

600 1st Avenue North
Suite 301
St. Petersburg FL 33701



727.895.2188 Telephone
727.895.8652 Facsimile
www.oceanconservancy.org

January 23, 2015

Kevin Anson, Chair
Gulf of Mexico Fishery Management Council
2203 N. Lois Avenue
Suite 1100
Tampa, Florida 33607

RE: Ocean Conservancy's Written Comments for the Gulf of Mexico Fishery Management Council's January Meeting in Point Clear, Alabama

Dear Chairman Anson:

Ocean Conservancy¹ is pleased to offer the recommendations and comments below as the Gulf of Mexico Fishery Management Council prepares for its January meeting in Point Clear, Alabama.

1. **Council Must Develop a Rebuilding Plan for Greater Amberjack:** In accordance with federal law, the Council must establish a new rebuilding plan for greater amberjack immediately. A new rebuilding plan is needed to achieve compliance with the Magnuson-Stevens Fishery and Conservation Management Act (MSA) and to provide the greatest likelihood for recovery of the stock.
2. **Council Should Use a Precautionary Approach in Setting Gag ACLs:** While the Scientific and Statistical Committee has set an Allowable Biological Catch that nearly doubles the existing Annual Catch Limit, Council should take a conservative, precautionary approach in setting Annual Catch Limits for 2015 seasons and onward.
3. **Council Should Reconvene the Ad-Hoc For-hire Red Snapper AP:** This advisory panel shows considerable promise and should be reconvened to continue to build on the motions and recommendations it made in December 2014.
4. **Council Should Develop Component-Specific Management Measures For the Two Recreational Red Snapper Sectors:** Creating paybacks and buffers for the recreational red snapper sectors will ensure that sector separation works as it was intended and conservation benefits can be reaped that will achieve stability in the stock.

Each of these individual recommendations is discussed treated in more detail in the following sections.

¹ Ocean Conservancy, a non-profit organization with over 120,000 members, educates and empowers citizens to take action on behalf of the ocean. From the Arctic to the Gulf of Mexico to the halls of Congress, Ocean Conservancy brings people together to find solutions for our water planet. Informed by science, our work guides policy and engages people in protecting the ocean and its wildlife for future generations.

1. Council Should Develop a New Amberjack Rebuilding Plan

At its January 2015 meeting, Council will continue to consider proposed modifications to Annual Catch Limits (ACLs) and Annual Catch Targets for greater amberjack. While there may be conservation benefits within the range of actions and options proposed in the Draft Framework Action, there is currently no action before Council to develop and implement a new MSA-mandated rebuilding plan for the stock, nor is there an attempt to understand why the previous rebuilding plan failed. **Accordingly, it is imperative that the Council embarks upon a thorough analysis of why the rebuilding plan failed, and moreover it is paramount that Council acts straightaway to end overfishing and to develop a new rebuilding plan for greater amberjack.**

Amberjack was declared overfished in 2000 and was placed under a rebuilding plan starting in 2003, with a rebuilding target of 2012. The rebuilding plan failed, and as of the 2014 SEDAR 33 assessment the stock remains overfished and is still undergoing overfishing,² a clear indication that the management strategies that have been applied to this stock over the past 14 years have been ineffective at alleviating overfishing or at rebuilding.³ The MSA requires stocks with an overfished designation to be subject to a rebuilding plan.⁴ Pursuant to federal law, managers must “end overfishing immediately” and “rebuild [the] affected [stock] of fish”.⁵ In order to overcome previous unsuccessful attempts to end overfishing, as well as to comply with the requirements of the MSA, Council needs to act immediately to implement aggressive management tactics for the stock.

In addition, the MSA requires that for overfished stocks, rebuilding must occur within 10 years or sooner.⁶ When a rebuilding plan runs its course and the stock is still determined to be overfished, as was the case with greater amberjack, the fishing mortality rate may not be increased and a remedial fishing rate must be selected.⁷ This remedial rate must be the *lesser of either* 75% of Maximum Fishing Mortality Threshold (MFMT), which in the case of amberjack would amount to 75% of F_{MSY} (F_{PROXY} standing in for F_{MSY} at $F_{30\%SPR}$), **OR** $F_{REBUILD}$.⁸ $F_{REBUILD}$ can only be determined when Council provides a rebuilding timeframe for the stock, and as yet the Council has not acted to develop a rebuilding timeframe for greater amberjack.⁹ The Council should develop a rebuilding plan that establishes $F_{REBUILD}$,

² SEFSC, *SEDAR 33*, http://www.sefsc.noaa.gov/sedar/download/SEDAR%2033%20SAR-%20Gag%20Stock%20Assessment%20Report%20FINAL_sizereduced.pdf?id=DOCUMENT (accessed January 20, 2015).

³ NOAA Fisheries, *Status of the Stocks 2014 Third Quarter Report Overfished Stocks*, http://www.nmfs.noaa.gov/sfa/fisheries_eco/status_of_fisheries/archive/2014/third/mapoverfishedstockscy_q3_2014.pdf (accessed January 20, 2015); NOAA Fisheries, *Status of the Stocks 2014 Third Quarter Report Stocks Subject to Overfishing*, http://www.nmfs.noaa.gov/sfa/fisheries_eco/status_of_fisheries/archive/2014/third/mapoverfishingstockscy_q3_2014.pdf (accessed January 20, 2015).

⁴ 16 U.S.C. §1854(e)(2).

⁵ 16 U.S.C. §1854(e)(3)(A).

⁶ 16 U.S.C. §1854(e)(4)(A)(ii); 50 C.F.R. §600.310(j)(3)(i).

⁷ 50 C.F.R. §600.310(j)(3)(ii).

⁸ *Id.*

⁹ Gulf of Mexico Fishery Management Council, *Options Paper: Modifications to Greater Amberjack Allowable Harvest and Management Measures*, <https://public.gulfcouncil.org:5001/webman/index.cgi> (accessed January 20,

and can implement the desired conservation benefits already suggested in the recommended options within the framework adjustment. The Council should have implemented additional or revised rebuilding measures when it became clear back in 2011 (or sooner) that greater amberjack was still overfished and not making adequate progress toward the 2012 rebuilding date. By failing to carry out the MSA-mandated rebuilding obligations, NMFS and the Council have already violated the law. Steps must be taken immediately to achieve compliance to ensure conservation of the stock and a sustainable fishing future.

Presently, Council is considering its Scientific and Statistical Committee's (SSC's) recommendations for greater amberjack that are based on the default remedial rate of 75% of MFMT, with some options that are in fact more conservative than this rate. The SSC predicts that these measures will have the effect of rebuilding the stock by 2020, which from a conservation perspective is certainly desirable; however, past rebuilding efforts cast doubt on these predictions. In order to comply with the law, the Council (or NMFS) must first take the basic step of specifying a revised rebuilding date for this stock in order to establish $F_{REBUILD}$. Once that has been accomplished, a legally-compliant rebuilding plan can be put into place. (See the flow chart in the appendix to this letter.)

In addition to immediately developing a rebuilding plan for greater amberjack, the Council should assess and take into account the reasons why the previous rebuilding plan failed. Such a rebuilding failure analysis should be used to justify the selected target fishing mortality rates and should become protocol for any future failed rebuilding plans under Council management. Council should act in conformity with the findings, purpose, and policy of the MSA that mandate sustainability in and conservation of U.S. fisheries by developing a new rebuilding plan that assures meaningful rebuilding progress for greater amberjack and for other overfished stocks in the Gulf.¹⁰

2. Council Should Use a Precautionary Approach in Setting Gag Grouper ACLs

Ocean Conservancy recommends that the Council act conservatively when setting ACLs for gag grouper, despite the fact that the SSC's recommendation for 2015-17 ABCs would allow the Council to possibly double the existing ACL. It is commendable that the Council has already taken a measured and cautious approach thus far in compelling the SSC to consider the possible impacts of the recent red tide event on the gag grouper stock, and now even though the SSC has determined that there was no measurable impact from the 2014 red tide event, the Council should continue the careful and tactful approach heretofore taken. Seeking out possible ecosystem effects and analyzing their impacts on managed stocks leads to strong management decisions, and Ocean Conservancy applauds the Council on taking this approach.

One of the most reasonable courses of action would be to keep the 2015 recreational ACL at the previously established 1.708 million pounds gutted weight.¹¹ This conservative approach would reduce concerns among the fishing public about the accuracy of the gag stock assessment and would allow for more time to ensure that the stock is actually rebuilt while still allowing for an increase in the ACL.

2015). Available by logging into the Council's FTP Server; Attached (Appendix 1) is a flowchart that demonstrates that issue of selecting between the lesser of 75% of MFMT or $F_{REBUILD}$.

¹⁰ 16 U.S.C. §1801(a)-(c).

¹¹ 50 C.F.R. §622.41(d)(2)(4).

Ocean Conservancy recommends that the Council lends strong credence to the status quo alternative as it makes its management decisions on this issue.

It is also worth noting that in the past four seasons' recreational landings have fallen short of the Annual Catch Target, sometimes by nearly 40%. The 2014 season, which ended on December 3, 2014, also seems poised to have landed significantly less than the ACT of 1.519 million pounds gutted weight.¹² Council should take these figures into consideration when setting ACLs for gag for 2015 and onward, as an increase in ACL may not be warranted if the existing lesser ACLs and associated ACTs cannot be met. Furthermore, analysis of why anglers have not been landing their share of the quota should be undertaken in order to make informed management decisions going into the future.

3. Council Should Reconvene Ad-Hoc For-hire Red Snapper AP

At its inaugural meeting in December 2014, the Ad-Hoc For-hire Red Snapper Advisory Panel prepared a number of motions and recommendations pertaining to the charter-for-hire sector of the red snapper fishery that will be very useful to the Council in the management of the recreational fishery.

Of note was the AP's recommendation that the Council consider a variety of management tools for the charter-for-hire sector. The suggested management concepts show great promise for the long-term health and resiliency of the red snapper stock and will reduce the probability of perennial recreational overruns that jeopardize rebuilding and endanger optimum yield.

In addition, the AP's motion that the Council accelerate the development of electronic monitoring tools and tactics for charter-for-hire fishermen is excellent advice and indicates that the sector is seeking accountability.

Ocean Conservancy recommends that Council heed the AP's advice in considering these proactive strategies for managing this part of the recreational red snapper fishery, and furthermore that it honor the AP's request to reconvene the panel in late February.

4. Council Should Develop Component Specific Management Measures For the Two Recreational Red Snapper Sectors

Sector Separation stands as a milestone achievement for the Council, and it is certain that this management strategy has the ability to impart significant conservation benefits to the health and resiliency of the recreational red snapper fishery. However, the advantages of sector separation will not be fully realizable unless component specific management measures are created for the individual private recreational and charter-for-hire divisions. Accordingly, Council should act as soon as possible to implement, by way of a framework adjustment, these component specific management measures which could take the form of payback and/or buffer type accountability measures.

The Amendment 40 document notes that under the proposed sector separation format it is possible that one of the overall recreational red snapper season could be shut down due to an overage cause by

¹² NOAA Fisheries, *Gulf of Mexico Recreational Landings*, http://sero.nmfs.noaa.gov/sustainable_fisheries/acl_monitoring/recreational_gulf/index.html (accessed January 21, 2015).

one of the sectors, despite the fact that the other sector still had fish to catch under its share of the allocation.¹³ The language in the amendment is clear that the way to ameliorate this possible situation would be to implement accountability measures for the individual sectors. If, for example, the charter-for-hire sector exceeded its share of the allocation, its subsequent charter-for-hire season would be reduced by a corresponding amount and the private recreational sector would not be unfairly penalized. As sector separation currently stands, it is properly in compliance with MSA Section 407(d) which mandates that separate quotas are to be maintained for the Gulf of Mexico recreational and commercial red snapper fisheries.¹⁴ Adding accountability to the two sub-components of the recreational red snapper fishery does nothing to jeopardize compliance with MSA Section 407(d), and as such there are no legal obstacles to implementing paybacks or buffers for the individual sectors.

Currently before the Council is a framework action that may establish the possibility for creating a split season for the charter-for-hire recreational red snapper fishery.¹⁵ Ocean Conservancy urges the Council to consider including in this framework action, or alternatively in a standalone framework action, the implementation of accountability measures for the individual sectors that have been created under Amendment 40 that will eliminate any inequity between the two components that might arise from one exceeding its share of the allocation. Doing so will ensure that sector separation can precipitate the desired conservation results that were contemplated as the amendment was developed.

Thank you for your consideration of our comments. Should you have any questions or concerns, please do not hesitate to contact me.

Best regards,

/s Jon Paul S. Brooker, JD

Policy Analyst, Ocean Conservancy

jbrooker@oceanconservancy.org

727.369.6613

¹³ Gulf of Mexico Fishery Management Council, *Amendment 40*, at 22
<http://www.gulfcouncil.org/docs/amendments/RF%2040%20-%20Final%2012-17-2014.pdf> (accessed January 21, 2015).

¹⁴ 16 U.S.C. §1883(d).

¹⁵ Gulf of Mexico Fishery Management Council, *Options to Establish a Red Snapper Split Season*,
[http://www.gulfcouncil.org/council_meetings/Briefing%20Materials/BB-01-2015/B%20-%2012b%20Framework%20Action%20Supplemental%20Action%20for%20CFH%20Red%20Snapper%20Split%20Season\[1\].pdf](http://www.gulfcouncil.org/council_meetings/Briefing%20Materials/BB-01-2015/B%20-%2012b%20Framework%20Action%20Supplemental%20Action%20for%20CFH%20Red%20Snapper%20Split%20Season[1].pdf) (accessed January 21, 2015).

Appendix 1: Selection Between Lesser of 75% of MFMT or FREBUILD



