at its November 1994 meeting. After listening to the analysis pertaining to initial allotments, the Council made some technical changes to the Amendment and voted unanimously to hold public hearings on it.

A set of eight public hearings were held in December 1994. While generating less than full support, it was obvious to some that the set of meetings and comments revealed more acceptance and support for ITQs than had been the case during previous public meetings. In fact, a number of fishermen who had previously spoken out against ITQs changed their position after they received information as to their initial shares.

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<sup>13</sup> As indicated by the Executive Director, “...NMFS estimated approximately eight months to implement an ITQ system”, which required that the final rule would have to be published by 1 May 1994. The time required for review and approval of a final amendment was 140 days which meant that the amendment/EA/RIR/IFR A would have to have been submitted to the NMFS by 10 December 1993 for the ITQ process to be in place by 1 January 1995 (Minutes of the Reef Fish Management Committee, September, 1993)”. The eight months needed to implement an ITQ system included time to review all the data records for fishermen, convene an appeals board and issue ITQ certificates (Minutes of the Council Meeting, September 1993, p. 21).

<sup>14</sup> A Regulatory Impact Review, which is required by law, serves three purposes: (a) it provides a comprehensive review of the level and incidence of impacts associated with a proposed or final regulatory action, (b) it provides a review of the problems and policy objectives prompting the regulatory proposals and an evaluation of the major alternatives that could be used to solve the problem and (c) it ensures that the regulatory agency systematically and comprehensively considers all available alternatives so that the public welfare can be enhanced in the most efficient and cost effective manner.

<sup>15</sup> The issue of owner/operators and historical captains is addressed in greater detail in Section 3.3.2 of this paper.

<sup>16</sup> A more detailed discussion of this data collection process is presented in Section 4.

In addition to the public hearings, both the Reef Fish Advisory Panel and the *Ad Hoc* Red Snapper Advisory Panel met in late 1994 to review Amendment 8 for a final time. Both Panels opted for a licence-limitation system in conjunction with trip limits in lieu of an ITQ programme.

The Council, when it met in mid-January 1995, after supporting an ITQ programme for several years, reversed itself and, following the advice of the Panels, voted for a licence-limitation system as the preferred option.<sup>17</sup> Subsequently, the Council, at its May 1995 meeting, reversed itself once again and voted in support of an ITQ programme. Furthermore, the Council at the same meeting voted to submit Amendment 8 to the Secretary of Commerce for final approval at which point no further action could be taken by the Council on the Amendment.

In summary, the Council devoted about three years, off and on, to the development of a comprehensive management programme for red snapper with an anticipated implementation date almost a year later. The reasons for the extended process are varied. First, commercial fishermen were, in general, unfamiliar with effort limitation programmes and, hence, time was devoted to familiarizing them with alternative effort management programmes. Second, there was considerable uncertainty among Council members as to whether an ITQ programme could be successfully implemented (and the related intricacies of such a programme) and, as such, they relied extensively on the industry (through panels and the public hearings process) to provide guidance on the specifics related to such a programme (*e.g.* the status of historical captains). Finally, there was a need for information to be collected to provide fishermen with an estimate of individual ITQ allotments under an ITQ system. The collection of this information was time consuming but, in the opinion of many, exceedingly helpful in garnering increased support by fishermen for an ITQ programme. After all this work, however, support by the industry for an ITQ programme was considerably less than unanimous and it is debatable whether even the majority of the industry supported an ITQ programme.

### **3.3 Allocation method chosen**

#### **3.3.1 Qualifying period**

The Council, by and large, was constrained by what years it could use as a qualifying period for ITQ shares. Prior to 1990, there was no systematic records of individual vessel harvest. After 1992, there was an endorsement system which could tend to seriously distort catch records. Hence, the Council, with little objection, settled on 1990-92 qualifying time frame.

While there was little challenge to the time frame for qualification, there was considerable debate regarding the years to use within this time period. There was some discussion that the highest catch year within this three-year time frame should be used in determining the ITQ shares. In part, this option was rejected because it would, some thought, benefit speculators and individuals who entered the fishery in 1992, the most productive year despite a shortened season. Another option considered was an average of all vessel red snapper production records over the three-year period. This option was rejected because it might penalize individuals who had a bad year or missed a year of fishing during the eligibility period for unforeseen reasons. As a compromise, the Council chose to allocate ITQ shares proportionately based on the average of the highest two out of three years during 1990 to 1992.

#### **3.3.2 Initial eligibility**

On the surface, the issue of eligibility may appear relatively straight forward. Vessels fishing in the Gulf of Mexico reef fish fishery were required to have a reef fish permit. One might conclude, therefore, that matching of the permitted vessels with documented red snapper landings attached to those vessels would provide the potential universe of ITQ shareholders. However, at the time that Amendment 8 was being developed, 6.2% of the reef fish vessel permits were based on records of income qualifications of operators rather than owners. This raised the issue of whether the initial red snapper ITQ allocation should be provided to the owner or operator of the reef fish permitted vessel in those instances where the operator's income was used to qualify the vessel. In addition, public testimony pointed to the fact that "[i]n some instances, captains operate vessels under vessel lease agreements with the owners where the captain is classified as a self-employed independent contractor. Under these arrangements (which may be written or verbal) the captains pay the owner for use of the vessel through a share of the catch landed and hire and pay the crew".<sup>18</sup> In these instances, the historical captain's income was not used to qualify the vessel. In all instances, however, the landings records were attached to the vessel.

<sup>17</sup> A detailed discussion of what happened at the January 1995 meeting and subsequent May meeting is presented in Section 3.3.9.

<sup>18</sup> As noted in RFMP Amendment 8, "[h]istorical captains are classified as captains operating continuously in the red snapper fishery under a verbal or written share agreement with an owner to lease a vessel from prior to the control date of 7 November 1989 set for the reef fish fishery, who have landed at least 5000lb of red snapper in two of the last three years 1990,1991 and 1992 and who can satisfy the more than 50% earned income requirement from the year of the control date (1989) to present. The agreement must provide that the captain is responsible for hiring the crew who were paid for shares under his control (p.34)".

Amendment 8 listed seven alternative options regarding initial eligibility. Most of these options recognized only the current owners, operators, captains and income qualifiers who are in the fishery at the time of implementation of the amendments as eligible for initial allocation.<sup>19</sup> The preferred option by the Council was that of “[e]ither the current owners or operators of permitted vessels depending on whose income qualified for the permit (*i.e.* only the income qualifier is eligible) and historic captains”. In the proposed rule establishing an ITQ programme and published in the Federal Register (25 August 1995), initial eligibility was defined as follows: “An initial shareholder under the ITQ system would be either the owner or operator of a vessel with a valid permit on 29 August 1995 provided such owner or operator had the required landing of red snapper during the period 1990 through 1992. If the earned income of an operator was used to qualify for the permit valid on 29 August 1995, such operator would be the initial shareholder rather than the owner. The term “owner” includes a corporation or other legal entity. Additionally, a historical captain could be an initial ITQ shareholder”.

The rationale for inclusion of some operators (*i.e.* those whose earned income was used to qualify for the permit) and historical captains in the initial ITQ allocation process was based, at least in part, on the *Magnuson Fishery Conservation and Management Act*, 16 U.S.C. 1853, Section 303 which provides that the Council, when establishing a system for limiting access to a fishery in order to achieve optimum yield, take into account: (a) present participation in the fishery, (b) historical fishing practices in, and dependence on, the fishery, (c) the economics of the fishery and (d), the cultural and social framework relevant to the fishery.<sup>20</sup> Referring to those instances where the operators earned income was used for qualification, the Amendment 8 states: “[i]n these situations, it is the skill and effort of the operator that results in the vessel qualifying for a permit. Under these situations, it may be desirable to reward the individual responsible for the permit being issued (p.36)”. With respect to historical captains, the Amendment goes on to state that “[u]nder such agreements the success of the fishing venture is largely based on the captain’s expertise as a historical participant in the fishery”.

### **3.3.3 Initial ITQ shares**

As is the case with most ITQ programmes, the initial allocation of ITQ shares was based on historical production of vessels in the fishery. Individual shares were determined on a percentage basis of the commercial quota and then transformed into pounds that each shareholder was to receive. The expression of initial (and thereafter annual) allocations on a percentage basis, which was then converted to a poundage basis, was selected by the Council to facilitate allocation determinations over the long run as the stock and, hence, commercial quota was expected to increase.

An additional feature regarding the initial ITQ shares was that no initial shareholder was to receive an initial percentage share that would equate to less than 100lb whole weight. This was, in essence, a bycatch allowance for those initial shareholders who had minimum red snapper landings records during the qualifying period. After the minimum shares were calculated, the remaining percentage shares would then be apportioned based on each remaining shareholder’s red snapper landings records during the qualifying period.

### **3.3.4 ITQ coupons**

Each shareholder was to receive coupons in various denominations equal to the shareholder’s calculated total based on shares owned as of 1 November of the preceding year. The coupons would be transferrable by completing the sale endorsement thereon, including the name of the recipient. Any vessel under the ITQ programme was not permitted to possess red snapper in excess of ITQ coupons on board that vessel. In accordance with the sale of red snapper to a dealer throughout the year (or the transfer of coupons) remaining coupons would decrease accordingly (unless additional coupons were purchased).

### **3.3.5 Transfer of landings records**

The qualifying period for red snapper landings to be used in the initial allocation under the red snapper ITQ programme, as noted, was from 1990 through 1992. The Proposed Rule for implementing the ITQ programme, however, did not come out in the Federal Register until 29 August 1995. A moratorium on the issue of new reef fish permits, as noted, was established in May 1992 and the transfer of these permits was permitted only under certain conditions: (a) transfer of permits between vessels owned by the income qualifying owner of a permitted vessels, (b) transfer of permits between individuals was allowed only with the transfer of the permitted vessel (*e.g.* sale) and (c), in the event of death or disability of a permit-holder, the Regional Director shall have the authority to transfer, either permanently or temporarily, the permit to a person specified by the permit-holder or the legal guardian, or estate (RFMP Amendment 8, p.41). These transfers raised the issue of who would receive the initial ITQ allocation; the owner/operator at the time of transfer or the owner/operator after the transfer.

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<sup>19</sup> In general, the alternative options ranged from the most restrictive measures (*i.e.* only owners of permitted vessels are eligible to receive initial allocations) to less restrictive measures and covered most variations.

<sup>20</sup> This is not a complete list of factors that can be considered.

The Council addressed this issue as follows. First, the Council made the determination that records for the 1990-92 period should be retained by the permitted owner if the permit was transferred to additional vessels owned by the income qualifying owner. Second, the Council determined that the landings records for the 1990-92 period should be transferred to the new permitted owner, if the vessel permit was transferred through sale of the vessel or transferred due to death or disability, unless there was a legally binding agreement for such transfer. Finally, the Council determined that the owner of a currently permitted vessel should retain the landings record for a vessel that was substantively controlled by him even though the ownership of such vessel may be in the name of a different legal entity (“substantively controlled” means that the same entity had at least a 50% interest in the vessel immediately prior to, and after, the change in ownership).

### **3.3.6 Transfer of shares**

As indicated in the Proposed Rules for the Gulf of Mexico red snapper ITQ programme “[t]he transfer of shares would be prohibited for the first 6 months after the date that ITQ coupons are required to be carried on board. From 6 months after the date that coupons are required to be carried on board to 18 months after such date, shares could be transferred only to persons who are initial shareholders and are U.S. citizens. Thereafter, ITQ participants may transfer all or a portion of their percentage shares to any person who is a U.S. citizen or permanent resident alien (Federal Register, 29 August 1995 p.44827)”. All transfers of shares, furthermore, were required to be registered with the Regional Director of the NMFS. There would be a fee imposed on these transfers. Transfers during November and December of each year would not be recorded until the next year.

Several issues related to transferring of ITQ shares are worth evaluating in greater detail. First, the transfer of ITQ shares from one individual to another did not automatically provide sufficient conditions for use of the ITQ shares because a reef fish permit was still a requirement for harvesting red snapper under an ITQ programme. Hence, if the individual to whom the ITQ shares were being transferred to did not have a reef fish permit, he would not be able to directly use the ITQ shares.

A second relevant issue with respect to the transfer of ITQ shares was that any transfer would be prohibited for six months after the implementation of the ITQ programme. The rationale for inclusion of this restriction in development of the red snapper ITQ programme was two fold: (a) to give the NMFS sufficient time to fully prepare for the ITQ programme, including the determination of eligibility, assessing ITQ levels, and resolving disputes; and (b) to prevent speculation during the initial phase of the programme.

For the 6 to 18 month-period, as noted, transfer of shares could only be made to individuals who were initial shareholders and were U.S. citizens. The Council imposed this constraint on transferring shares during the initial phases of the programme to give preference to existing reef fish fishermen. Similarly, transfers during the first 18 months were to be limited to U.S. citizens because of concerns that foreign entities might buy shares before the marketplace was able to set a “fair” market price.

Finally, all transfers were to be registered with the Regional Director and transfers that were made during November or December of each year would not be recorded and confirmed until the following year. The rationale for this was that it was during the November/December period that each shareholder’s allocation of the commercial quota would be made for the next fishing year.

### **3.3.7 The “lose it or use it” criteria**

The Council, in developing the red snapper ITQ programme, considered a “use it or lose it” criterion for individuals to maintain ITQ shares over the long run. One reason for considering such an option was that a use requirement would tend to “weed out” speculators during the early phases of the programme. The use requirement would also ensure that the total annual crop not above overfishing levels was harvested over the life span of the programme. This, some presumed, would effectively stop environmental groups from purchasing ITQ shares and not fishing them.

The Council realized, however, that there were two drawbacks associated with including a “use it or lose it” clause. First, it would generate a certain amount of instability in the harvesting sector. Second, it would create a negative conservation impact by forcing individuals to harvest red snapper. Given these factors, the Council made a determination that no ITQ shares or portions thereof should revert back to the management programme because of lack of use.

### **3.3.8 Maximum ownership or use of ITQs**

The issue of maximum ownership or use of ITQs was considered by the Council on the basis of both initial ownership and ownership or use after implementation of an ITQ programme. These issues were addressed during the early stages of the Council deliberation process and with little objection, the decision was made almost immediately to impose no maximum on the initial holding of ITQs (Minutes of the Reef Fish Committee Meeting, January 1993). The rationale for this decision was based, in part, on the fact that the maximum boat landings of red snapper in any year during the 1990-92 period was only 75 000lb and, hence, no individual would initially dominate the market (Minutes of the Council Meeting, 19-22 January 1993).

With respect to maximum ownership or use after implementation of an ITQ programme, a suite of options was originally proposed to the Council from which to choose. One option would impose no maximum on the possession and fishing of ITQ shares during a given year. A second option would require that no individual could possess and fish more than a specified fraction of all outstanding ITQs in any single year. A final option, which was a variation of the second option, would relax the 'single year' time constraint but would limit the time frame to some specified number of consecutive years.

At its May 1993 meeting, the Council, by a vote of nine to eight, selected that "No maximum shall be imposed on the possession and fishing of ITQs for any single fishing year" as the preferred option to be taken to public hearings. The close vote on this issue is an indication of the divisiveness among the Council members at the time and general concern, as expressed by a number of fishermen in the sponsored workshops, that monopolization of ITQs was a distinct possibility. This concern was fueled, at least in part, by the aggregation of ITQs in the Atlantic surf clam fishery where the Mid-Atlantic Council chose not to include any anti-monopoly features in its ITQ system preferring instead to leave it to the anti-trust laws (see Minutes of the Council Meeting, 11-12 March 1993).

In a final action taken on Amendment 8, the Council chose not to impose any maximum on the possession of ITQ shares or the fishing of ITQ coupons in any given year. This decision was made despite the concern had been expressed regarding the potential for monopolization of ITQ market during the sponsored workshops and public hearing process. There were essentially three reasons the Council chose not to impose any "cap" on ITQ shares. First, they recognized that anti-trust laws could be easily invoked, at some date after implementation of the programme, if the situation was warranted. Second, Council realized that any "cap" could easily be circumvented by a family or corporation where the individuals each maintained levels under the "cap". Third, the Council realized that imports of red snapper were large and competed directly with the domestic product. As such, the ability of any ITQ shareholder to manipulate price was of little concern.<sup>21</sup>

### **3.3.9 Regions of applicability of programme**

As a general rule, the Council has authority to only manage fisheries in federal waters (outside nine nautical miles in Texas and Florida and three nautical miles in the other states) with individual Gulf of Mexico states maintaining management responsibilities in state waters. Red snapper are not estuarine-dependent, thus, one would not anticipate sizeable harvests in state waters. In fact, reported harvests from state waters averaged only about 2% of the total annual catch. These harvests were primarily in Florida where state waters extend offshore for 9nm.

When federal waters were closed to commercial red snapper harvesting (*i.e.* quota having been reached), however, reported landings from state waters showed a sizeable increase. As such the NMFS concluded that compatible state regulations were essential for the successful realization of any red snapper ITQ system. As indicated in the Proposed Rules establishing the ITQ programme, "[t]o the extent that non-compatibility state regulations allow red snapper to be harvested outside the ITQ system, the system would be compromised because monitoring and enforcement would be hindered (Federal Register, 29 August 1995 p. 44828)".

Therefore to help ensure success of the ITQ programme, the NMFS asked the individual Gulf of Mexico states to develop compatible regulations. Before publication of the final rules, the NMFS had received assurances from all five of the Gulf of Mexico states that they either had, or would, enact compatible regulations in waters under their jurisdictions (Federal Register, 29 November 1995). As stated in the Federal Register "[t]hus, in making its decision to approve and implement the remaining measures of Amendment 8, NMFS obtained reasonable assurance from all of the affected states that they would be able to issue compatible state regulations effective on or about the time that Amendment 8 is fully implemented (1 April 1996). This cooperation will greatly enhance enforcement of the regulations (Federal Register, 29 November 1995 p. 61203)".

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<sup>21</sup> However, the Council advised that it could, at a subsequent time, recommend and implement (with NMFS approval) a different allocation scheme via the FMP Amendment process, if concentration in the industry became "excessive" under the ITQ programme.

Thus, the Council and the NMFS worked closely with the individual Gulf of Mexico states to help ensure that an ITQ programme would be acceptable and workable. Without this assurance, it is unknown whether the NMFS would have accepted an ITQ programme for the Gulf of Mexico red snapper fishery.

### **3.3.10 Duration of ITQ programme**

As indicated in the Federal Register that provided the proposed rules for creation of the red snapper ITQ programme (29 August 1995), "...the proposed ITQ system would remain in effect for 4 years from the date that the system is implemented during which the NMFS and Council would evaluate the system. Based on the evaluation, NMFS and the Council would modify, extend, or terminate the system (p.44825)". Given this somewhat unusual duration arrangement, it is worthwhile to examine how this arrangement evolved.

The issue of the duration of the red snapper ITQ programme was originally addressed at the January 1993 Council Meeting. In general, two options were proposed to the Reef Fish Management Committee and subsequently to the Council. The first option was to confer on the ITQ the privilege to harvest the specified amount indefinitely. The second option was confer on the ITQ the privilege to harvest the specified amount for an unspecified, but limited, amount of time. With little debate, the Council confirmed that it was the Council's intent to continue the ITQ programme as long as the objectives of the plan were met. While there had been some discussion by the Reef Fish Advisory Panel of inserting some type of a "sunset" rule to re-evaluate any ITQ system (see Minutes of the Reef Fish Advisory Panel, 29-30 April 1993), the Council appears to have never seriously considered this option as a long-run effort management programme was being more fully developed.

In January 1995 the Reef Fish Management Committee and the full Council met and final action was to be taken on Amendment 8. At the time of these meetings, there were still considerable doubts and uncertainties, on the part of both Council members and the commercial fishing sector, regarding whether an ITQ programme or a licence-limitation system would adequately address the problems confronting the fishery. Adding to this uncertainty were two Congressional bills that were being prefiled to amend the Magnuson Act, which specifically addressed ITQ programmes throughout the United States. A detailed summary of the Senate version of the bill was provided by the Executive Director of the Council (GMFMC) to the Reef Fish Management Committee at the January meeting, "Senator Stevens and Senator Carey introduced a bill with a provision relating to ITQs. This would proposed (sic) that upon implementation of the revised Magnuson Act, there would be a moratorium on implementation of ITQs until NMFS had developed a policy paper on how they should be structured and that any ITQ systems implemented prior to the implementation of the Act would become subject to meeting the provisions of the NMFS policy paper within three years. There was also a provision for fees for ITQ systems only. The fee level would be up to four per cent ex-vessel value of landings. There would also be an additional one percent ex-vessel value in the case of transfers of ITQs (Minutes of the Reef Fish Management Committee, 17 January 1995 p.13)". The Executive Director also indicated that the House version of the bill did not contain language on taxes.

Given the cloud of uncertainty surrounding the ITQ system, a motion was made by one of the Reef Fish Management Committee members to adopt the Licence Limitation System as the preferred option. This motion failed and, subsequently, the Committee confirmed ITQs as the preferred alternative by a vote of five to two.

When the Council met the next day, there was considerable debate whether to make the Licence Limitation System or the ITQ system the preferred option.<sup>22</sup> One Council member, actively involved in the red snapper fishery as both a boat owner and dealer, spoke passionately against adopting ITQs. His rationale was based on several different issues. First, he asserted that if a red snapper ITQ programme was to be implemented, similar programmes would be developed for all other fisheries in the Gulf (presumably limited to reef fish species). This would, he asserted, reduce the "...flexibility the fishermen have to move from one fishery to another, without having to go to the bank and buy something that they don't know if the value would be worth the effort (Minutes of the Council Meeting, January 18-19 p.25)". Second, in expressing his concern regarding possible Congressional action and its impact on an ITQ programme, the Council member stated "[w]e heard yesterday that we don't know what Congress is going to do with user fees. We (implement) an ITQ (programme) and they come back and tell us that there will be a three or four percent cost on your ITQs and have to pay that (p. 25)". Third, the Council member suggested that the three year qualifying period (*i.e.* 1990-92) was not representative of historical years in the red snapper fishery. Specifically, he stated that "...[t]hose years were where the fishery was changed, different ways of fishing were forced, due to regulations this Council put on the fishermen. The fishermen changed habits prior to this time because of low catch rates and moved out of the red snapper fishery into other fisheries (p.25)". Fourth, the Council member expressed concerns that the ITQs could be bought up by a large entity, "...like Tyson Chicken who could buy them up to recoup the profits over a long period of time whereas the fishermen would not have that option (p. 25-26)". Fifth, the Council member, questioned the quality of the reporting process used during the qualifying period. And last, the Council

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<sup>22</sup> A twenty-three page verbatim transcript of the discussion is given in the January 1995 Council Minutes.

member questioned the appropriateness of an ITQ programme for the commercial sector when there existed a large recreational sector which was not bound to its share of the TAC.<sup>23</sup> The Council member finished his plea with a motion that the Licence Limitation Option be adopted as the preferred alternative for Amendment 8.<sup>24</sup>

This plea resulted in a long discussion as to whether the Council member's assertions were accurate and whether the Objectives attached to Amendment 8 (see Section 3.1; Policy Objectives) could be achieved with a licence-limitation programme. When finally brought to a vote, the Council, by nine to six, voted in favor of licence-limitation as the preferred alternative for Amendment 8 in lieu of an ITQ system. All five Council members with commercial interests voted in favor of Licence Limitation. Hence, it appeared as though the Gulf of Mexico red snapper fishery would by 1996 be operating under a Licence Limitation Programme rather than an ITQ Programme.

The Council next addressed Amendment 8 at its May meeting. While the focus of the meeting was to be on finalizing specific options with respect to the Licence Limitation Management Programme, the issue of adopting an ITQ quota system was raised once again. This time, however, implementation the ITQ Management System "...would confer on an ITQ share certificate holder the privilege to harvest the specified amount for four years after inception of the programme after which the programme may be extended (Minutes of the Council Meeting, May 10-12, p. 42)". This time, the Council voted in favor of the ITQ Management System and subsequently voted at the same meeting to send Amendment 8 to the Secretary of Commerce for final approval.<sup>25</sup>

The Council member who moved for a specific four-year evaluation period of the ITQ system stated that the purpose for doing so "...was to end speculation in the windfall gain by holding (the system) to confined periods and allowing the system to be evaluated after four years on the basis of what it had accomplished in terms of efficiency, enforcement and cost (Minutes of the Council Meeting, 10-12 May 1995 p. 42)". He proceeded to explain that a four-year period was adequate because "[t]he effectiveness of the system could be evaluated in years two and three and Council (would then) consider whether to extend it in year four".

In subsequent discussions, the Council member more fully explained his rationale for a limited duration of the ITQ system (pers. comm. Dr. Kenneth Roberts, Cooperative Extension Service, Louisiana State University, Baton Rouge, Louisiana). Specifically, he indicated that many members of the Council were largely uncertain whether an ITQ programme for red snapper would be effective given its large number of unique characteristics including, but not limited to, a large recreational component and the multi-species nature of the commercial fleet. In addition, some of the Council members were concerned with "giving up" control of the management process, particularly if the ITQ programme failed to achieve the objectives set forth in Amendment 8. Evaluation of the programme would, hence, allow it to be modified accordingly or, if found to be grossly inadequate, terminated. Thus, the Council could, if needed, remain actively involved in the management process.

### **3.4 Enforcement**

Enforcement had been of concern throughout the development of a red snapper effort limitation programme; particularly an ITQ programme. There had been persistent allegations, during the workshop and public hearing process, that a large portion of landings had not been accounted for under the quota management system. It was also recognized that monitoring of any ITQ programme at sea would be extremely difficult; in part because of the multiple species landed on any given trip and also because of overall lack of enforcement personnel. To maximize enforcement capabilities under the ITQ programme, the Council adopted a monitoring programme similar to that developed for the South Atlantic wreckfish ITQ programme.

The steps included in the monitoring programme were to be: First, each shareholder would receive coupons based upon pounds he was allocated under the ITQ programme. Second, the amount of red snapper on board a vessel with a federal reef fish permit (or any vessel in the EEZ) would not be able to exceed the total of ITQ coupons on board that vessel. Third, red snapper harvested by a permitted vessel (or otherwise harvested from the EEZ) would be transferrable only to a dealer who held a federal reef fish dealer permit.<sup>26</sup> These federally-permitted dealers were allowed to receive red snapper only from vessels with reef fish permits and coupons equal to, or exceeding, the

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<sup>23</sup> The recreational component of the red snapper fishery, during discussion of Amendment 8, was being managed primarily through size limits and bag limits. There was no provision to close the recreational fishery when its share of the TAC was reached and significant "overruns" were the rule rather than the exception. Congress has since mandated that the recreational red snapper fishery be closed when its share of the TAC is reached.

<sup>24</sup> Technically, this was a substitute motion because the motion on the floor was that which came from the Reef Fish Committee in support of an ITQ programme.

<sup>25</sup> Given the framework of Amendment 8, it was necessary for the Council to first vote on the adoption of the ITQ management system prior to deciding its duration. It was well known though that the issue of the duration of the ITQ programme would be re-visited immediately after Council's adoption of the ITQ system.

<sup>26</sup> The Federal Reef Fish dealer permitting system was established in RFMP Amendment 7. Much of the impetus for establishing this permitting system was to provide a more accurate tracking system of red snapper and other reef fish landings.

amount of red snapper being transferred. When transferred, the vessel operator would provide the dealer with part of the ITQ coupon (the “Fish House part”, equal in denomination to the weight of the red snapper transferred to the dealer. He would retain the other part (the “Fisherman” part) for his records.

The dealer when receiving these coupons from the vessel operator was required to indicate the date received, the vessel permit number and his permit number. The dealer was required to submit these records to the NMFS at monthly intervals, or more often if requested. The vessel operator was required to submit the “Fisherman” part of the coupons with his log book records.

This monitoring method allowed for enforcement of ITQs at sea (*i.e.* on the vessel) as well as ashore (*i.e.* of the dealer). In addition, the submission of coupons by both the vessel operators and the dealers allowed for compliance checks which would reduce fraudulent activities. Last, the requirement that Federally-permitted dealers were allowed to receive red snapper only from vessels with reef fish permits and coupons would facilitate enforcement in two ways. First, it helped to identify all dealers since most, if not all, would desire purchasing product from permitted vessels and would thus need a permit. Second, it allowed for closer monitoring of dealer records by enforcement.

#### **4. DATA REQUIREMENTS AND COMPUTATIONAL PROCESS**

The Reef Fish Advisory Panel met in November 1993 to discuss the overall management programme for red snapper. Many of the Panel members expressed concern that many fishermen were unwilling to support an ITQ programme because they did not know what their initial allocation would be. By unanimous agreement, the Reef Fish Advisory Panel requested that the Council ask the NMFS to obtain landings information from fishermen and to generate initial estimates of ITQ allocations (Minutes of the Reef Fish Advisory Panel, November 1993). This request arose from the fact that “[m]any fishermen were uncertain of what their allocations would be if ITQs were implemented, and felt that there would be a large number of fraudulent or previously unreported fish house receipts submitted, which would decrease their personal allocations (Minutes of the Council Meeting, November 17-18, p.11)”. The Council, in response to the request by the Reef Fish Advisory Panel, moved to gather the requisite data through the Amendment process (RFMP Amendment 9).

Amendment 9 provided the NMFS with the authority to “collect and compile commercial red snapper landings data for the years 1990, 1991 and 1992 for vessels by owner and, in the case of permitted vessels for which the permit was based on the earned income qualification of an operator, by such operator of vessels that were operating in the commercial red snapper fishery and had red snapper landings in any of the years 1990, 1991 and 1992, whether such persons are currently owners or income-qualifying operators or permitted vessels or not (RFMP Amendment 9, p.7)”. Landings data which would be used as the basis for initial allocation were as follows: (a) for vessels which submitted logbooks, only the logbook landings during the appropriate period would be considered for that time period during which a log book was required or was voluntarily submitted,<sup>27</sup> (b) in the absence of log book records, for those vessels landing red snapper in Florida, only Florida trip tickets would be considered for landings in Florida, and (c) for landings where neither of the other criteria apply, the owner or operator of the vessel whose income was used to qualify the vessel for the permit was required to provide the NMFS with documentation of red snapper landings in accordance with the criteria used for a red snapper endorsement.

Amendment 9 provided the only opportunity for individuals to submit landings records. Thus, anyone wishing to participate in an initial allocation of ITQ shares would have to submit the requested landings data. In general, the collection of landings data was so broad that it would accommodate fishermen who left the fishery after 1992 but had landings during the qualifying period. It also accommodated fishermen who never obtained a reef fish permit but who harvested red snapper during the qualifying period when reef fish could be legally harvested without a permit. Only those fishermen who did not submit log books or landed fish in Florida (trip ticket) were required to resubmit records.

In addition, Amendment 9 addressed the issue of records documenting historical captain status. Among other things, the Amendment required historical captains to: (a) provide documentation of red snapper landings during the period of that the individual was a historical captain, (b) identify the vessel or vessels and period of time the share agreement was in effect, (c) provide statements signed by each vessel owner with whom they had the share agreement attesting to the share agreement and acknowledging that the captain determined the shares/payment to the crew [or other documentation]<sup>28</sup> and (d), submit income tax records for the period 1989 through 1993 to verify that they had met the earned-income criteria.

<sup>27</sup> Further, logbook records that were not submitted when required could no longer be submitted as proof of landings.

<sup>28</sup> In public testimony, the requirement for a signed statement from vessel owners stating terms of the share agreement was met with some resistance by vessel owners who indicated that they would refuse to sign any such document. If the vessel owner refused to sign the document, the historical captain was allowed to provide other documentation of the share arrangement.

Documentation of historical captain status was required to ascertain which vessel the historical captain operated and what his share agreement was with the owner so that both the historical captain and the vessel owner could receive the appropriate credit for the vessel's landings. The provision that captains controlled crew shares/payments was included as a means of providing evidence that captains operated as independent operators.

In total, the NMFS accepted catch records for 930 corporations and individuals through the Amendment 9 process (November 1994 Council Minutes). Of the 930 total, only 374 had current reef fish permits suggesting that 556 individuals (accounting for approximately one third of the total catch) would not qualify under the Council's preferred alternative. To advise fishermen what their individual ITQ shares might be, reports were issued to the fishermen indicating their individual status with respect to catch records, non-accepted catch records, catch during the two highest years and the ITQ share under a 3.06 million pound commercial quota.

The process associated with the collection and analysis of data associated with Amendment 9 served several useful purposes. First, there had been a major concern when the Council began discussing ITQs that once they were implemented the Council would realize that the landings greatly exceeded recorded catch and, hence, the shares that legitimate fishermen would receive would be extremely low relative to their actual landings. The data collected and analyzed under Amendment 9 showed this not to be the case. Second, it allowed for identification of all individuals who qualified for participation in the red snapper effort management regime. Finally, fishermen were advised what their catch allotments would be under alternative scenarios.

## 5. APPEALS PROCESS

There were actually two appeal processes of relevance in the formulation of an ITQ programme for red snapper in the Gulf of Mexico. The first was in response to an emergency rule that established the red snapper endorsement for qualified reef fish permittees. To qualify for this endorsement reef fish permittees were required to demonstrate 5000lb of red snapper in two of the three years from 1990 through 1992.<sup>29</sup> An appeals board, consisting of state directors or their designees was established by the Council to hear disputes between the NMFS and individuals in relation to what would be considered acceptable proof of catch. The Council explicitly noted that the appeals board would not consider hardship cases.

There were about 2200 permitted reef fish vessels in the Gulf of Mexico in 1992. Endorsement application forms and pre-approval notifications were sent out on 11 December 1992.<sup>30</sup> Applications were returned to the NMFS by 251 permitted reef fish vessels and of this total, 115 (46%) were initially approved with the remaining 136 being rejected; primarily for insufficient landings (Minutes of the Council Meeting; 19-23 January 1993). Those applicants not approved for endorsement were informed of the appeals process, and 55 of the 136 rejected permittees appealed for further consideration (RFMP Amendment 6 to the Endorsement Oversight Committee, which met during the first week of February 1993).

In general, the 55 appeals focused on a number of different issues (Minutes of the Reef Fish Management Committee, November 16, 1993). Eight individuals appealed because they had not harvested the amount of red snapper required for endorsement; none of these eight cases were accepted by the appeals board. Sixteen cases were presented to the appeals board based on the issue that the vessel was permitted in only one or two of the three years, generally the result of the entity having just recently acquired a vessel and was planning to participate in the red snapper fishery. Only one of these sixteen cases was accepted by the appeals board. A third issue presented to the appeals board related to discrepancies between red snapper catch as reported in the application for endorsement and the catch reported on acceptable documents (*e.g.* log books or Florida trip tickets). In many cases, the discrepancies were found to be the result of data coding errors and six of the eighteen cases presented to the appeals board relative to this issue were resolved in favor of the individual. A fourth issue presented to the appeals board for the red snapper endorsement related to the number of individuals informed that they had provided insufficient documentation of landings history at the time of application. Five individuals falling into this category provided new or additional documentation to the appeals board and all five cases were accepted. Other issues addressed by the appeals board included: (a) three cases where there was no history of red snapper catch but the applicants wanted to protest the management regime; none of the three cases were accepted, (b) one fisherman with a long history of reef fish fishing who did not fish for red snapper during the period of record because he chose to fish for alternative species; not accepted by the appeals board, (c) three disputes between owners and operators of which one was accepted, and (d) instances where income requirements were met by a number of operators during the period of record rather than the

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<sup>29</sup> Acceptable proof of catch, as determined by the Council, included: (a) Florida Department of Natural Resources trip tickets, (b) NMFS log books or (c), fish house receipts (Minutes of the Council Meeting; 16-17 September 1992).

<sup>30</sup> A total of 81 applications were pre-approved by the National Marine Fisheries Service, based upon log book data (Minutes of the Council Meeting; 19-23 January 1993).

requirement being met by a single operator; none of these three cases were rejected. In total, the appeals board recommended approval of an additional 16 applicants, which resulted in a total of 131 red snapper endorsements finally being issued.

The endorsement appeals board provided considerable insight to the Council in its deliberation of the development of an ITQ appeals board. First, the state directors (or their designees) who sat on the endorsement appeals board felt that political pressure and pressure from the commercial industry hindered their performance and some of the endorsement appeals board members felt that the ITQ appeals board could best function if the appeals board was comprised only of industry members. Second, many of the Council members, after hearing the nature of many of the appeals, felt a strong need to include hardship cases in the appeals process. Finally, the appeals process brought to light errors in vessel catch information. While many of the errors were simply of a coding nature, the recognition of such errors made Council wary of “over dependence” on available information and the need to address catch information issues in any subsequent appeals process.

Before sending Amendment 8 to the Secretary for approval, the Council voted to create an appeals board that consisted solely of commercial industry members. These members would be selected by the Council and their task was to review and evaluate appeals. Their recommendations would be sent to the NMFS Regional Director who would render a final decision on the appeal.

In furtherance of findings related to the endorsement appeals board, the Council also determined that the ITQ appeals board should consider hardship cases when resolving disputes.<sup>31</sup> At the recommendation of the NMFS Regional Director and the NMFS legal counsel, the Council developed a set of guidelines to assist the appeals board in reviewing and evaluating hardship appeals. As stated in RFMP Amendment 8, “[s]ince hardships are, by nature, unique situations, the Council cannot predict all of the circumstances which would merit consideration. The Council emphasizes that hardship allotments are to be awarded on the basis of circumstances that were beyond an individual’s control, as opposed to difficulties resulting from unfortunate business judgements. The following examples of meritorious circumstances are offered to aid the special advisory panel in its determinations: (a) The fisherman’s vessel was in the boat-yard for reconditioning and the work was not done in a timely manner despite the owner’s persistent efforts, (b) the fisherman’s vessel was the subject of litigation and was thereby prevented from fishing, (c) a health problem, physical or mental, or a degree sufficient to prevent the fisherman from fishing existed, regardless of whether he was, himself, the patient, (d) a family situation required the fisherman’s presence and attendance to the extent that he could not fish (RFMP Amendment 8, p. 56)”. The Council further instructed the special advisory panel to require documentation and/or proof of the claims made pursuant to the hardship appeal.

Despite the guidelines developed by the Council for evaluation of hardship cases, the final rules for the red snapper ITQ programme rejected any hardship appeals. As stated in the Federal Register that provided the Proposed Rules for the red snapper ITQ programme (29 August 1995), “NMFS has determined that the hardship appeals criterion in Amendment 8 is too vague and subjective to identify circumstances constituting hardships. The subjectivity, in turn, would invite arbitrary decision-making (p.44827)”. Hence, the ITQ appeals board would have been unable to consider hardship cases in its deliberations.

The appeals board was to meet in January 1996 to review appeals related to ITQ allotments. Due to the federal furlough in December 1995 and early January 1996, however, “...NMFS was unable to process fishermen’s requests for appeals of NMFS initial determinations regarding historical captain status and red snapper landings records (Federal Register 29 February 1996 p. 7752)”. Hence the appeals board did not meet in January as originally intended and the NMFS further concluded that “...it would be unreasonable to expect red snapper fishermen to pursue their appeals before the Council Appeals Board during February 1996 when the commercial red snapper fishery is open and fishermen are busy with harvesting operations (Federal Register, 29 February 1996, p. 7752)”. Given the subsequent retroactive repeal of the Gulf of Mexico red snapper ITQ programme by Congress, this appeals board never met and, hence, there is no information to determine the nature of the appeals that would have been forthcoming.

## **6. ADMINISTRATION OF THE ALLOCATION PROCESS**

### **6.1 Staff requirements**

Nothing is documented regarding the additional staff that would have been required to successfully implement and oversee a red snapper ITQ programme in the Gulf of Mexico. As discussed in Section 6.2, however, additional staff requirements, outside of enforcement, were estimated to be rather small: approximately two positions. These

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<sup>31</sup> Hardship allocations were to come from a quota set-aside of three percent. Fishermen who did not appeal would not have any reduction in their initial allocation as a result of hardship awards but fishermen receiving hardship allotments would receive reduced shares if the set-aside was insufficient.

additional positions, one envisions, would have been responsible for determining individual allotments on an annual basis and maintaining the additional records that would be required under an ITQ programme. One should realize, however, that part of the reason that few additional staff would have been required reflects the fact that the endorsement system that was implemented for the red snapper fishery likely required additional staff and, to some extent, these staff would merely transfer duties.

## **6.2 Additional programme funding requirements**

While this ITQ programme was never implemented, estimated additional programme funding requirements were estimated in the preparation of the Regulatory Impact Review for RFMP Amendment 8. As stated, “[c]osts under ITQ management will be higher than under the other management systems (*i.e.* either the status quo or licence-limitation) largely due to the need for increased enforcement and the extensive records and tracking system for coupons (or similar tracking devices) and ITQ shares (p. 115)”. In terms of the current system that was in place at the time that the ITQ system was proposed (*i.e.* the endorsement programme), the NMFS administrative costs were estimated to equal \$30 000 annually. Under an ITQ programme, it was estimated that the NMFS annual administrative costs would have increased to \$145 000.

Enforcement costs under the proposed compliance system were estimated to equal \$400 000 annually. This level of enforcement expenditures was considered to be inadequate for that needed to achieve even a “minimum” acceptable compliance under the endorsement system. The Regulatory Review concluded that an additional \$450 000 would be required to enforce regulations under the current system at a “high” level of compliance. These additional enforcement expenditures would also provide an “adequate” level of enforcement under an ITQ programme. To achieve “full” compliance (defined as a compliance level of at least 90%) under the ITQ programme, however, enforcement expenditures of about \$1.5 million would be required annually. Hence, it was concluded that achieving a “high” level of compliance within the confines of an ITQ system would cost approximately \$1.0 million more annually than that which would be required under the then current endorsement programme.

There was one major caveat provided regarding the higher enforcement costs required to achieve a “high” level of compliance in the ITQ programme. As indicated in the Regulatory Impact Review for RFMP Amendment 8, “[i]deally, a high level of enforcement would occur initially (with the ITQ programme), and it could diminish over time as the ‘self-enforcement’ aspects of ITQs begin to take hold (p. 119)”. Since the red snapper ITQ programme was never implemented, it is unknown whether the “ideal” scenario would have been forthcoming.

## **7. DISCUSSION**

The Council spent more than three years developing an ITQ programme for the Gulf of Mexico red snapper fishery. Shortly after the programme had been approved by the Secretary of Commerce, but before implementation, Congress placed a moratorium on the implementation of any new ITQ programme and made the moratorium retroactive to include the Gulf of Mexico red snapper fishery. Hence, there is no information as to whether the programme would have been successful in terms of ameliorating the problems identified in RFMP Amendment 8.

With Congress set to possibly relax the moratorium, however, the Council at its May 2000 meeting proposed creating a panel to evaluate IFQ’s in the red snapper fishery. In addition, members of the red snapper industry have recently drafted an IFQ options paper for distribution. These signs suggest that the process may be re-considered when Congress lifts the moratorium.

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