

# Texas Management for Recreational Red Snapper



## Draft Amendment to the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico

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## **ABBREVIATIONS USED IN THIS DOCUMENT**

ACL	annual catch limit
ACT	annual catch target
AM	accountability measure
CEP	Conservation Equivalency Plan
Council	Gulf of Mexico Fishery Management Council
FMP	Reef Fish Fishery Management Plan
Gulf	Gulf of Mexico
Magnuson-Stevens Act	Magnuson-Stevens Fishery Conservation and Management Act
NEPA	National Environmental Policy Act
NMFS	National Marine Fisheries Service
SMZ	special management zone
State Management Amendment	State Management Program for Recreational Red Snapper Amendment

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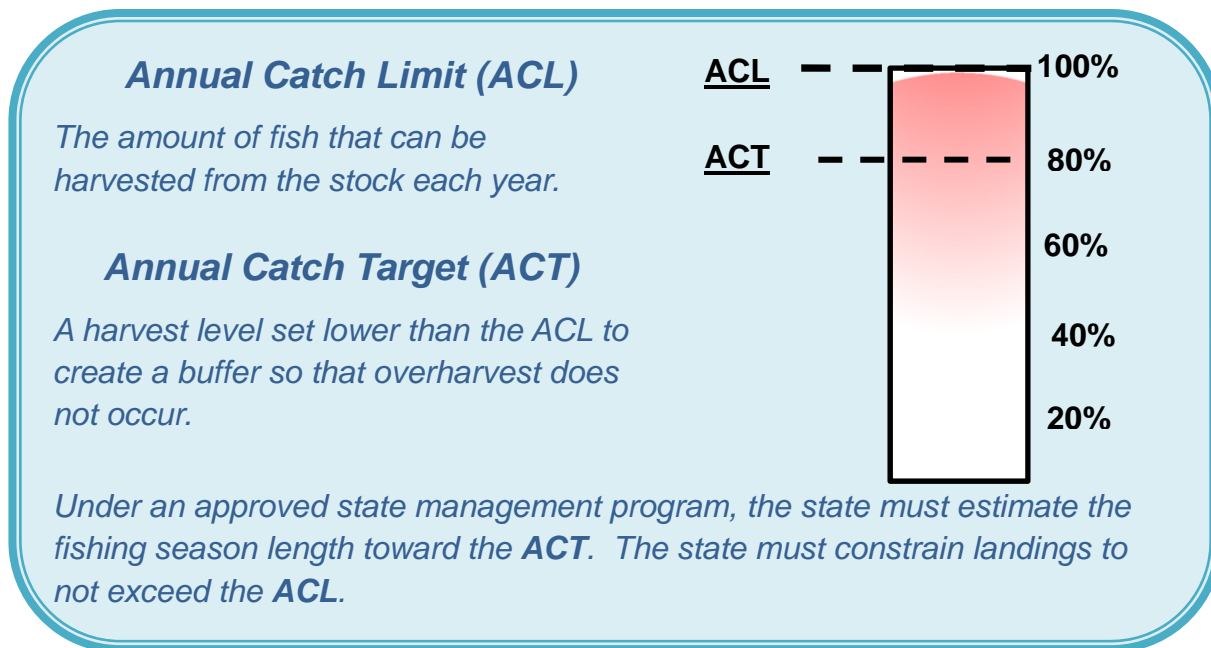
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# CHAPTER 1. INTRODUCTION

## 1.1 Background

From 1996 – 2014, the recreational fishing season for red snapper in federal waters became progressively shorter. Despite regular increases in the recreational annual catch limit (ACL) since 2010 (Table 1.1.1), shorter federal seasons have continued as the quota continues to be caught in a shorter amount of time and inconsistent state water seasons became longer. In 2015, sector separation was implemented, changing how recreational red snapper fishing is prosecuted as the sector was divided into a private angling component and a federal for-hire component. Separate fishing seasons are established for each component based on the component annual catch targets (ACT), which are reduced from the recreational sector’s red snapper ACL by the established buffer.

Currently, the recreational harvest of red snapper in federal waters of the Gulf of Mexico (Gulf) is constrained by a 2-fish bag limit, 16-inch total length minimum size limit, and a fishing season that begins on June 1 and closes when the ACT of each recreational component (i.e., private angling and federal for-hire) is projected to be caught.



Fishermen from different areas of the Gulf have requested more flexibility in recreational red snapper management so that regulations provide greater socioeconomic benefits to their particular area. Referred to in this amendment as *state management*, the devolution of some federal management authority to Texas is being explored as a way to provide greater flexibility in the management of recreational red snapper.

A state management program would enable Texas to establish the recreational regulations (specifically bag limits and season dates) for its anglers, in contrast to uniform recreational regulations applied to all anglers fishing in federal waters in the Gulf. In the State Management Program for Recreational Red Snapper Amendment (State Management Amendment), the Gulf of Mexico Fishery Management Council (Council) would establish the program for individual Gulf States to adopt state management. The State Management Amendment consists of actions addressing 1) the components of the recreational sector that would be included under a state's management program; and 2) the apportionment of the recreational red snapper ACL among the Gulf States.

This Texas Management for Recreational Red Snapper Amendment contains actions to define a state management program for the recreational harvest of red snapper in Texas's state waters and adjacent federal waters. The first action proposes two approaches for implementing state management: the *delegation* of limited authority to Texas to specify management measures or the use of a *conservation equivalency plan* (CEP), in which Texas would specify the management measures to be used to constrain harvest to Texas's portion of the recreational sector ACL (established in the State Management Amendment). Under either approach, Texas would select the management measures most appropriate for management of its portion of the stock based on the fishing preferences of Texas anglers. For example, Texas specific regulations could accommodate the local differences in tourist seasons or weather conditions from other parts of the Gulf, thereby optimizing fishing opportunities. The second action addresses post-season accountability measures (AMs) to determine the action to take in the event the Texas harvest of red snapper exceeds Texas's portion of the recreational sector ACL. Texas would establish the specific regulations pertaining to the bag limit and season structure, using the process for the selected approach (delegation or CEP).

Although a state management program would allow for the establishment of certain management measures most suited to the state, state management may not result in additional fishing days, particularly if Texas establishes its season when fishing effort is greatest. However, providing Texas with the flexibility to establish some management measures is expected to result in social and economic benefits by providing optimal fishing opportunities from the state's portion of the recreational ACL. Nevertheless, proposed state management measures must achieve the same conservation goals as the current federal management measures (i.e., constrain landings of participating fishermen to Texas's allocated portion of the recreational sector ACL).

Under state management, red snapper would remain a federally managed species. The Council and the National Marine Fisheries Service (NMFS) would continue to oversee management of the stock. This includes continuing to comply with the mandate to ensure the red snapper recreational ACL is not exceeded and that conservation objectives are achieved. The Council's Scientific and Statistical Committee would continue to determine the acceptable biological catch for red snapper, while the Council and NMFS would determine the total recreational sector ACL and ACT, a portion of which would be allocated to Texas. All federal regulations for the harvest of red snapper would remain effective. The existing bag limit and season start date would be designated the default federal regulations, and would be applicable for all states that do not have an approved state management program. Upon Texas's state management program approval and implementation, an exemption from the default federal regulations would be made for Texas's

bag limit and fishing season for red snapper landed in the state from both federal and state waters. NMFS would retain authority for the remaining management regulations including implementing ACL adjustments, regulating federal permits, and managing the commercial red snapper individual fishing quota program.

### **ACL and ACT Designations**

Amendment 40 (GMFMC 2014) established two components within the recreational sector for the harvest of red snapper: a private angling and a federal for-hire component, and apportioned the recreational sector ACL between the components. The final rule specified component ACTs, which are reduced from the component ACLs (component quotas) by the established buffer (currently 20%). Thus, there are component ACLs (component quotas) and component ACTs.

If Texas's state management is approved and implemented, the portion of each component ACL designated for Texas through the State Management Amendment would become the Texas component ACLs (the component ACLs could be combined, if Texas chooses to manage the components together). The Texas combined ACLs would be deducted from the recreational sector ACL. Texas's component ACLs (or Texas total recreational ACL) will be reduced by the established buffer, resulting in a Texas ACT for each component (or both components combined). Texas will estimate its season length based on its component ACTs (or total ACT), and must constrain landings to the Texas ACL.

Section 407(d) of the Magnuson-Stevens Fishery Conservation and Management Act mandates that separate quotas be established for commercial fishing and recreational fishing, which includes both the private angling and federal for-hire components. When the recreational sector ACL is reached, further harvest of red snapper is prohibited for the duration of the year. This means that even if a state under a state management program has remaining quota, the state must close its fishing season and prohibit further harvest of red snapper once the recreational sector ACL is determined to have been met.

### **Description of Boundaries between States**

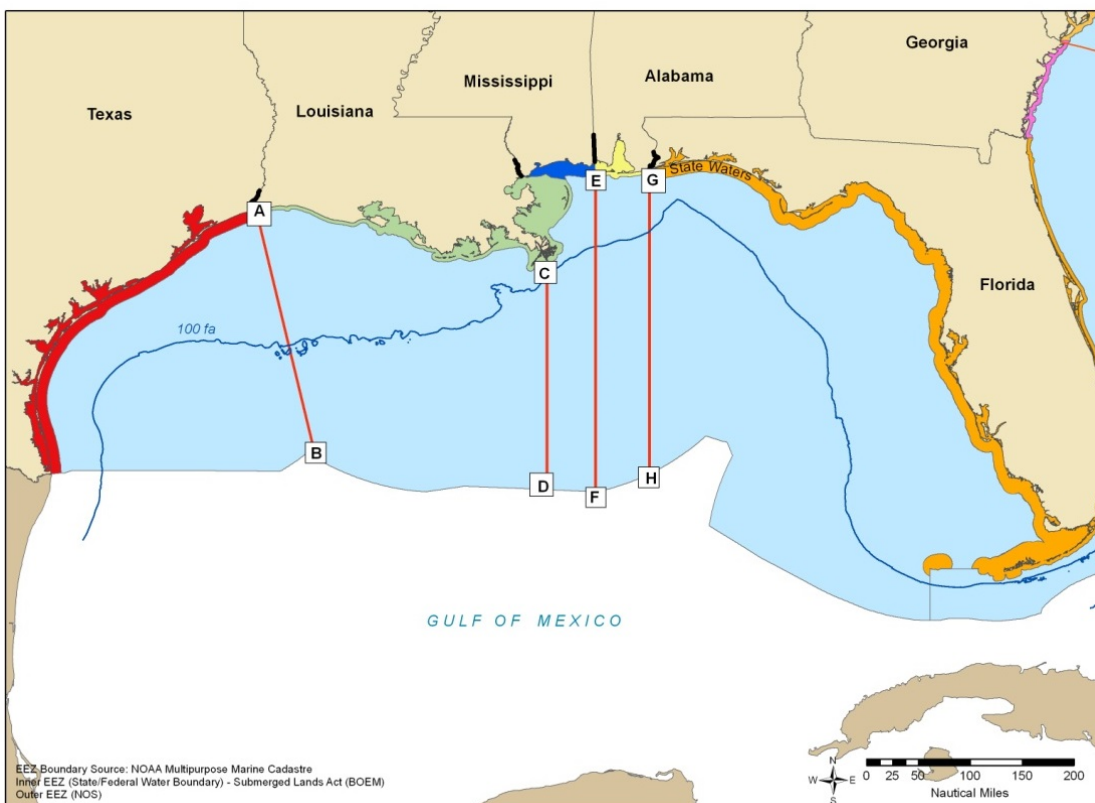
The boundaries in Figure 1.1.1 were agreed upon by the representatives from each state marine resource agency at the February 2013 Council meeting and would represent the boundaries between states for the purpose of any state having an active state management program. However, prior to the 2016 season, the U.S. Congress included language in the 2016 Department of Commerce Appropriations Act that extended red snapper management jurisdiction for Alabama, Mississippi, and Louisiana from 3 nm from shore out to 9 nm from shore. Under subsequent continuing resolutions, this jurisdictional extension remained in effect during summer 2017. Nevertheless, it is unclear if Congress will make this a permanent boundary.

All lines begin at the boundary between state waters and federal waters. Line A-B, defining federal waters off Texas, is already codified as a line from 29°32.1' N latitude, 93°47.7' W longitude to 26°11.4' N latitude, 92°53.0' W longitude, which is an extension of the boundary between Louisiana and Texas (50 CFR 622.2). Likewise, line G-H, defining federal waters off Florida, is codified as a line at 87°31.1' W longitude extending directly south from the



Alabama/Florida boundary (50 CFR 622.2). The other two lines have not been codified, but were agreed upon by the Council. Line E-F is a line at 88°23.1' W longitude extending directly south from the boundary between Alabama and Mississippi.

Line C-D is a line at 89°10.0' W longitude extending directly south from the South Pass Light in the Mississippi River delta in Louisiana. Unlike the other lines, this line is not based on the boundary between Louisiana and Mississippi because doing so would be impracticable. Louisiana has jurisdiction over the Chandeleur Islands, which extend into waters south of Mississippi. A line based on the state waters boundary just north of the islands could result in inequitable impacts on Mississippi anglers as it would identify federal waters that are off both Mississippi and Louisiana as being exclusively off Louisiana. A line based on the state land boundary would be even further west and would reduce the extent of federal waters off Louisiana. Therefore, this line was considered a fair compromise by representatives of both states.



**Figure 1.1.1.** Map of state waters (shaded in color for each State) with established and proposed boundaries between states extending into federal waters. Federal waters adjacent to a state refer to the portion of federal waters bounded by the state’s waters and the boundary line(s) shown in the figure that separate federal waters off of each state. State waters off Louisiana, Mississippi, and Alabama reflect the boundaries prior to the 2016 extension to 9 nm.

## 1.2 Purpose and Need

The **purpose** of this action is to give the state of Texas the flexibility to establish certain management measures for the recreational harvest of red snapper by Texas anglers.

The **need** is to reconsider the management of the recreational harvest of red snapper within the context of the states of the Gulf: to prevent overfishing while achieving, on a continuing basis, the optimum yield from the harvest of red snapper by the recreational sector<sup>1</sup>; take into account and allow for variations among, and contingencies in the fisheries, fishery resources, and catches<sup>2</sup>; and provide for the sustained participation of the fishing communities of the Gulf and to the extent practicable, minimize adverse economic impacts on such communities<sup>3</sup>.

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<sup>1</sup> National Standard 1 [https://www.ecfr.gov/cgi-bin/text-idx?SID=71b8c6026001cb90e4b0925328dce685&mc=true&node=se50.12.600\\_1310&rgn=div8](https://www.ecfr.gov/cgi-bin/text-idx?SID=71b8c6026001cb90e4b0925328dce685&mc=true&node=se50.12.600_1310&rgn=div8)

<sup>2</sup> National Standard 6: [https://www.ecfr.gov/cgi-bin/retrieveECFR?gp=&SID=6b0acea089174af8594db02314f26914&mc=true&r=SECTION&n=se50.12.600\\_1335](https://www.ecfr.gov/cgi-bin/retrieveECFR?gp=&SID=6b0acea089174af8594db02314f26914&mc=true&r=SECTION&n=se50.12.600_1335)

<sup>3</sup> National Standard 8: [https://www.ecfr.gov/cgi-bin/retrieveECFR?gp=&SID=6b0acea089174af8594db02314f26914&mc=true&r=SECTION&n=se50.12.600\\_1345](https://www.ecfr.gov/cgi-bin/retrieveECFR?gp=&SID=6b0acea089174af8594db02314f26914&mc=true&r=SECTION&n=se50.12.600_1345)

## CHAPTER 2. MANAGEMENT ALTERNATIVES

### 2.1 Action 1 – Authority Structure for State Management

**Alternative 1:** No Action – Retain current federal regulations for management of recreational red snapper in federal waters of the Gulf of Mexico (Gulf).

**Alternative 2:** Establish a management program that **delegates** some management authority in federal waters to Texas. Texas must establish the red snapper season structure and bag limit for the harvest of its assigned portion of the recreational sector annual catch limit (ACL). If Texas’s red snapper harvest plan is determined to be inconsistent with the requirements of delegation, the recreational harvest of red snapper in the federal waters adjacent to Texas would be subject to the default federal regulations for red snapper.

**Alternative 3:** Establish a management program that **delegates** management authority in federal waters to Texas. The scope of authority to include in the delegation to Texas must be defined. If Texas red snapper harvest plan is determined to be inconsistent with the requirements of delegation, the recreational harvest of red snapper in the federal waters adjacent to Texas would be subject to the default federal regulations for red snapper.

**Alternative 4:** Establish a management program in which Texas submits a plan to the National Marine Fisheries Service (**NMFS**) describing the **conservation equivalency** measures Texas will adopt for the management of its portion of the recreational sector ACL in federal waters. The plan must specify the red snapper season and bag limit. To be a conservation equivalency plan (CEP), the plan must be reasonably expected to limit the red snapper harvest to Texas’s assigned portion of the recreational sector ACL. If Texas’s plan is determined by NMFS to not satisfy the conservation equivalency requirements, then the recreational harvest of red snapper in the federal waters adjacent to Texas would be subject to the default federal regulations for red snapper.

**Alternative 5:** Establish a management program in which Texas submits a plan to a **technical review committee** describing the **conservation equivalency** measures Texas will adopt for the management of its portion of the recreational sector ACL in federal waters. The plan must specify the red snapper season and bag limit. To be a CEP, the plan must be reasonably expected to limit the red snapper harvest to Texas’s assigned portion of the recreational red snapper ACL. The technical review committee reviews and may make recommendations on the plan, which is either returned to Texas for revision or forwarded to NMFS for final review. If Texas’ plan is determined by NMFS to not satisfy the conservation equivalency requirements, then the recreational harvest of red snapper in the federal waters adjacent to Texas would be subject to the default federal regulations for red snapper.

#### **Discussion:**

**Default federal regulations** refer to the Gulf-wide regulations governing the recreational harvest of red snapper in the Code of Federal Regulations (50 CFR Part 622). To implement state management by delegation or CEPs, the current regulations in the Code of Federal Regulations

(50 CFR Part 622) would need to be suspended for a state while consistent delegation or an approved CEP is in effect. Default federal regulations for the recreational harvest of red snapper would be applied to the federal waters adjacent to the state waters of Texas in the event Texas's delegation is determined to be inconsistent or its CEP is not approved. A different process would be followed for delegation or CEPs, in that delegation would remain in effect unless NMFS determines the delegation is inconsistent (see Appendix A), while CEPs would require a periodic determination that the plan is acceptable and is the conservation equivalent of the default federal regulations.

In the event that the default federal regulations are implemented for Texas, NMFS would publish a notice with the Office of the Federal Register announcing such an action. Currently, the federal regulations include a 2-fish bag limit, minimum size limit of 16 inches total length, and a June 1 season opening; the season closes when the recreational annual catch target (ACT) is projected to be met. These regulations have been established and revised over time through past actions, which considered a variety of alternatives that were analyzed as part of the decision-making process.

In recognition of the stock assessment issues with allowing the states to adopt different minimum size limits for the recreational harvest of red snapper, the Council considered modifying the minimum size limit through the State Management Program for Recreational Red Snapper Amendment. States participating in state management would be required to adopt a minimum size limit consistent with the selected federal minimum size limit. At its August 2017, meeting, the Council removed from further consideration the action to modify the recreational minimum size limit for red snapper, because at that time, the three states with separate state management programs already establish a state minimum size limit that is consistent with the current federal minimum size limit, and were not considering a change at the state level. Immediately after removing the action, the Council moved to begin development of separate state management amendments for Florida and Texas. Because Texas has a different minimum size limit for red snapper for its state waters, the Council may wish to reconsider the action to modify the minimum size limit.

Currently, each Gulf state decides when to open and close its state waters to fishing, while NMFS opens and closes federal waters to fishing consistent with the regulations implementing the Reef Fish Fishery Management Plan (FMP). By adopting state management under delegation or conservation equivalency (**Alternatives 2-5**), consistent regulations would apply to both Texas's state and adjacent federal waters by removing the fixed closed season and bag limit in federal waters adjacent to Texas. To constrain landings to its portion of the recreational sector ACL, Texas would establish the management measures for the recreational harvest of red snapper based on its portion of the recreational ACT, for each component or combined, and would prohibit further landings and possession of red snapper after its portion of the quota has been caught. Enforcement would primarily be carried out dockside. Anglers participating in Texas' state management program may fish in Texas state waters and federal waters adjacent to Texas. When Texas closes its season, further landings or possession of red snapper would be prohibited, from both state and federal waters.

Under all alternatives, the respective permit and/or license requirements for anglers and recreational vessels will remain in place. Anglers fishing from private vessels must comply with the required permit or licensing requirements to possess and land red snapper in Texas. For-hire vessels would not be allowed to harvest red snapper from federal waters without a federal charter vessel/headboat permit for reef fish.

In the event a state bordering Texas has an approved state management program and a fishing season that differs from Texas', federal waters adjacent to Texas could remain open when Texas's fishing season is closed and the bordering state's season is open. This would allow anglers from the bordering state to harvest red snapper in federal waters adjacent to Texas that will be landed in the bordering state and would count against the bordering state's quota. In turn, should Texas's fishing season be open while the bordering state's season is closed, anglers participating in Texas's state management program would be able to harvest red snapper from federal waters adjacent to the bordering state and land the fish in Texas; such fish would count against Texas's quota. To be consistent with National Standard 4 of the Magnuson-Stevens Fishery and Conservation Act (Magnuson-Stevens Act), when federal waters are open or closed adjacent to a state, the opening or closure would apply to all recreational vessels.

By allowing Texas to set its own fishing seasons, Texas could have an open fishing season while a neighboring state's fishing season is closed. Bag limits may also vary among regions. Therefore, enforcement will primarily be conducted dockside. At-sea enforcement could be most complicated near the boundaries between Texas and a bordering state with different management measures, as it could be difficult for enforcement agents to determine which state's jurisdiction applies to a recreational vessel. In these cases, enforcement agents would consider the most liberal of the state's management measures in place at the time, to serve as guidelines for determining regulatory compliance. For example, if no region has a bag limit greater than four red snapper per person per day, then a vessel possessing red snapper in excess of this bag limit, regardless of where in federal waters it is fishing, could be in violation if stopped by enforcement agents.

**Alternative 1** (No Action) would retain current management measures for the recreational harvest of red snapper in federal waters of the Gulf. Currently, these measures include a 2-fish per angler per day bag limit and a June 1 fishing season start date. **Alternatives 2-5** propose different approaches to state management of red snapper by Texas. Under all alternatives, red snapper would remain under federal management jurisdiction, subject to Gulf-wide closure when the recreational sector ACL is met. Essentially, while Texas would be given some management authority to determine the regulations to be applied to anglers participating in Texas' state management program, none of these alternatives provide the complete authority to manage red snapper advocated for by some supporters of state management. Texas would be able to establish the season start and end dates, season structure, and bag limit at the state level. However, Texas must adopt the current federal minimum size limit. The management measures implemented by Texas must adhere to the goals of the rebuilding plan and be consistent with federal and other applicable laws. This currently includes the requirement that season length estimates of the regions be based on the ACT, which is currently reduced by 20% from the ACL.

Under **Alternative 2**, state management is defined as the delegation of limited management authority to a state, which would then establish appropriate management measures to constrain recreational harvest to the state's assigned portion of the recreational sector ACL. The Magnuson-Stevens Act allows for the delegation of management to a state to regulate fishing vessels beyond their state waters, provided its regulations are consistent with the FMP. The delegation of management authority (**Alternative 2**) requires a three-quarters majority vote of the voting members of the Gulf of Mexico Fishery Management Council (Council) members. See Appendix A for additional information on the requirements of delegation including the Secretary of Commerce's procedure for addressing a state's regulations that are deemed inconsistent with the FMP.

Under delegation (**Alternative 2**), the states would have management authority to establish the red snapper fishing season and bag limit. In setting the fishing season, the state would have the flexibility to select the season start date and could establish a fixed closed season, split seasons (e.g., spring and fall season), and alternate season structures (e.g., weekends, only). A state could also establish regional seasons, such as separate fishing seasons for the Florida Panhandle and west Florida. Provided the state constrains its landings of each component to that component's portion of the ACL, a state could establish different seasons and bag limits for each component, if the state is managing both the private angling and federal for-hire components.

**Alternative 3** proposes to delegate authority to manage red snapper beyond establishing the fishing season and bag limit. However, the extent of this expansion must be defined. To delegate management, specific regulations in the Code of Federal Regulations (Appendix B) would need to be modified, removed, or exemptions made for a particular state. Many regulations that apply to the recreational harvest of red snapper are not red snapper specific, but rather, apply to all reef fish or apply to fishing in federal waters, generally. For example, the requirement to use non-stainless steel circle hooks when fishing with natural baits applies to all reef fish, while the provision that bag limits apply to a person on a daily basis, regardless of the number of trips the person takes in a day applies to bag limits in federal waters, generally. Because authority would be delegated only for the management of red snapper, delegating authority for some management measures could become more complicated if a state enacts a regulation that applies to red snapper, but not to other reef fish. Further, the delegation of some management measures may require additional analyses (e.g., National Environmental Policy Act [NEPA] analysis) through a plan amendment.

The following list includes potential modifications to existing regulations affecting the recreational harvest of red snapper that could be delegated to the states as expanded delegation. The list is divided into three sections: 1) regulations that are specific to red snapper, only; 2) regulations that are applicable to all reef fish; and 3) regulations that are general to all fishing in federal waters (Appendix B). The delegation of any management measure must be specific to the recreational harvest of red snapper, only. For example, a state may want to:

#### Red snapper specific

- Remove prohibition on for-hire captains and crew from retaining a bag limit of red snapper.
- Potentially, allow a state to modify the ACT or manage toward the ACL.



## Reef Fish

- Expand required fishing gear beyond the use of non-stainless steel circle hooks when fishing with natural baits and possession of a dehooking device. For example, the Council is considering whether to require possession of descending devices or to develop a policy for the use of descending devices alongside an outreach and education program regarding their proper use.
- Expand the fishing gear and methods that are currently prohibited (i.e., the use of powerheads within the stressed area, and prohibition on use of poisons to harvest reef fish). Additional gear and methods are prohibited in general, including explosives, toxic chemicals, fish traps, and use of reef fish as bait. Similar to the prohibition on certain fishing gear, possession of reef fish exhibiting trap rash or damage from a powerhead is currently prohibited.
- Establish gear restricted areas, similar to Alabama's special management zone (SMZ) within which regulations specific to recreational gear usage could be assigned. These areas could not restrict access by commercial vessels and must apply to all recreational vessels regardless of homeport state.

## General

- Reopen the fishing season if the state's portion of the ACL is determined to not be met, provided the state is able to constrain total landings to its portion of the ACL.
- Allow anglers to possess more than one bag limit per day if making more than one trip per day.

There are several federal regulations that affect the management of red snapper by the recreational sector, which would remain under federal authority. Regulations that affect all states would be difficult to delegate (i.e., the setting of ACLs). Regulations that would remain under federal authority include:

- Federal permits including renewal and transferability requirements, and permit designation as limited access.
- Reporting requirements for for-hire vessels selected by the SRD to participate in the SRHS.
- Sea turtle release protocols and gear; smalltooth sawfish release guidelines.
- Area closures to protect Gulf reef fish within Madison Swanson, Steamboat Lumps, and The Edges. Establishing SMZs or marine protected areas in federal waters that restrict access by commercial vessels.
- Setting ACLs and ACTs for each component.
- Post-season accountability measures (AM), which will be modified in Action 2 to account for state management programs.

Other regulations would not be applicable under delegated authority and would be modified to identify a state's exemption as long as the state's delegation is active. For example, existing regulations for in-season AMs would no longer be applicable as the state would have the authority to establish its own fishing season and to prohibit further harvest when its portion of the quota is estimated to have been met. Further, under an approved state management program for which the state will manage both its private angling and federal for-hire components, the provision that prohibits federally permitted for-hire vessels from possessing red snapper outside of the federal season would no longer be applicable, as there would not be an inconsistency

between state and federal waters. Nevertheless, this regulation applies to all reef fish and would still apply to other reef fish species if state waters are open while federal waters are closed. **Alternative 4** and **Alternative 5** would adopt a process by which Texas submits a CEP describing its intended management measures for the recreational harvest of red snapper. While **Alternatives 4** and **5** would grant less management authority directly to Texas than **Alternatives 2** and **3**, all four alternatives provide flexibility to Texas to modify the season structure and bag limit for the harvest of its designated portion of the red snapper recreational ACL. Nevertheless, whether delegation (**Alternatives 2** and **3**) or conservation equivalency (**Alternatives 4** and **5**) is selected, Texas' management measures must be consistent with the FMP, including the red snapper rebuilding plan and the Magnuson-Stevens Act. Consistency with the FMP requires, among other things, preventing overfishing, rebuilding declining reef fish stocks, monitoring the reef fish fishery, conserving and increasing reef fish habitats, and minimizing conflicts between user groups.

**Alternatives 4** and **5** differ based on the review process for the CEPs. Under **Alternative 4**, Texas would submit its plan directly to NMFS for review while under **Alternative 5**, Texas would first submit its CEP to a technical review committee, which will consist of one member from each state designated by the state fisheries director. The technical review committee would provide the initial review of the CEPs and may make recommendations on the plan, which is either returned to Texas for revision or forwarded to NMFS for final review and approval. Because of the additional time needed for the technical review committee to meet and review the CEPs, **Alternative 5** would potentially entail a longer process for consistency determination than under **Alternative 4**. On the other hand, the process under **Alternative 5** provides for greater participation and input by state-level managers and stakeholders, increasing the involvement of local-level entities in the state management process. The proposed process under **Alternative 5** is more similar to the Mid-Atlantic Fishery Management Council's management of summer flounder than is **Alternative 4**.

In addition to Texas, the Council is evaluating red snapper state management for the remaining Gulf States in separate amendments. In the event all or some of the states have approved state management programs, the sum of all participating states' ACLs (as selected in the State Management Program for Recreational Red Snapper Amendment) would be subtracted from the component ACL (or recreational sector ACL). Non-participating states would continue to be managed under the default federal regulations with the remaining balance of the recreational ACL. NMFS would reduce the ACLs by the established buffer, and establish federal season lengths for each component in federal waters adjacent to all states without an active state management program, based on these ACTs.

### **Requirements of Conservation Equivalency (Alternative 4 and Alternative 5)**

Under **Alternative 4**, Texas would have the opportunity to submit a CEP to establish state management measures, including season start and end dates, season structure, and bag limit, for the recreational harvest of red snapper on a yearly basis. These plans would be reviewed by NMFS to insure the proposed management measures are a conservation equivalent to the federal regulations. Table 2.1.1 provides an example timeline for the submittal and approval of the CEPs under **Alternative 4**. This process would be altered for the first year of the program if this



action is implemented mid-year. Under **Alternative 5**, the CEP would be submitted to the technical review committee and a separate timeline may be established by the committee. However, the established timeline may also be applied for this alternative (Table 2.1.1). The finalized plans with the technical review committee recommendation for approval would need to be submitted to NMFS by November 1 to allow time to publish a notice in the federal register by January 1 identifying Texas with an approved CEP. Without an approved CEP, Texas would be subject to the default federal regulations.

If the proposed management measures extend beyond the range analyzed in this amendment, then NMFS may recommend preparing the appropriate documentation for the applicable laws to support the decision (e.g., NEPA analysis). NMFS would collaborate with Texas in developing the appropriate documentation with the understanding that the development of the document could delay NMFS’ ability to approve the CEP and may need further Council action for implementation.

**Table 2.1.1.** Example timeline for the review of CEPs by NMFS or the technical review committee for **Alternatives 4 and 5**.

<b>Timeline</b>	<b>Description</b>
<b>July 1</b>	The state provides a brief written description of its preliminary CEP for the following year (e.g., the regulations they hope to implement the following year if supported by the current year landings and effort data) to NMFS and the Council. At this time, NMFS may flag any high-level concerns or alternative process requirements (e.g., additional NEPA documentation required if the proposed regulations are outside the scope of analysis this amendment and documentation for other applicable laws).
<b>September 1</b>	The state submits the CEP to NMFS or the Technical Review Committee.
<b>October 1</b>	NMFS or the Technical Review Committee responds to the state with the preliminary determination for whether the plan is a conservation equivalent to the federal default regulations. At this time, NMFS or the Technical Review Committee may approve the plan or request a revised CEP.
<b>October 5</b>	The state provides a revised CEP to NMFS or the Technical Review Committee for approval, if necessary.
<b>November 1</b>	If applicable, the Technical Review Committee provides the recommended state CEP to NMFS for final approval and processing. If the CEP was not approved or the state did not submit a CEP, then the state would be subject to the federal default regulations.
<b>January 1 (or sooner)</b>	NMFS publishes a notice in the federal register identifying the state as having an approved CEP.

Each CEP shall include the following:

- Point of contact for the CEP.
- Point of contact with the authority to close the fishery.
- Proposed CEP including season structure and bag limit.
- Specify if the CEP is intended to be applicable for 1 or 2 years. Prior to approving the second year of the plan, it would be evaluated based on data from the first year. The plan

may require revisions based on the NMFS review. A 2-year CEP could only be approved if there are 2 or more years before the program sunsets (see Action 2).

- Analysis demonstrating the ability of the CEP to constrain recreational harvest of red snapper to the allocated quota with a description of the methodology.
- Summarize the previous year's performance (e.g., was the harvest constrained at or below the state's quota?).
- Explain how the CEP will be enforced.
- If applicable, provide a description of the in-season monitoring program and plan to prohibit further harvest of red snapper if the state's portion of the recreational sector ACL is reached.
- If necessary, provide additional analysis and documentation supporting the proposed CEP, which may include NEPA, Magnuson-Stevens Act, or other applicable laws. This would only apply for CEP management strategies beyond the range analyzed in this amendment.
- Any other supporting documentation for the CEP, such as scientific research.

## 2.2 Action 2 – Post-Season Accountability Measures (AMs)

**Alternative 1:** No Action – Retain the current post-season AMs for managing overages of the respective recreational sector ACL in federal waters of the Gulf. While red snapper is overfished (based on the most recent Status of U.S. Fisheries Report to Congress), if the combined recreational landings exceed the recreational sector ACL, reduce the **recreational sector** ACL and reduce the total recreational quota, and applicable recreational component quota in the following year by the full amount of the overage, unless the best scientific information available determines that a greater, lesser, or no overage adjustment is necessary. The applicable component ACT (through 2022) will be adjusted to reflect the previously established percent buffer.

**Alternative 2:** While red snapper is overfished (based on the most recent Status of U.S. Fisheries Report to Congress), if the combined Texas recreational landings exceed the Texas recreational ACL, then in the following year reduce the total recreational quota and Texas' ACL by the amount of the ACL overage in the prior fishing year, unless the best scientific information available determines that a greater, lesser, or no overage adjustment is necessary. The Texas recreational ACT (or component ACTs) will be adjusted to reflect the previously established percent buffer.

**Option 2a:** If Texas has both a private-angling ACL and a federal for-hire ACL, the reduction will be **applied to the component(s)** that exceeded the applicable ACL.

**Option 2b:** If Texas has both a private-angling ACL and a federal for-hire ACL, the reduction will be **applied equally to both components**.

### **Discussion:**

Section 407(d) of the Magnuson-Stevens Act requires that the Council ensure the FMP (and its implementing regulations) have conservation and management measures that establish a separate sector ACL for recreational fishing (private and for-hire vessels) and prohibit the possession of red snapper caught for the remainder of the fishing year once the sector ACL is reached. The National Standard 1 guidelines identify two types of AMs: in-season and post-season. These AMs are not mutually exclusive and should be used together where appropriate. In 2014, the Council adopted an in-season AM to create an ACT calculated by deducting 20% from the ACL. To correct or mitigate any overages during a specific fishing year (50 CFR 600.310(g)), the Council also adopted a post-season AM which would reduce the recreational sector ACL in the year following an overage by the full amount of the overage (**Alternative 1**) unless the best scientific information available determines that a greater, lesser, or no overage adjustment is necessary.

**Alternative 1** (No Action), would continue to apply the existing post-season AM Gulf-wide. In the event red snapper landings exceed the Gulf-wide recreational ACL, the amount of the overage would be deducted from the recreational ACL. This would occur whether or not Texas was successful in constraining landings to below its ACL, but would result in a decrease to Texas' ACL, because Texas' ACL would be based on a percentage of the Gulf-wide ACL.

Although the possibility of triggering an overage adjustment would encourage Texas to constrain harvest to its ACL, the Gulf-wide approach may be perceived as inequitable. For example, if the recreational ACL is greatly exceeded, then the necessary overage adjustment (applied to the recreational ACL before Texas' ACL is deducted) may reduce fishing opportunities under Texas' ACL the following year, even if Texas had not exceeded its portion of the recreational ACL. If this occurs, it may reduce the flexibility provided under state management. Alternately, if Texas' landings cause the entire recreational sector ACL to be exceeded, while landings by other components remain within their respective portions of the ACL, anglers in the other components would lose fishing opportunities despite remaining within their respective portions of the ACL.

**Alternative 2** would apply the post-season AM to Texas, only in the event that the Gulf-wide recreational sector ACL was exceeded. With the apportionment of the recreational sector ACL such that individual states may establish state management programs<sup>4</sup>, **Alternative 2** would prevent an overage of the Gulf-wide ACL from affecting Texas in the event its state ACL is not exceeded. However, if both the Texas and the Gulf-wide ACLs were exceeded, the portion of the overage for which Texas was responsible would be deducted from Texas' ACL for the next year. The overage adjustments would need to be taken into account when Texas develops its management plan (delegation or CEP), including the length of the fishing season for the following year. **Alternative 2** would encourage Texas to constrain harvest to its ACL to ensure that the overage adjustment is not applied to the recreational season for the following year. Regardless of a state exceeding its ACL, an overage adjustment would only be applied if the Gulf-wide recreational sector ACL was exceeded.

**Option 2a** and **Option 2b** under **Alternative 2** would apply only if the Council decides to include the federally permitted for-hire vessels in state management, through the State Management Amendment. Either option would apply the post-season AM to the Texas component (for-hire and/or private angling) that exceeds its component ACL in the prior fishing year. In the event the Gulf-wide recreational sector ACL is exceeded, **Option 2a** would apply the overage adjustment only to the Texas component that exceeded its ACL. That component ACL would be reduced in the following year by the full amount of the overage, unless the best scientific information available determines that a greater, lesser, or no overage adjustment is necessary. This option would prevent the overage adjustment from affecting Texas' other component that does not exceed its ACL. **Option 2b** would apply the overage adjustment evenly to both of Texas' component ACLs, regardless if only one of the components exceeded its component ACL. Although the possibility of triggering an overage adjustment would encourage the components to constrain harvest to the respective ACLs, applying the overage equally to both components may be perceived as inequitable, should one component remain within its portion of the ACL, yet have its portion of the ACL reduced in the following year due to overages by the other component.

Under **Alternative 1** and **Alternative 2**, **Option 2a** and **Option 2b**, if the combined recreational landings do not exceed the Gulf-wide recreational sector ACL in that year, neither the recreational sector ACL nor any state or component ACLs would be reduced to account for a state or component ACL overage.

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<sup>4</sup> See the State Management Program for Recreational Red Snapper Amendment.

## CHAPTER 3. REFERENCES

GMFMC. 2014. Final amendment 40 to the reef fish fishery management plan for the reef fish resources of the Gulf of Mexico – recreational red snapper sector separation. Gulf of Mexico Fishery Management Council, Tampa, Florida. 274 p.

<http://www.gulfcouncil.org/docs/amendments/RF%2040%20-%20Final%2012-17-2014.pdf>

GMFMC. 2016. Final amendment 45 to the fishery management plan for the reef fish resources of the Gulf of Mexico: Revision of the red snapper recreational sector separation sunset provision. Gulf of Mexico Fishery Management Council. Tampa, FL. 161p.

<http://archive.gulfcouncil.org/docs/amendments/RF%2045%20Final.pdf>

## APPENDIX A. DELEGATION PROVISION

### **Magnuson-Stevens Fishery Conservation and Management Act 16 U.S.C. §1856(a)(3), (b)**

(3) A State may regulate a fishing vessel outside the boundaries of the State in the following circumstances:

(A) The fishing vessel is registered under the law of that State, and (i) there is no fishery management plan or other applicable Federal fishing regulations for the fishery in which the vessel is operating; or (ii) the State's laws and regulations are consistent with the fishery management plan and applicable Federal fishing regulations for the fishery in which the vessel is operating.

(B) The fishery management plan for the fishery in which the fishing vessel is operating delegates management of the fishery to a State and the State's laws and regulations are consistent with such fishery management plan. If at any time the Secretary determines that a State law or regulation applicable to a fishing vessel under this circumstance is not consistent with the fishery management plan, the Secretary shall promptly notify the State and the appropriate Council of such determination and provide an opportunity for the State to correct any inconsistencies identified in the notification. If, after notice and opportunity for corrective action, the State does not correct the inconsistencies identified by the Secretary, the authority granted to the State under this subparagraph shall not apply until the Secretary and the appropriate Council find that the State has corrected the inconsistencies. For a fishery for which there was a fishery management plan in place on August 1, 1996 that did not delegate management of the fishery to a State as of that date, the authority provided by this subparagraph applies only if the Council approves the delegation of management of the fishery to the State by a three-quarters majority vote of the voting members of the Council.

(C) [Pertains to Alaska, only.]

(b) EXCEPTION.—

(1) If the Secretary finds, after notice and an opportunity for a hearing in accordance with section 554 of title 5, United States Code, that—

(A) the fishing in a fishery, which is covered by a fishery management plan implemented under this Act, is engaged in predominately within the exclusive economic zone and beyond such zone; and

(B) any State has taken any action, or omitted to take any action, the results of which will substantially and adversely affect the carrying out of such fishery management plan; the Secretary shall promptly notify such State and the appropriate Council of such finding and of his intention to regulate the applicable fishery within the boundaries of such State (other than its internal waters), pursuant to such fishery management plan and the regulations promulgated to implement such plan.

(2) If the Secretary, pursuant to this subsection, assumes responsibility for the regulation of any fishery, the State involved may at any time thereafter apply to the Secretary for reinstatement of its authority over such fishery. If the Secretary finds that the reasons for which he assumed such regulation no longer prevail, he shall promptly terminate such regulation.

(3) If the State involved requests that a hearing be held pursuant to paragraph (1), the Secretary shall conduct such hearing prior to taking any action under paragraph (1).

## **APPENDIX B. GULF OF MEXICO RED SNAPPER FEDERAL REGULATIONS RELEVANT TO STATE MANAGEMENT AMENDMENTS**

Current as described in the eCFR, September 6, 2017. This is a summary only and is not a list of all regulations applicable to Gulf reef fish overall, but focuses on regulations that affect the recreational harvest of red snapper.

### **§622.8 Quotas—general.**

(c) *Reopening.* When a species, sector or component has been closed based on a projection of the quota specified in this part, or the ACL specified in the applicable annual catch limits and accountability measures sections of subparts B through V of this part being reached and subsequent data indicate that the quota or ACL was not reached, the Assistant Administrator may file a notification to that effect with the Office of the Federal Register. Such notification may reopen the species, sector or component to provide an opportunity for the quota or ACL to be harvested.

### **§622.9 Prohibited gear and methods—general.**

This section contains prohibitions on use of gear and methods that are of general applicability, as specified. Additional prohibitions on use of gear and methods applicable to specific species or species groups are contained in subparts B through V of this part.

(a) *Explosives.* An explosive (except an explosive in a powerhead) may not be used to fish in the Caribbean, Gulf, or South Atlantic EEZ. A vessel fishing in the EEZ for a species governed in this part, or a vessel for which a permit has been issued under this part, may not have on board any dynamite or similar explosive substance.

(b) *Chemicals and plants.* A toxic chemical may not be used or possessed in a coral area, and a chemical, plant, or plant-derived toxin may not be used to harvest a Caribbean coral reef resource in the Caribbean EEZ.

(c) *Fish traps.* A fish trap may not be used or possessed in the Gulf or South Atlantic EEZ. A fish trap deployed in the Gulf or South Atlantic EEZ may be disposed of in any appropriate manner by the Assistant Administrator or an authorized officer.

(d) *Weak link.* A bottom trawl that does not have a weak link in the tickler chain may not be used to fish in the Gulf EEZ. For the purposes of this paragraph, a weak link is defined as a length or section of the tickler chain that has a breaking strength less than the chain itself and is easily seen as such when visually inspected.

(e) *Use of Gulf reef fish as bait prohibited.* Gulf reef fish may not be used as bait in any fishery, except that, when purchased from a fish processor, the filleted carcasses and offal of Gulf reef fish may be used as bait in trap fisheries for blue crab, stone crab, deep-water crab, and spiny lobster.

### **§622.11 Bag and possession limits—general applicability.**

(a) *Applicability.* (1) The bag and possession limits apply for species/species groups in or from the EEZ. Unless specified otherwise, bag limits apply to a person on a daily basis, regardless of the number of trips in a day. Unless specified otherwise, a person is limited to a single bag limit for a trip lasting longer than one calendar day. Unless specified otherwise,



possession limits apply to a person on a trip after the first 24 hours of that trip. The bag and possession limits apply to a person who fishes in the EEZ in any manner, except a person aboard a vessel in the EEZ that has on board the commercial vessel permit required under this part for the appropriate species/species group. The possession of a commercial vessel permit notwithstanding, the bag and possession limits apply when the vessel is operating as a charter vessel or headboat. A person who fishes in the EEZ may not combine a bag limit specified in subparts B through V of this part with a bag or possession limit applicable to state waters. A species/species group subject to a bag limit specified in subparts B through V of this part taken in the EEZ by a person subject to the bag limits may not be transferred at sea, regardless of where such transfer takes place, and such fish may not be transferred in the EEZ. The operator of a vessel that fishes in the EEZ is responsible for ensuring that the bag and possession limits specified in subparts B through V of this part are not exceeded.

#### **§ 622.20 Permits and endorsements.**

(b)(3) If Federal regulations for Gulf reef fish in subparts A or B of this part are more restrictive than state regulations, a person aboard a charter vessel or headboat for which a charter vessel/headboat permit for Gulf reef fish has been issued must comply with such Federal regulations regardless of where the fish are harvested.

#### **§622.30 Required fishing gear.**

For a person on board a vessel to fish for Gulf reef fish in the Gulf EEZ, the vessel must possess on board and such person must use the gear as specified in paragraphs (a) and (b) of this section.

(a) *Non-stainless steel circle hooks.* Non-stainless steel circle hooks are required when fishing with natural baits, except that other non-stainless steel hook types may be used when commercial fishing for yellowtail snapper with natural baits in an area south of a line extending due west from 25°09' N. lat. off the west coast of Monroe County, Florida, to the Gulf of Mexico and South Atlantic inter-council boundary, specified in §600.105(c).

(b) *Dehooking device.* At least one dehooking device is required and must be used to remove hooks embedded in Gulf reef fish with minimum damage. The hook removal device must be constructed to allow the hook to be secured and the barb shielded without re-engaging during the removal process. The dehooking end must be blunt, and all edges rounded. The device must be of a size appropriate to secure the range of hook sizes and styles used in the Gulf reef fish fishery.

#### **§622.33 Prohibited species.**

(d) *Gulf reef fish exhibiting trap rash.* Possession of Gulf reef fish in or from the Gulf EEZ that exhibit trap rash is prima facie evidence of illegal trap use and is prohibited. For the purpose of this paragraph, trap rash is defined as physical damage to fish that characteristically results from contact with wire fish traps. Such damage includes, but is not limited to, broken fin spines, fin rays, or teeth; visually obvious loss of scales; and cuts or abrasions on the body of the fish, particularly on the head, snout, or mouth.

#### **§ 622.34 Seasonal and area closures designed to protect Gulf reef fish.**

(a) *Closure provisions applicable to the Madison and Swanson sites and Steamboat Lumps, and the Edges— ...*



(b) *Seasonal closure of the recreational sector for red snapper.* The recreational sector for red snapper in or from the Gulf EEZ is closed from January 1 through May 31, each year. During the closure, the bag and possession limit for red snapper in or from the Gulf EEZ is zero.

#### **§622.35 Gear restricted areas.**

(d) *Alabama SMZ.* The Alabama SMZ consists of artificial reefs and surrounding areas. In the Alabama SMZ, fishing by a vessel that is operating as a charter vessel or headboat, a vessel that does not have a commercial permit for Gulf reef fish, as required under §622.20(a)(1), or a vessel with such a permit fishing for Gulf reef fish is limited to hook-and-line gear with three or fewer hooks per line and spearfishing gear. A person aboard a vessel that uses on any trip gear other than hook-and-line gear with three or fewer hooks per line and spearfishing gear in the Alabama SMZ is limited on that trip to the bag limits for Gulf reef fish specified in §622.38(b) and, for Gulf reef fish for which no bag limit is specified in §622.38(b), the vessel is limited to 5 percent, by weight, of all fish on board or landed. The Alabama SMZ is bounded by rhumb lines connecting, in order, the following points ...

(a) *Reef fish stressed area.* The stressed area is that part of the Gulf EEZ shoreward of rhumb lines connecting, in order, the points listed in Table 2 in Appendix B of this part.

(1) A powerhead may not be used in the stressed area to take Gulf reef fish. Possession of a powerhead and a mutilated Gulf reef fish in the stressed area or after having fished in the stressed area constitutes *prima facie* evidence that such reef fish was taken with a powerhead in the stressed area.

#### **§ 622.37 Size limits.**

(a) *Snapper--*(1) *Red snapper--*16 inches (40.6 cm), TL, for a fish taken by a person subject to the bag limit specified in § 622.38 (b)(3) and 13 inches (33.0 cm), TL, for a fish taken by a person not subject to the bag limit.

#### **§ 622.38 Bag and possession limits.**

(b)(3) *Red snapper--*2. However, no red snapper may be retained by the captain or crew of a vessel operating as a charter vessel or headboat. The bag limit for such captain and crew is zero.

#### **§ 622.39 Quotas.**

(a)(2)(i) *Recreational quota for red snapper.* (A) *Total recreational quota (Federal charter vessel/headboat and private angling component quotas combined).* For fishing year 2017 and subsequent fishing years—6.733 million lb (3.054 million kg), round weight.

(B) *Federal charter vessel/headboat component quota.* The Federal charter vessel/headboat component quota applies to vessels that have been issued a valid Federal charter vessel/headboat permit for Gulf reef fish any time during the fishing year. This component quota is effective for only the 2015 through 2022 fishing years. For the 2023 and subsequent fishing years, the applicable total recreational quota, specified in paragraph (a)(2)(i)(A) of this section, will apply to the recreational sector. For fishing years 2017 through 2022—2.848 million lb (1.292 million kg), round weight.

(C) *Private angling component quota.* The private angling component quota applies to vessels that fish under the bag limit and have not been issued a Federal charter vessel/headboat

permit for Gulf reef fish any time during the fishing year. This component quota is effective for only the 2015 through 2022 fishing years. For the 2023 and subsequent fishing years, the applicable total recreational quota, specified in paragraph (a)(2)(i)(A) of this section, will apply to the recreational sector. For fishing years 2017 through 2022—3.885 million lb (1.762 million kg), round weight.

(2) If the recreational fishery for the indicated species is closed, all harvest or possession in or from the Gulf EEZ of the indicated species is prohibited.

(c) *Restrictions applicable after a recreational quota closure or recreational component quota closure.* The bag limit for the applicable species for the recreational sector or recreational sector component in or from the Gulf EEZ is zero. When the Federal charter vessel/headboat component is closed or the entire recreational sector is closed, this bag and possession limit applies in the Gulf on board a vessel for which a valid Federal charter vessel/headboat permit for Gulf reef fish has been issued, without regard to where such species were harvested, *i.e.*, in state or Federal waters.

#### **§ 622.41 Annual catch limits (ACLs), annual catch targets (ACTs), and accountability measures (AMs).**

(q) *Red snapper (2) Recreational sector.* (i) The recreational ACL is equal to the total recreational quota specified in §622.39(a)(2)(i)(A). The AA will determine the length of the red snapper recreational fishing season, or recreational fishing seasons for the Federal charter vessel/headboat and private angling components, based on when recreational landings are projected to reach the recreational ACT, or respective recreational component ACT specified in paragraph (q)(2)(iii) of this section, and announce the closure date(s) in the FEDERAL REGISTER. These seasons will serve as in-season accountability measures. On and after the effective date of the recreational closure or recreational component closure notifications, the bag and possession limit for red snapper or for the respective component is zero. When the recreational sector or Federal charter vessel/headboat component is closed, this bag and possession limit applies in the Gulf on board a vessel for which a valid Federal charter vessel/headboat permit for Gulf reef fish has been issued, without regard to where such species were harvested, *i.e.*, in state or Federal waters.

(ii) In addition to the measures specified in paragraph (q)(2)(i) of this section, if red snapper recreational landings, as estimated by the SRD, exceed the total recreational quota specified in §622.39(a)(2)(i)(A), and red snapper are overfished, based on the most recent Status of U.S. Fisheries Report to Congress, the AA will file a notification with the Office of the Federal Register to reduce the total recreational quota by the amount of the quota overage in the prior fishing year, and reduce the applicable recreational component quota(s) specified in §622.39(a)(2)(i)(B) and (C) and the applicable recreational component ACT(s) specified in paragraph (q)(2)(iii) of this section (based on the buffer between the total recreational ACT and the total recreational quota specified in the FMP), unless NMFS determines based upon the best scientific information available that a greater, lesser, or no overage adjustment is necessary.

(iii) *Recreational ACT for red snapper—(A) Total recreational ACT (Federal charter vessel/headboat and private angling component ACTs combined).* The total recreational ACT is 5.386 million lb (2.443 million kg), round weight.

(B) *Federal charter vessel/headboat component ACT.* The Federal charter vessel/headboat component ACT applies to vessels that have been issued a valid Federal charter vessel/headboat permit for Gulf reef fish any time during the fishing year. This component ACT

is effective for only the 2015 through 2022 fishing years. For the 2023 and subsequent fishing years, the applicable total recreational ACT, specified in paragraph (q)(2)(iii)(A) of this section, will apply to the recreational sector. The component ACT is 2.278 million lb (1.033 million kg), round weight, for fishing years 2017 through 2022.

(C) *Private angling component ACT.* The private angling component ACT applies to vessels that fish under the bag limit and have not been issued a Federal charter vessel/headboat permit for Gulf reef fish any time during the fishing year. This component ACT is effective for only the 2015 through 2022 fishing years. For the 2023 and subsequent fishing years, the applicable total recreational ACT, specified in paragraph (q)(2)(iii)(A) of this section, will apply to the recreational sector. The component ACT is 3.108 million lb (1.410 million kg), round weight, for fishing years 2017 through 2022.