

# Alabama Management for Recreational Red Snapper



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

**August 2017**



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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
State Management Amendment	State Management Program for Recreational Red Snapper Amendment
TL	total length

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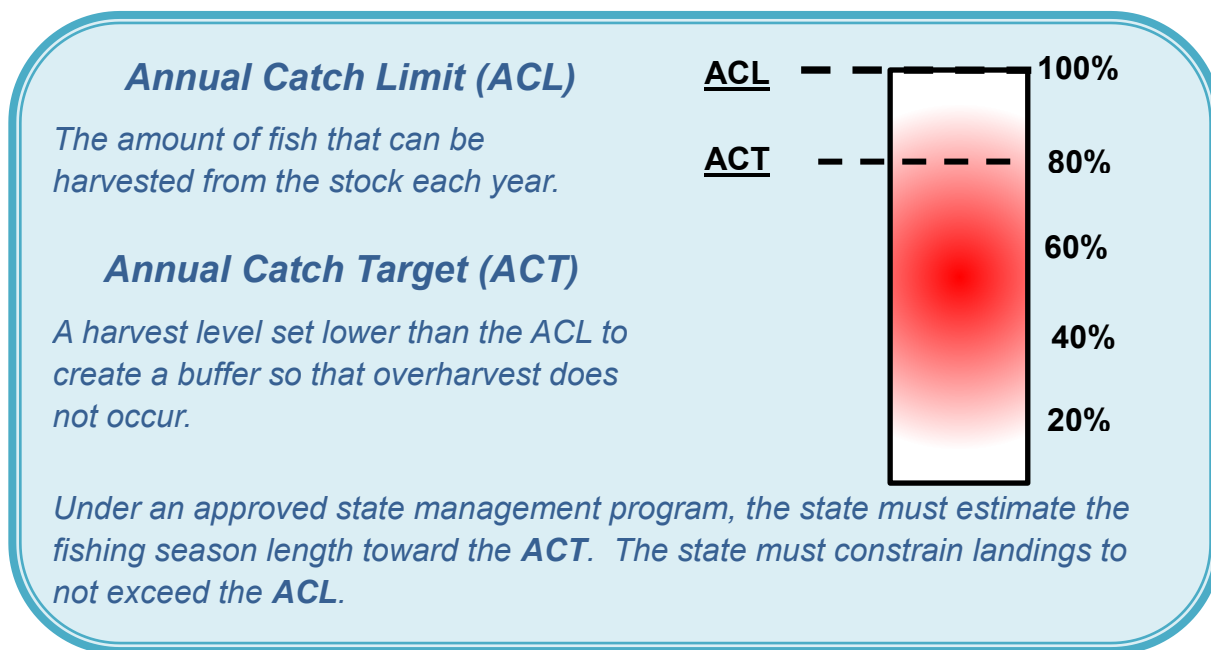
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# CHAPTER 1. INTRODUCTION

## 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 (TL) 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 Alabama is being explored as a way to provide greater flexibility in the management of recreational red snapper.

A state management program would enable Alabama 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 apportionment of the recreational ACL among the five Gulf states, 2) whether to allow state management of one or both components of the recreational sector, and 3) whether to modify the federal minimum size limit.

This Alabama Management for Recreational Red Snapper Amendment contains actions to define a state management program for the recreational harvest of red snapper in Alabama's state waters and adjacent federal waters. The first action proposes two approaches for implementing state management: the *delegation* of limited authority to Alabama to specify management measures or the use of a *conservation equivalency plan* (CEP), in which Alabama would specify the management measures to be used to constrain harvest to Alabama's portion of the recreational sector ACL (established in the State Management Amendment). Under either approach, Alabama would select the management measures most appropriate for management of its portion of the stock based on the fishing preferences of Alabama anglers. For example, Alabama 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 evaluates the duration of Alabama's state management program. The third action addresses post-season accountability measures (AMs) to determine the action to take in the event the Alabama harvest of red snapper exceeds Alabama's portion of the recreational sector ACL. Alabama 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 Alabama establishes its season when fishing effort is greatest. However, providing Alabama 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 Alabama'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 Alabama. 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 Alabama's state management program approval and implementation, an exemption from the default federal regulations would be made for Alabama'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 Alabama's state management is approved and implemented, the portion of each component ACL designated for Alabama through the State Management Amendment would become the Alabama component ACLs (the component ACLs could be combined, if Alabama chooses to manage the components together). The Alabama combined ACLs would be deducted from the recreational sector ACL. Alabama's component ACLs (or Alabama total recreational ACL) will be reduced by the established buffer, resulting in an Alabama ACT for each component (or both components combined). Alabama will estimate its season length based on its component ACTs (or total ACT), and must constrain landings to the Alabama 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.

## **1.2 Purpose and Need**

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

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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)



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>.

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

The boundaries in Figure 1.3.1 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.

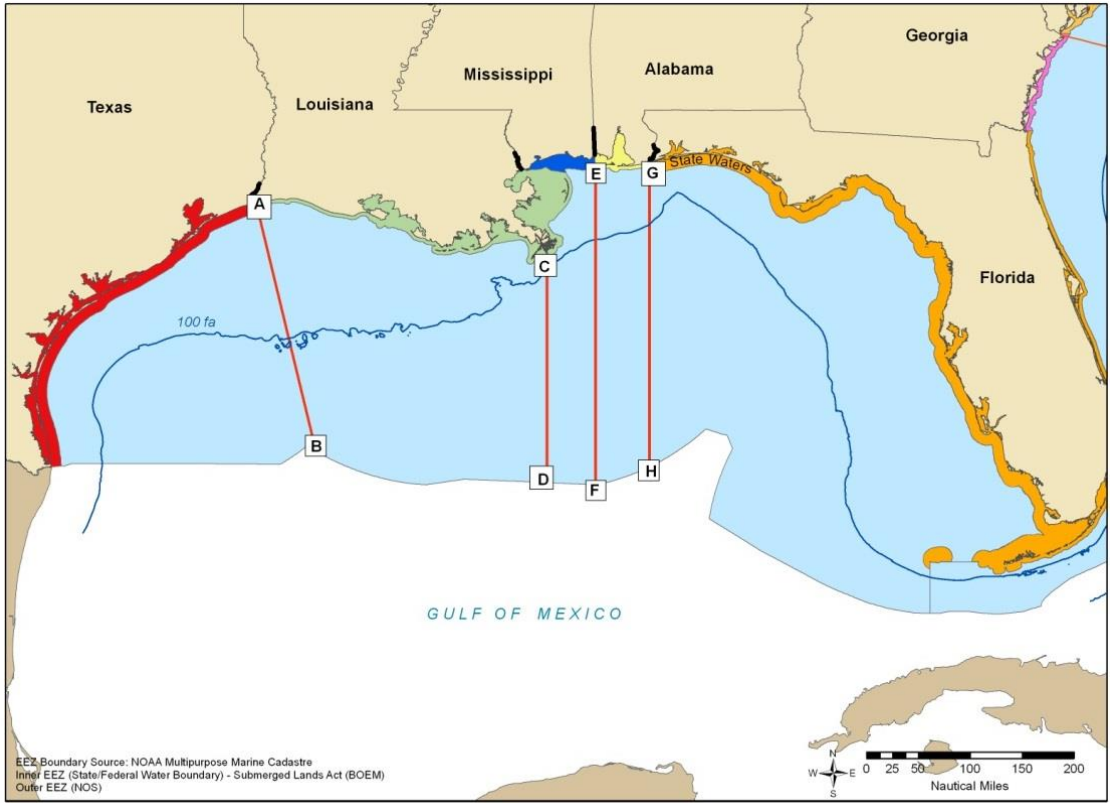
All lines begin at the boundary between state waters and federal waters. Line A-B, defining federal waters off Texas, is already codified as a line from 29°32.1' N latitude, 93°47.7' W longitude to 26°11.4' N latitude, 92°53.0' W longitude, which is an extension of the boundary between Louisiana and 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.

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<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)



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## 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 Alabama. Alabama 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 Alabama'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 Alabama would be subject to the default federal regulations for red snapper.

**Alternative 3:** Establish a management program in which Alabama submits a plan to the National Marine Fisheries Service (NMFS) describing the **conservation equivalency** measures Alabama 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 Alabama's assigned portion of the recreational sector ACL. If Alabama'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 Alabama would be subject to the default federal regulations for red snapper.

**Alternative 4:** Establish a management program in which Alabama submits a plan to a **technical review committee** describing the **conservation equivalency** measures Alabama 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 Alabama'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 Alabama for revision or forwarded to NMFS for final review. If Alabama'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 Alabama 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 Alabama in the event Alabama'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, 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 Alabama, 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 (TL), 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.

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 2-4**), consistent regulations would apply to both Alabama's state and adjacent federal waters by removing the fixed closed season and bag limit in federal waters adjacent to Alabama. To constrain landings to its portion of the recreational sector ACL, Alabama would establish the dates 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 Alabama's state management program may fish in Alabama state waters and federal waters adjacent to Alabama. When Alabama closes its season, further landings or possession of red snapper would be prohibited, from both state and federal waters.

In the event a state bordering Alabama has an approved state management program and a fishing season that differs from Alabama's, federal waters adjacent to Alabama could remain open when Alabama'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 Alabama that will be landed in the bordering state and would count against the bordering state's quota. In turn, should Alabama's fishing season be open while the bordering state's season is closed, anglers participating in Alabama's state management program would be able to harvest red snapper from federal waters adjacent to the bordering state and land the fish in Alabama; such fish would count against Alabama'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.

**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 2-4** propose different approaches to state management of red snapper by Alabama. 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 Alabama would be given some management authority to determine the regulations to be applied to anglers participating in Alabama's state management program, none of these alternatives provide the complete authority to manage red snapper advocated for by some supporters of state management. Alabama would

be able to establish the season start and end dates, season structure, and bag limit at the state level. However, Alabama must adopt the federal minimum size limit selected in the State Management Program for Recreational Red Snapper Amendment (State Management Amendment). The management measures implemented by Alabama must adhere to the goals of the rebuilding plan and be consistent with federal and other applicable laws. This 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.

**Alternative 3** and **Alternative 4** would adopt a process by which Alabama submits a CEP describing its intended management measures for the recreational harvest of red snapper. While **Alternatives 3** and **4** would grant less management authority directly to Alabama than **Alternative 2**, all three alternatives provide comparable flexibility to Alabama to modify the season structure and bag limit for the harvest of its designated portion of the red snapper recreational ACL. Nevertheless, whether delegation (**Alternative 2**) or conservation equivalency (**Alternatives 3** and **4**) is selected, Alabama's 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 3** and **4** differ based on the review process for the CEPs. Under **Alternative 3**, Alabama would submit its plan directly to NMFS for review while under **Alternative 4**, Alabama 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 Alabama 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 4** would potentially entail a longer process for consistency determination than under **Alternative 3**. On the other hand, the process under **Alternative 4** 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 4** is more similar to the Mid-Atlantic Fishery Management Council's management of summer flounder than is **Alternative 3**.

In addition to Alabama, the Council is evaluating red snapper state management for Alabama and Alabama in separate amendments. In the event all or some of the three states have approved state management programs, the sum of all participating states' ACLs (as selected in the State

Management 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.

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 Alabama. For-hire vessels would not be allowed to harvest red snapper from federal waters without a federal permit.

### **Requirements of Conservation Equivalency (Alternative 3 and Alternative 4)**

Under **Alternative 3**, Alabama 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 3**. This process would be altered for the first year of the program if this action is implemented mid-year. Under **Alternative 4**, 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 Alabama with an approved CEP. Without an approved CEP, Alabama 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., National Environmental Policy Act (NEPA) analysis). NMFS would collaborate with Alabama 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 3 and 4.**

<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.

By allowing Alabama to set its own fishing seasons, Alabama 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 Alabama 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.



## 2.2 Action 2 – Sunset Provision

**Alternative 1:** Do not establish a provision to sunset Alabama’s state management program.

**Alternative 2:** Establish a provision to sunset Alabama’s state management program after 10 calendar years.

**Alternative 3:** Establish a provision to sunset Alabama’s state management program after 5 calendar years.

**Alternative 4:** Establish a provision to sunset Alabama’s state management program after 3 calendar years.

### **Discussion:**

This action would specify that Alabama’s state management continue until otherwise modified by the Council (**Alternative 1**), or establish a date at which time Alabama’s state management program would end. **Alternatives 2-5** provide a range of years for the duration of Alabama’s state management program (either delegation or CEPs). At the time of the sunset, all regulations associated with all actions in this plan amendment would expire, including any accountability measures (AMs; Action 3). For all alternatives, Alabama’s management would expire after 10 calendar years of the program (**Alternative 2**), 5 years (**Alternative 3**), or 3 years (**Alternative 4**), regardless of the implementation date of this amendment. For example, if this amendment is implemented in June 2018 with **Alternative 3** selected as preferred, regional management would end December 31, 2022. If the Council decides subsequently to continue Alabama’s state management program, the Council would need to extend state management authority through the appropriate document and process.

## 2.3 Action 3 – 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 are overfished (based on the most recent Status of U.S. Fisheries Report to Congress), if the combined recreational landings exceed the recreational sector ACL (quota), reduce the **recreational sector** ACL and reduce the 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 component ACTs through 2022 will be adjusted to reflect the previously established percent buffer.

**Alternative 2:** While red snapper are overfished (based on the most recent Status of U.S. Fisheries Report to Congress), if the combined Alabama recreational landings exceed the Alabama recreational ACL, then in the following year reduce Alabama’s 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 Alabama recreational ACT (or component ACTs) will be adjusted to reflect the previously established percent buffer.

**Option 2a:** If Alabama 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 Alabama 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 Alabama was successful in constraining landings to below its ACL, but would result in a decrease to Alabama’s ACL, because Alabama’s ACL would be based on a percentage of the Gulf-wide ACL. Although the possibility of triggering an overage adjustment would encourage

Alabama 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 Alabama's ACL is deducted) may reduce fishing opportunities under Alabama's ACL the following year, even if Alabama had not exceeded its portion of the recreational ACL. If this occurs, it may reduce the flexibility provided under state management. Alternately, if Alabama's 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 Alabama, 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 Alabama in the event its state ACL is not exceeded. However, if both the Alabama and the Gulf-wide ACLs were exceeded, the portion of the overage for which Alabama was responsible would be deducted from Alabama's ACL for the next year. The overage adjustments would need to be taken into account when Alabama develops its management plan (delegation or CEP), including the length of the fishing season for the following year. **Alternative 2** would encourage Alabama 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.

**Options 2a** and **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 Alabama 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 Alabama 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 Alabama's other component that does not exceed its ACL. **Option 2b** would apply the overage adjustment evenly to both of Alabama's 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**, **Alternative 2**, and **Options 2a** and **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).