

Subject: Amberjack 34 inches

Date: Tuesday, March 31, 2015 at 9:24:44 PM Eastern Daylight Time

From: Stewart Miller

To: Gulf Council

Stewart Miller charterboat great escape Panama City Florida I do not like the 34 inch amberjack I would rather be at 30 the mortality rate will be too high at 34 inches we will catch the quota very fast and will have a very Short season Open the amberjack in the spring close it in June if we have not caught the quota reopen it in August I need the amberjack to be open in the spring time for my business

Sent from my iPhone

Subject: amberjack season and length

Date: Tuesday, March 31, 2015 at 9:08:21 PM Eastern Daylight Time

From: Shawn McGowan

To: Gulf Council

Do not change the length and season dates for Amberjacks. As a charter boat owner the proposed season dates would damage my ability to make a living. With other species closures in the spring there is not much else to fish for.

Shawn McGowan
McGowan Charters

Subject: Amberjack season and length

Date: Tuesday, March 31, 2015 at 9:06:35 PM Eastern Daylight Time

From: Dana McGowan

To: Gulf Council

Do not change the length and season dates for Amberjacks. As a charter boat owner the proposed season dates would damage my ability to make a living. With other species closures in the spring there is not much else to fish for.

Dana McGowan

Subject: Amberjack

Date: Tuesday, March 31, 2015 at 9:05:55 PM Eastern Daylight Time

From: Sherri Sullivan

To: Gulf Council

I would like to see the amberjack season open in the spring and closed in the June for as long as it has to be closed so we do not go over the quota. I am against the 34 inch size limit I like to see it stay at 30 inches.

Thank you

Sherri Sullivan

Sent from my iPhone

Subject: Amberjack season and length

Date: Tuesday, March 31, 2015 at 9:04:54 PM Eastern Daylight Time

From: Dana McGowan

To: Gulf Council

Do not change the length and season dates for Amberjacks. As a charter boat owner the proposed season dates would damage my ability to make a living. With other species closures in the spring there is not much else to fish for.

Dana McGowan
McGowan Charters

Subject: DO NOT CHANGE AMBERJACK SEASON

Date: Tuesday, March 31, 2015 at 8:55:07 PM Eastern Daylight Time

From: Bj Burkett

To: Gulf Council

To whom it may concern.

I am opposed to changing the amberjack season. As a charter boat owner and operator we need this species, open in the spring to be able to offer our customers something they want to catch. When almost everything else is closed. Please keep the spring months open and the June and July closure!!

We also need the smallest size limit possible. If the size limit goes up we will rarely catch large enough amberjack to harvest on our shorter trips. Thanks for your time.

Capt BJ Burkett

850 774 8333

Sent from my iPhone

Subject: Fwd: Amberjack

Date: Tuesday, March 31, 2015 at 8:53:47 PM Eastern Daylight Time

From: Michael Sullivan

To: Gulf Council

Sent from my iPhone

Begin forwarded message:

From: Michael Sullivan <captmikechartersweb@gmail.com>

Date: March 31, 2015 at 6:58:13 PM CDT

To: "info@gulfcouncil.org" <info@gulfcouncil.org>

Subject: Amberjack

I am a owner operator or two US Coast Guard certified boat in Panama City Fl. I am NOT in favor of the March-May closer. That will make it to where we will not have anything we can catch and keep in the spring. I would like to see it closed June- when ever it needs to be to be able to keep the jacks at 30 inches. If we go the a 34 inch size limit the season will only get shorter and shorter from the fish getting to big and us reaching the quota faster and the mortality rate. We all know those big fish do not live real well when they are released.

Thank you

Capt Mike Sullivan

Sent from my iPhone

Subject: Amberjack

Date: Tuesday, March 31, 2015 at 7:58:13 PM Eastern Daylight Time

From: Michael Sullivan

To: Gulf Council

I am a owner operator or two US Coast Guard certified boat in Panama City Fl. I am NOT in favor of the March-May closer. That will make it to where we will not have anything we can catch and keep in the spring. I would like to see it closed June- when ever it needs to be to be able to keep the jacks at 30 inches. If we go the a 34 inch size limit the season will only get shorter and shorter from the fish getting to big and us reaching the quota faster and the mortality rate. We all know those big fish do not live real well when they are released.

Thank you

Capt Mike Sullivan

Sent from my iPhone

Subject: Amberjack

Date: Tuesday, March 31, 2015 at 7:43:29 PM Eastern Daylight Time

From: Holly

To: Gulf Council

I am not in favor of the March-May closure. I would like it to be closed in summer and fall. We need something to catch and keep in the spring. I not in favor of the 34 in size limit. I would like it to be closed a extra month or two so we can lower the size limit. Once all of the jacks get caught up with the 34 inch size limit we will reach the quota way too fast like we do with the red snapper.

Thank you

Capt Wes Davis

Sent from my iPhone

Subject: New message from your mobile website, 03609da.mynetworksolutions.mobi

Date: Monday, March 23, 2015 at 10:24:37 PM Eastern Daylight Time

From: Mobile Alerts

To: Gulf Council

Subject: amberjack season and limits

Message: I would rather see the season stay the same and increase size to 32 inches and lower commercial to 1500 lbs per trip

Email: jason.utesch@williams.com

Phone: 2515540255

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



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727.895.8652 Facsimile
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March 27, 2015

Kevin Anson
Chair, Gulf of Mexico Fishery Management Council
Alabama Department of Conservation and Natural Resources
Marine Resources Division
P.O. Box 189
Dauphin Island, Alabama 36528

RE: Federal Register Notice Identifying Gulf of Mexico Greater Amberjack as Overfished and Undergoing Overfishing and Mandating Rebuilding Progress (80 FR 12621).

Dear Chairman Anson:

Ocean Conservancy¹ is writing to draw attention to the recent Federal Register notice pertaining to Gulf of Mexico greater amberjack that identifies the overfished and overfishing status and that requires the stock to be rebuilt.² We urge the Council to take several immediate steps: (1) to implement measures to immediately end overfishing of greater amberjack, (2) to identify a rebuilding date so that the Council can then select legally compliant catch limits that will be effective at rebuilding the stock, and (3) to act immediately to implement measures necessary to achieve rebuilding in the shortest time possible. We also urge the Gulf of Mexico Fishery Management Council to include this notice (excerpted and included in Appendix 1 below) in the briefing book for the upcoming meeting in Biloxi, Mississippi, along with the corresponding statutory language pertaining to Magnuson-Stevens Act rebuilding plan requirements (included in Appendix 2).

Greater amberjack in the Gulf of Mexico is a popular recreational game fish and a targeted commercial stock. Landings of greater amberjack in the Gulf peaked during the 1980s and it was declared overfished in 2000. A rebuilding plan was implemented in 2003 with a rebuilding target date of 2010, but no later than 2012.³ However, stock assessments in 2006 and 2011 found that greater amberjack was still overfished and subject to overfishing.⁴ Despite a few management changes through

¹ Ocean Conservancy, a non-profit organization with offices in Florida, Louisiana, Texas, California, Oregon, Alaska, and Washington, D.C., 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.

² 80 Fed. Reg. 12621 (Mar. 10, 2015).

³ Gulf of Mexico Fishery Management Council (GMFMC), *Secretarial Amendment 2 to the Reef Fish Fishery Management Plan to Set Greater Amberjack Sustainable Fisheries Act Targets and Thresholds and to Set a Rebuilding Plan*, at 46 (Nov. 2002). See also, Gulf of Mexico Fishery Management Council, *Options Paper: Modifications to Greater Amberjack Allowable Harvest and Management Measures*, at 1 (Aug. 14, 2014).

⁴ Southeast Fisheries Science Center, *Southeast Data, Assessment, and Review – Stock Assessment Report 09, Gulf of Mexico Greater Amberjack*, at 14 (Mar. 2006); Southeast Fisheries Science Center, *Southeast Data, Assessment, and Review – Stock Assessment Update Report 09, Gulf of Mexico Greater Amberjack*, at 8 (Feb. 2011).

the course of the rebuilding plan, the stock has failed to meet its rebuilding deadline and currently is without a rebuilding plan, despite its well-documented overfishing and overfished status.

The Magnuson-Stevens Act contains powerful mandates to end overfishing and rebuild overfished stocks. NMFS must identify overfished stocks on an annual basis and immediately notify the Regional Fishery Management Council when a stock under that Council's jurisdiction is determined to be overfished.⁵

The rebuilding plan must be designed to rebuild the stock in as short a time possible; that time may not exceed 10 years except in the case of certain exceptions that do not apply to greater amberjack.⁶ If the stock does not make adequate progress towards rebuilding while the rebuilding plan is in place, fishery managers are expected to revise measures so that the stock is rebuilt by the rebuilding deadline.⁷

The MSA requires NMFS to conduct routine reviews of existing rebuilding plans at intervals not to exceed two years to ensure that adequate progress is being achieved in removing overfished status and in ending overfishing.⁸ If the stock is not rebuilt by the end of the rebuilding plan period, fishery managers may not increase fishing mortality. Instead they are to limit fishing mortality to the lower of two rates: 75% of the maximum fishing mortality rate ("MFMT") or the fishing mortality rate ("F") that would rebuild the stock within a specified time frame ("F_{REBUILD}").⁹ Currently the council has not established a new rebuilding plan for the stock and as such a specified time frame for rebuilding is unknown.

In light of the recent aforementioned Federal Register notice pointing out the need for rebuilding of the greater amberjack stock as well as the explicit requirements for rebuilding timeframes within the MSA and its implementing regulations, Ocean Conservancy urges the council establish a new rebuilding timeframe for greater amberjack by creating a new rebuilding plan. This will ensure compliance with the MSA and formalize potential conservation benefits contemplated in the existing framework adjustment.

We urge the inclusion of this information in the briefing book. Please feel free to contact the undersigned directly should you have any questions or concerns.

Sincerely,

s/ Jon Paul S. Brooker, J.D.

Policy Analyst, Fish Conservation Program

jbrooker@oceanconservancy.org

727.286.0338

cc: Roy Crabtree, NMFS Southeast Regional Administrator
Mara Levy, NMFS Southeast Regional Office General Counsel
Doug Gregory, Gulf of Mexico Fishery Management Council Executive Director
Charlotte Schiaffo, GMFMC Research and Human Resource Librarian

⁵ 16 U.S.C. § 1854(e)(1)-(2); 50 C.F.R. § 600.310(j)(1).

⁶ *Id.* at § 1854(e)(4)(A).

⁷ 50 C.F.R. § 600.310(j)(3)(ii).

⁸ 16 U.S.C. §1854(e)(7).

⁹ 50 C.F.R. § 600.310(j)(3)(ii).

Appendix 1: March 10, 2015 Federal Register Notice

“NMFS has determined that the Gulf of Mexico stocks of Greater Amberjack and Grey Triggerfish are subject to overfishing and that Greater Amberjack continues to be in an overfished condition. The Gulf of Mexico Fishery Management Council (GMFMC) has been informed that they must end overfishing on these two stocks and that they must continue to rebuild the stock of Greater Amberjack.”

Appendix 2: MSA Rebuilding Plan Requirements

304(e) REBUILDING OVERFISHED FISHERIES.—

(1) The Secretary shall report annually to the Congress and the Councils on the status of fisheries within each Council's geographical area of authority and identify those fisheries that are overfished or are approaching a condition of being overfished. For those fisheries managed under a fishery management plan or international agreement, the status shall be determined using the criteria for overfishing specified in such plan or agreement. A fishery shall be classified as approaching a condition of being overfished if, based on trends in fishing effort, fishery resource size, and other appropriate factors, the Secretary estimates that the fishery will become overfished within two years.

(2) If the Secretary determines at any time that a fishery is overfished, the Secretary shall immediately notify the appropriate Council and request that action be taken to end overfishing in the fishery and to implement conservation and management measures to rebuild affected stocks of fish. The Secretary shall publish each notice under this paragraph in the Federal Register.

(3) Within 2 years after an identification under paragraph (1) or notification under paragraphs (2) or (7), the appropriate Council (or the Secretary, for fisheries under section 302(a)(3)) shall prepare and implement a fishery management plan, plan amendment, or proposed regulations for the fishery to which the identification or notice applies—

- (A) to end overfishing immediately in the fishery and to rebuild affected stocks of fish; or
- (B) to prevent overfishing from occurring in the fishery whenever such fishery is identified as approaching an overfished condition.

(4) For a fishery that is overfished, any fishery management plan, amendment, or proposed regulations prepared pursuant to paragraph (3) or paragraph (5) for such fishery shall—

- (A) specify a time period for rebuilding the fishery that shall—
 - (i) be as short as possible, taking into account the status and biology of any overfished stocks of fish, the needs of fishing communities, recommendations by international organizations in which the United States participates, and the interaction of the overfished stock of fish within the marine ecosystem; and
 - (ii) not exceed 10 years, except in cases where the biology of the stock of fish, other environmental conditions, or management measures under an international agreement in which the United States participates dictate otherwise;
- (B) allocate both overfishing restrictions and recovery benefits fairly and equitably among sectors of the fishery; and

(C) for fisheries managed under an international agreement, reflect traditional participation in the fishery, relative to other nations, by fishermen of the United States.

(5) If, within the 2-year period beginning on the date of identification or notification that a fishery is overfished, the Council does not submit to the Secretary a fishery management plan, plan amendment, or proposed regulations required by paragraph (3)(A), the Secretary shall prepare a fishery management plan or plan amendment and any accompanying regulations to stop overfishing and rebuild affected stocks of fish within 9 months under subsection (c).

(6) During the development of a fishery management plan, a plan amendment, or proposed regulations required by this subsection, the Council may request the Secretary to implement interim measures to reduce overfishing under section 305(c) until such measures can be replaced by such plan, amendment, or regulations. Such measures, if otherwise in compliance with the provisions of this Act, may be implemented even though they are not sufficient by themselves to stop overfishing of a fishery.

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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

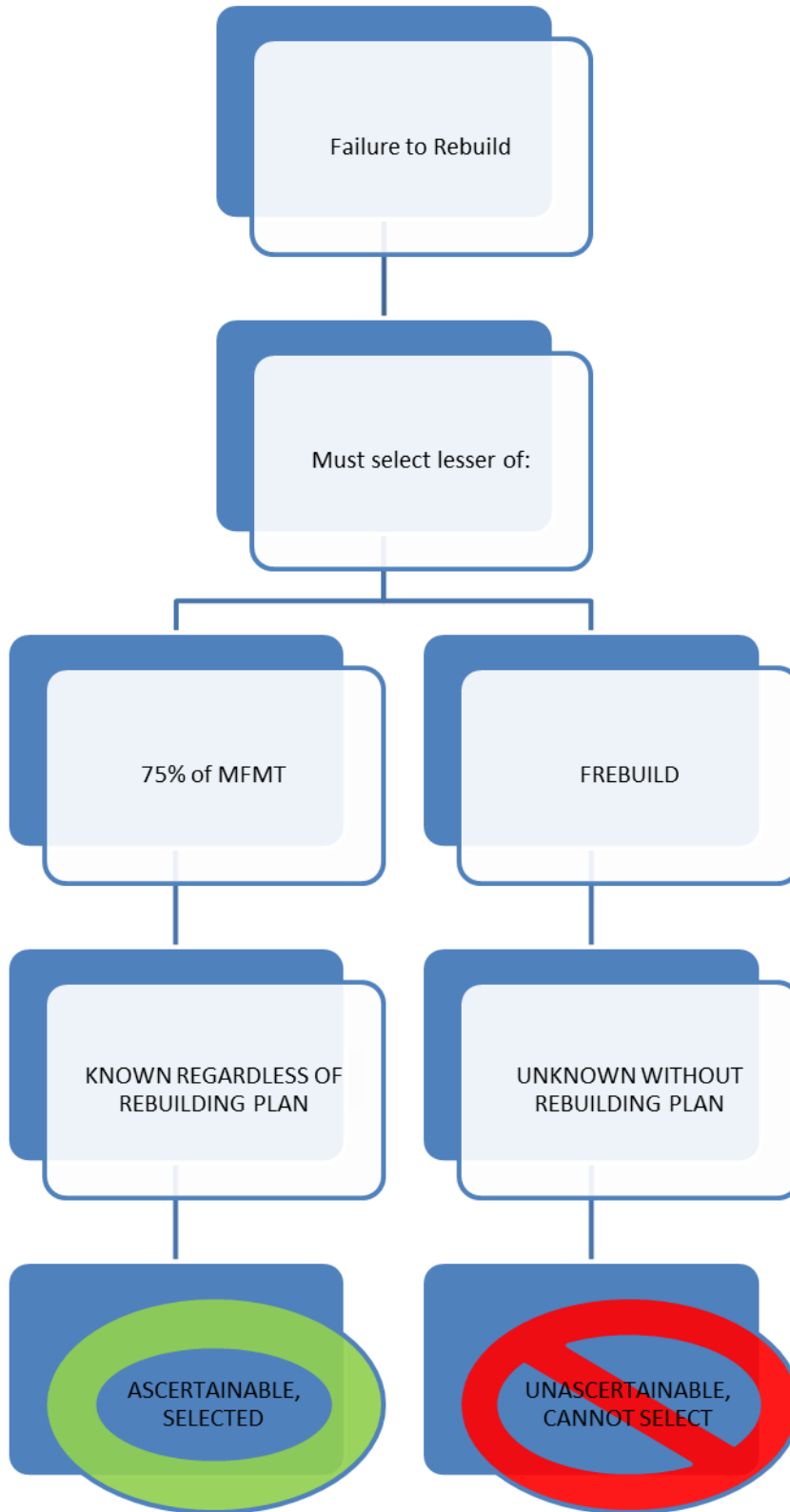
727.369.6613

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





Via Electronic Mail

October 20, 2014

Doug Gregory, Executive Director
Gulf of Mexico Fishery Management Council
2203 N Lois Avenue
Suite 1100
Tampa, Florida 33607
doug.gregory@gulfcouncil.org

Kevin Anson, Chair
Gulf of Mexico Fishery Management Council
Alabama Department of Conservation and Natural Resources
Marine Resources Division
P.O. Box 189
Dauphin Island, Alabama 36528
Kevin.Anson@dcnr.alabama.gov

Dr. Roy Crabtree, Director
NMFS Southeast Regional Office
263 13th Avenue South
Saint Petersburg, Florida 33701
roy.crabtree@noaa.gov

Subj.: Ending Overfishing and Rebuilding Greater Amberjack

Dear Mr. Gregory, Mr. Anson, and Dr. Crabtree:

Earthjustice is concerned that greater amberjack remains overfished and undergoing overfishing more than a decade after rebuilding efforts were initiated for the species. In order to remedy this problem, the Council – and/or the National Marine Fisheries Service (“NMFS”), if necessary – must take several steps. First, they must implement measures immediately to end overfishing of greater amberjack. Second, they must identify a rebuilding date so that they can select legally compliant catch limits that will finally be effective in rebuilding the species. Third, fishery managers must act immediately to implement measures necessary to achieve rebuilding in the shortest time possible.

The Magnuson-Stevens Fishery Conservation and Management Act (“MSA”) requires that any fishery management plan end overfishing and rebuild overfished stocks. 16 U.S.C. §§ 1851(a)(1); 1853(a)(1). A core purpose of the MSA is to foster “immediate” action to conserve and manage fish stocks, including actions necessary or useful in rebuilding those stocks. *Id.* at §§ 1801(b)(1) and 1802(5).

The MSA requires NMFS to identify overfished stocks on an annual basis and immediately notify a Regional Fishery Management Council when a stock under that Council's jurisdiction is determined to be overfished. 16 U.S.C. § 1854(e)(1)-(2); 50 C.F.R. § 600.310(j)(1). Within two years of a stock being identified as overfished or the Council being notified of that status, the Council must implement measures to end overfishing immediately and rebuild the stock. 16 U.S.C. § 1854(e)(3). Should the Council fail to implement such measures within the 2-year period beginning with identification or notification of the stock's overfished status, NMFS is required to develop and implement its own rebuilding plan within 9 months. *Id.* at § 1854(e)(5).

The rebuilding plan must be designed to rebuild the stock in as short a time possible; that time may not exceed 10 years except in the case of certain exceptions that do not apply to greater amberjack. *Id.* at § 1854(e)(4)(A). If the stock does not make adequate progress towards rebuilding while the rebuilding plan is in place, fishery managers are expected to revise measures so that the stock is rebuilt by the rebuilding deadline. 50 C.F.R. § 600.310(j)(3)(ii). If the stock is not rebuilt by the end of the rebuilding plan period, fishery managers may not increase fishing mortality. Instead they are to limit fishing mortality to the lower of two rates: 75% of the maximum fishing mortality rate ("MFMT") or the fishing mortality rate ("F") that would rebuild the stock within a specified time frame ("F_{rebuild}"). *Id.*

Greater amberjack was identified as an overfished stock in 2000. In 2003, NMFS promulgated a secretarial fishery management plan amendment to implement a rebuilding plan for the stock, which was supposed to rebuild the stock in 7 years. In 2008, when it was apparent that the rebuilding plan was not making adequate progress, the Council implemented Amendment 30A to establish annual catch limits and accountability measures that were supposed to rebuild the stock by 2012. Yet in 2012, greater amberjack remained overfished. NMFS's annual reports on the status of U.S. fish stocks for 2011 and 2012 identified greater amberjack as overfished and undergoing overfishing. The stock has remained overfished since that time. In point of fact, this status of this stock has not improved – or even shown real promise of improving – since rebuilding measures were originally put in place in 2003.

Per MSA requirements, the Council should have implemented additional or revised rebuilding measures when it became clear (once again) in 2011 that greater amberjack was still overfished and not making adequate progress towards the 2012 rebuilding date. Instead, the Council and NMFS allowed the rebuilding period to end unsuccessfully without taking additional measures or choosing a new rebuilding date. By failing to carry out their rebuilding obligations under the MSA, NMFS and the Council have already violated the law.

Even if one interpreted the MSA to grant the Council another 2 years to implement a new rebuilding plan after it became aware that greater amberjack was still overfished (an interpretation we do not believe is correct), that time period has passed. The Council has been on notice since the end of revised rebuilding period in 2012 that greater amberjack is overfished. Two years have passed. The Council must implement rebuilding measures immediately or, if not, NMFS must step in and implement its own measures.

We recognize that the Council has proposed to adjust annual catch limits for greater amberjack in order to end overfishing. However, we remain concerned that these adjusted limits may fail

once again to end overfishing and rebuild the stock. One of our primary concerns is that the Council is only considering one of the two approaches to rebuilding recommended under NMFS's National Standard One guidelines – setting fishing rates equal to 75 percent of the maximum fishing mortality threshold. However, the guidelines specify that fishing rates should be set at the *lower* of 75% MFMT or F_{rebuild} – the fishing mortality rate that would rebuild the stock within as short a time frame as possible (less than 10 years in this case). 50 C.F.R. § 600.310(j)(3)(ii). Neither the Council nor NMFS has analyzed what F_{rebuild} should be for greater amberjack. Indeed, fishery managers have not taken the basic step of specifying a revised rebuilding date for this stock. Without this analysis, neither the Council nor NMFS has any basis to determine whether fishing mortality is being constrained at a legally and scientifically appropriate level.

The failure to analyze the F_{rebuild} scenario also renders inadequate the draft environmental assessment underlying the October 2014 greater amberjack management options paper. Under the National Environmental Policy Act (“NEPA”), NMFS must analyze a reasonable range of alternatives, including those that are necessary to comply with legal requirements. The Council's options paper and alternatives analysis currently omits the analysis necessary to determine what catch limits would be consistent with F_{rebuild} , and whether those catch limits would be lower than those set to reflect 75% MFMT. The failure to analyze multiple approaches to setting catch limits is especially troubling given that most of the annual catch limits options currently before the Council are not drastically different from the limits that have failed to rebuild the stock in recent years – and, in fact, would allow *increases* in catch levels without any evidence that such increases would end overfishing or rebuild the stock. Failing to conduct a full analysis consistent with the MSA and National Standard One guidelines could render the Council's and NMFS's decision arbitrary and capricious, and not in accordance with the MSA or NEPA.

We therefore call upon the Council to immediately specify a rebuilding date that is as short as possible given the biology of greater amberjack, conduct the analysis to determine an appropriate F_{rebuild} , and set annual catch limits in reference to the lower of F_{rebuild} or 75% MFMT. In addition, we urge the Council to adopt strong accountability measures, including annual catch targets with substantial buffers, to reduce the likelihood that management uncertainty will continue to foster overfishing as it has in the past.

Thank you for your consideration. We look forward to your expeditious progress on these matters.

Sincerely,

/s/

Andrea A. Treece
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