

Modification of Midwater Snapper Complex Composition and Catch Limits

Draft Options for Amendment 61 to the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico

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ENVIRONMENTAL ASSESSMENT COVER SHEET

Modification of Midwater Snapper Complex Composition and Catch Limits: Draft Amendment 61 to the Fishery Management Plan for Reef Fish Resources in the Gulf of Mexico.

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Administrative
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This Environmental Assessment is being prepared using the 2020 CEQ NEPA Regulations. The effective date of the 2020 CEQ NEPA Regulations was September 14, 2020, and reviews begun after this date are required to apply the 2020 regulations unless there is a clear and fundamental conflict with an applicable statute. 85 Fed. Reg. at 43372-73 (§§ 1506.13, 1507.3(a)). This Environmental Assessment began on December 29, 2020, and accordingly proceeds under the 2020 regulations.

ABBREVIATIONS USED IN THIS DOCUMENT

ABC	acceptable biological catch
ACL	annual catch limit
ACT	annual catch target
AM	accountability measures
B	biomass
BiOp	biological opinion
B _{MSY}	stock biomass level capable of producing an equilibrium yield of MSY
Council	Gulf of Mexico Fishery Management Council
CS	consumer surplus
CZMA	Coastal Zone Management Act
DLMTTool	Data Limited Methods Tool
DPS	distinct population segment
DWG	deep-water grouper
EA	Environmental Assessment
EEZ	Exclusive Economic Zone
EIS	environmental impact statement
EJ	environmental justice
ELMRP	Estuarine Living Marine Resources Program
ESA	Endangered Species Act
MSA	Magnuson-Stevens Fishery Conservation and Management Act

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CHAPTER 1. INTRODUCTION

1.1 Background

The Gulf of Mexico (Gulf) midwater snapper complex (MWS) consists of four snapper species: silk, queen, blackfin and wenchman, all of which are managed under the Fishery Management Plan (FMP) for Reef Fish Resources of the Gulf of Mexico (Reef Fish FMP). Amendment 61 to the Reef Fish FMP is being developed by the Gulf of Mexico Fishery Management Council (Council) to reconsider the inclusion of wenchman in the MWS and the Reef Fish FMP, and whether to modify the overfishing limit (OFL), acceptable biological catch (ABC), and annual catch limit (ACL) for the remaining species in the MWS. The current MWS catch limits are shown in Table 1.1.1.

Table 1.1.1. Species in midwater snapper complex and the catch limit specifications for the stock complex. Catch limits were derived in part using recreational landings estimates generated by the Marine Recreational Fisheries Statistics Survey (MRFSS). Catch limits are presented below in pounds whole weight (lb ww).

Midwater Snapper Complex	OFL	ABC	ACL	ACT
Silk snapper Queen snapper Wenchman Blackfin snapper	209,000 lb ww	166,000 lb ww	166,000 lb ww	136,000 lb ww

Species in the MWS are caught primarily in federal waters by commercial, and to a lesser extent historically, recreational fishermen. Landings have been largely consistent (Figure 1.1.1) since the mid-1990s, with the exception of an otherwise anomalous spike in 2009 for silk snapper, and a spike in 2021 attributed to increased bycatch of wenchman in the butterfish trawl fishery. It is this spike in wenchman landings, in 2021, which was the genesis of Amendment 61. Between 2021 and 2023, the Council heard public testimony and reviewed fishery data about wenchman in the Gulf. During this time, and specifically in 2020 and 2021, wenchman landings were considerably higher than in previous years, leading to a quota closure in the MWS fishery (100.5% of the MWS stock ACL landed in 2020, and 130.5% in 2021). Wenchman is not caught using the same methods as queen snapper, blackfin snapper, and silk snapper; nor is it typical of the same habitats and distribution. Wenchman landings have come primarily from the butterfish mid-water trawl fishery, per public testimony from those butterfish fishermen, landings reports, and fishery data curated by the Gulf States Marine Fishery Commission (GSMFC). The butterfish and scad fisheries have been developing since the 1980s, primarily for Asian markets. The Gulf butterfish fishery is small, with only a handful of vessels supplying fish to a small number of dealers. Butterfish and scad are caught in mid-water trawls; the fish are stored in the vessel then sorted upon return to the dock. Although butterfish are not state or federally regulated, the landings are recorded on state trip tickets. Of note, the Council does not manage butterfish or scad. During discussions for the Generic ACL/AM Amendment, the Council determined that butterfish was not in need of federal conservation and management, as this responsibility was already satisfactorily fulfilled by the Gulf states (criteria for this evaluation

are discussed later in this section). Wenchman landings from these trawl fisheries are subject to confidentiality preclusions, as often, fewer than three fishermen caught, and/or fewer than three seafood dealers bought, those wenchman landings. As such, the data necessary to annually evaluate wenchman harvest individually compared to a stock ACL are not able to be publicly disseminated at this time.

Because wenchman is primarily caught as bycatch in the butterfish mid-water trawl fishery, it serves as a choke species for that fishery; meaning, if wenchman cannot be landed because the stock ACL for MWS has been met, then butterfish fishermen would be required to sort and discard all wenchman from their trawl catch at sea before returning to port and selling their remaining catch. Wenchman is found in the water column in similar places as butterfish, but is indistinguishable from butterfish by a trawl fisherman using modern bottom sounding equipment. As such, it is impossible for these fishermen to know whether they have caught any wenchman when trawling for butterfish until the trawl is retrieved and emptied on the deck of the fishing vessel. Mortality of trawl-caught fish is expected to be considerably high, and sorting that catch on the deck of the fishing vessel is time-consuming and increases both the probability of fish mortality and operating costs for the vessel. Thus, if the MWS ACL has been met and that fishery is closed, butterfish vessels cannot operate efficiently enough to justify the costs of fishing. Ultimately, the Council passed a motion requesting that the SSC work with the GSMFC to investigate historical wenchman landings and life history relative to the other three species in the MWS.

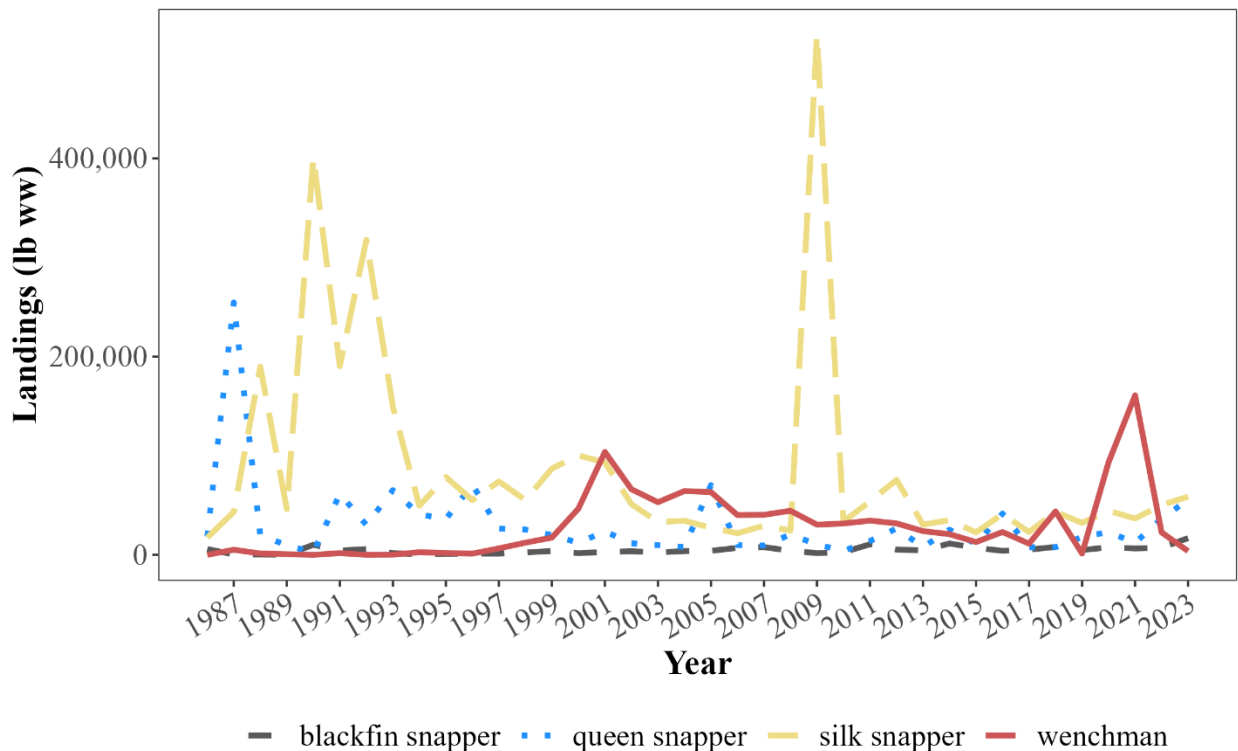


Figure 1.1.1. Annual commercial and recreational landings in pounds whole weight (lb ww) of silk snapper, queen snapper, blackfin snapper and wenchman in the Gulf of Mexico from 1986 through 2023. Recreational landings include Marine Recreational Information Program’s

Fishing Effort Survey (MRIP-FES) data units. Source: Historical Commercial ACL Monitoring File – Oct 2020, Commercial ACL Monitoring File – Sep 2023, SEFSC Preliminary 2023 Commercial Landings Mar 2024, SEFSC MRFSS ACL Monitoring File – Feb 2024, SEFSC FES ACL Monitoring File – Feb 2024

With few exceptions, the 2007 amendments to the Magnuson-Stevens Fishery Conservation and Management Act (MSA) required FMPs to include ACLs and accountability measures (AMs) to prevent overfishing of managed stocks. The Generic Comprehensive Annual Catch Limits / Accountability Measures (ACL/AM) Amendment (GMFMC 2011), implemented in 2012, established ACLs and AMs for all stocks managed under the Reef Fish FMP that did not already have existing ACLs and AMs. At the time, only 13 species managed by the Reef Fish FMP had peer-reviewed stock assessments that were appropriate for informing management advice. Therefore, other approaches for developing ACLs and AMs for certain species were explored (Farmer et. al 2010), including grouping unassessed species into complexes that could be managed as collective units. The amended National Standard 1 (NS1) Guidelines define a stock complex as “a group of stocks that are sufficiently similar in geographic distribution, life history, and vulnerabilities to the fishery such that the impact of management actions on the stocks is similar.”¹ The NS1 Guidelines advise that stocks may be grouped into complexes for various reasons: if stocks in a multispecies fishery cannot be targeted independent of one another; if it is a data-poor stock to the point where there is insufficient data to measure that stock's status relative to status determination criteria; or, when fishermen cannot practicably distinguish individual stocks among their catch.² For the purpose of evaluating whether to establish stock complexes, Farmer et. al (2010) provided analyses that examined criteria such as species assemblages, geographic distributions, life history, depth occurrences, and abundance for various Gulf stocks. At the time, the analyses concluded that wenchman, silk snapper, and blackfin snapper occurred in mid-to-deep water, and queen snapper and wenchman often clustered with deep-water grouper and tilefish species. The makeup of the MWS was a result of a preferred alternative from the Generic ACL/AM Amendment, but it also evaluated whether various stocks should be removed from the Reef Fish FMP, including wenchman, silk snapper, blackfin snapper, and queen snapper. Ultimately, all four snapper species remained in the FMP at that time and catch limits were set for the MWS. The OFL and ABC were based on landings from 2000 to 2008 under Tier 3A of the Council’s Acceptable Biological Catch Control Rule, because no stock assessment was available but landings data existed and the probability of exceeding the OFL in a given year could be approximated from the variance about the mean of recent landings. The ACT was calculated using a version of the ACL/ACT control rule based on a point system and a series of components representing various aspects of management uncertainty to derive the percent buffer that was deemed adequate. The ACT was set at 18% below the ACL (GMFMC 2011). The recreational landings estimates used to establish the current catch limits were generated by the Marine Recreational Fisheries Statistics Survey (MRFSS). The Marine Recreational Information Program (MRIP) replaced MRFSS in 2008. Therefore, to compare current landings to the catch limits, the National Marine Fisheries Service (NMFS) Southeast Fisheries Science Center converts recreational estimates generated using MRIP to MRFSS units.³

¹ 50 CFR 600.310

² 50 CFR 600.310(d)(8)

³ Although both MRFSS and MRIP generate estimates measured in pounds of fish, these estimates are not directly comparable. To signify that the estimates use different scales, this document uses the terms “MRFSS units” and “MRIP units” to describe the recreational catch limits.

Revisions were made to some of the NS Guidelines, including new language added to the 2016 guidelines that further identified criteria for Council consideration when deciding whether additional stocks require federal conservation and management. This list of factors is based on the definition of conservation and management, as defined in the MSA, along with other relevant provisions. The MSA requires Councils to prepare FMPs for those fisheries it deems in need of conservation and management, specifically, stocks that are predominantly caught in federal waters, are overfished or experiencing overfishing, or have a probability to be overfished or experience overfishing. However, for stocks that may not be predominantly caught in federal waters or are not overfished or likely to experience overfishing, Councils may determine whether these additional stocks require FMPs based on the below factors:

- (i) The stock is an important component of the marine environment.
- (ii) The stock is caught by the fishery.
- (iii) Whether an FMP can improve or maintain the condition of the stock.
- (iv) The stock is a target of a fishery.
- (v) The stock is important to commercial, recreational, or subsistence users.
- (vi) The fishery is important to the Nation or to the regional economy.
- (vii) The need to resolve competing interests and conflicts among user groups and whether an FMP can further that resolution.
- (viii) The economic condition of a fishery and whether an FMP can produce more efficient utilization.
- (ix) The needs of a developing fishery, and whether an FMP can foster orderly growth.
- (x) The extent to which the fishery is already adequately managed by states, by state/Federal programs, or by Federal regulations pursuant to other FMPs or international commissions, or by industry self-regulation, consistent with the requirements of the Magnuson-Stevens Act and other applicable law.⁴

Additionally, the NS Guidelines offer pertinent information when reviewing whether stocks should remain in an FMP, or when considering removing a stock from an FMP. The guidelines state that the Council should analyze the ten factors above along with any other relevant factors, and that the first three factors (i, ii, iii) should take precedent in consideration as they address maintaining the resource and the marine environment. Analysis of a stock removal from an FMP should also include how significant the amount and type of catch is that occurs in federal waters, and how much that contributes to the stock's status. The Council should also reflect on whether the stock can be adequately managed by the states or a combination of state and federal programs, which would lend weight to removal of the stock from an FMP.

The Southeast Data, Assessment, and Review (SEDAR) process is the stock assessment process used in the southeastern U.S. to evaluate fishery stock status, such as whether a stock is overfished and/or experiencing overfishing. SEDAR attempted to assess wenchman along with several other species as part of SEDAR 49 (2016), which determined that there were insufficient data to complete even a data-limited assessment for the species. Since 2016, there have been no measurable improvements to the precision of wenchman landings, nor have there been sufficient advances in science about the species to allow for the development of representative age and/or length composition information to better parameterize another stock assessment. Such advances

⁴ <https://media.fisheries.noaa.gov/dam-migration/ns1-redline-final-rule.pdf>

are not expected in the near-term, as wenchman is not a primary target species by Gulf recreational or commercial fishermen, which limits the data available. Although landings data are limited for this complex, it appears that the dominant landings source, at least for wenchman and silk snapper, is from the commercial sector (Table 1.1.2). Recreational landings are shown in MRIP-FES units. A majority of the commercial landings data must be shown in aggregate due to confidentiality issues.

Table 1.1.2. Annual Gulf MWS landings by sector from 1986 – 2023, all species combined.

Year	Commercial	Recreational (MRFSS)	Total (w/MRFSS)	Recreational (FES)	Total (w/FES)
1986	39,940	1,804	41,744	2,061	42,001
1987	72,778	25,633	98,411	230,680	303,458
1988	112,993	67,262	180,255	98,206	211,199
1989	55,925	159	56,084	159	56,084
1990	71,971	22,966	94,937	341,423	413,394
1991	257,658	459	258,117	459	258,117
1992	352,897	991	353,888	1,005	353,902
1993	216,496	409	216,905	409	216,905
1994	90,749	1,238	91,987	2,902	93,651
1995	117,300	226	117,526	226	117,526
1996	36,570	44,592	81,162	92,068	128,638
1997	108,108	330	108,438	185	108,293
1998	94,117	662	94,779	1,509	95,626
1999	126,230	4,030	130,260	2,049	128,279
2000	159,532	1,420	160,952	1,263	160,795
2001	217,805	6,070	223,875	5,840	223,645
2002	128,546	2,725	131,271	4,149	132,695
2003	97,879	2,106	99,985	680	98,559
2004	109,985	866	110,851	490	110,475
2005	107,284	4,577	111,861	57,924	165,208
2006	75,337	2,580	77,917	3,551	78,888
2007	83,499	3,508	87,007	3,653	87,152
2008	84,742	3,952	88,694	8,997	93,739
2009	62,776	33,514	96,290	504,436	567,212
2010	70,614	1,728	72,342	1,251	71,865
2011	110,231	1,543	111,774	2,895	113,126
2012	122,233	11,144	133,377	17,111	139,344
2013	65,613	1,291	66,904	1,291	66,904
2014	85,863	4,826	90,689	6,874	92,738
2015	51,921	1,881	53,802	1,810	53,730
2016	78,649	22,314	100,962	31,212	109,860
2017	40,925	6,913	47,838	6,330	47,255
2018	101,078	1,882	102,960	1,810	102,888
2019	54,418	2,245	56,663	2,087	56,505
2020	153,828	16,698	170,527	14,558	168,386

2021	214,090	2,352	216,441	2,230	216,320
2022	78,963	36,135	115,098	37,635	116,598
2023*	77,631	55,055	132,686	57,259	134,890

Sources: Historical Commercial ACL Monitoring File – Oct 2020, Commercial ACL Monitoring File – Sep 2023, *SEFSC Preliminary 2023 Commercial Landings – Mar 2024, SEFSC MRFSS ACL Monitoring File – Feb 2024, SEFSC FES ACL Monitoring File – Feb 2024

Current Regulations and Landings for the Midwater Snapper Complex

The MWS is managed under a stock ACL without sector allocations. The stock ACL is 166,000 lb ww. Fishing is open year-round for both the recreational and commercial sectors unless the AM triggers an in-season quota closure. The Council established an accountability measure (AM) for the MWS in the Generic ACL Amendment (GMFMC 2011). “If the sum of the commercial and recreational landings, as estimated by the Southeast Regional Director, exceeds the stock complex ACL, then during the following fishing year, if the sum of commercial and recreational landings reaches or is projected to reach the stock complex ACL, the Assistant Administrator for NOAA Fisheries will file a notification with the Office of the Federal Register to close the commercial and recreational sectors for the remainder of that fishing year.”⁷ There is not a recreational or commercial minimum size limit for any species in the MWS. There is a 10-fish per-person daily recreational bag limit for each species, within the 10-snapper recreational aggregate bag limit. Commercially, an eastern Gulf reef fish bottom longline endorsement is required to use bottom longline equipment for Gulf reef fish in the federal waters east of 85°30' longitude; however, landings of MWS species via longline are rare.

Compared to other federally managed reef fish species, the species in the MWS have traditionally been considered rare-event species, and often harvested incidentally. Confidentiality issues are rife within the commercial data, the recreational landings are of questionable reliability due to very few intercepts within the MRIP surveys, and wenchman in particular has been referred to as several different names throughout history (e.g., “silver snapper”). Further confounding the precision of the landings is the proximity of all MWS species to shore. Due to the proclivity of these species to inhabit deeper waters (e.g., greater than 100 meters or 330 feet), the vessel types necessary to safely fish these waters are typically larger than the vessels typically launched from public boating access points. This means that the MRIP survey landings estimates are likely not representative of true recreational landings. From 2012 to 202, there were no in-season closures of the MWS; total landings were often well below the stock ACL. However, in 2020, 100.5% of the stock ACL was landed, which triggered the AM to close fishing in the following year when the ACL was projected to be met. Then in 2021, landings exceeded the stock ACL by 31% and the season closed early on September 18, 2021. Examination of the stock landings indicated that high landings of wenchman in 2020 and 2021 led to the MWS ACL being exceeded in those two years (Figure 1.1.2; Figure 1.1.3); however, more data are needed to better understand if this is a trend or recent anomaly.

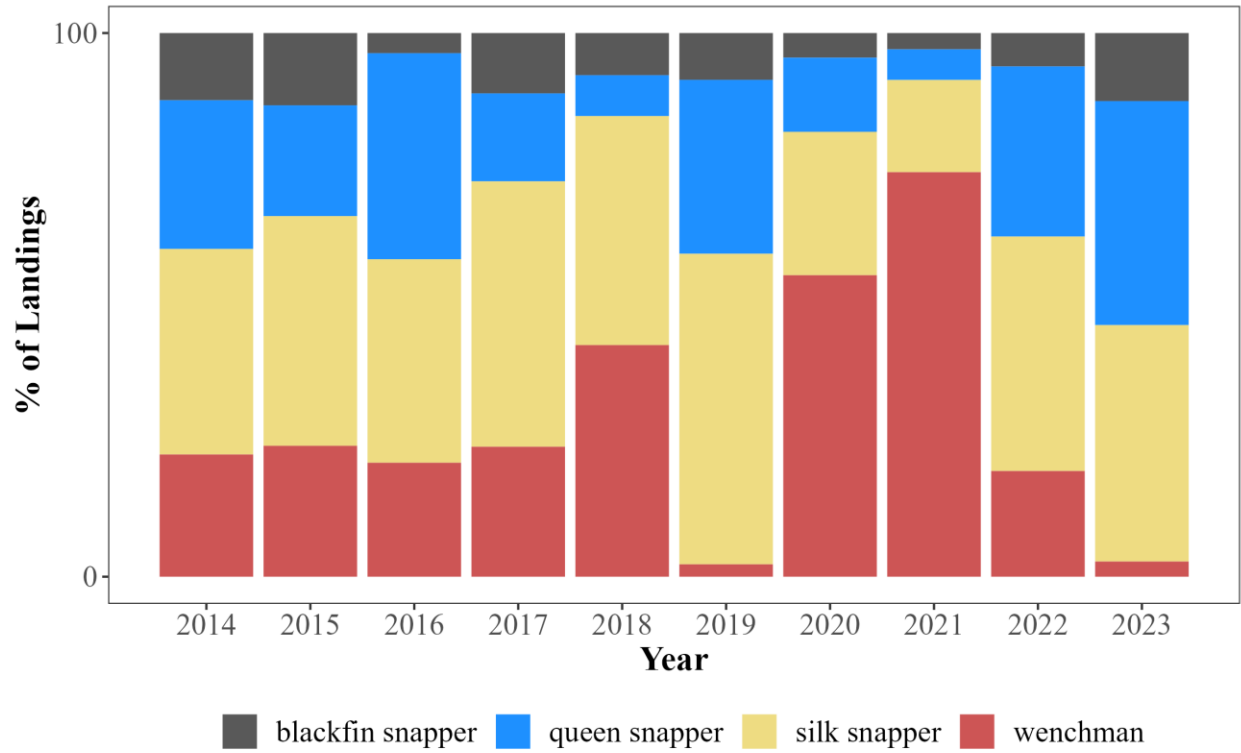


Figure 1.1.2. Proportion of annual Gulf mid-water snapper landings by species, from 2014 to 2023. Sources: Commercial ACL Monitoring File – Sep 2023, SEFSC Preliminary 2023 Commercial Landings – Mar 2024, SEFSC FES ACL Monitoring File – Feb 2024.

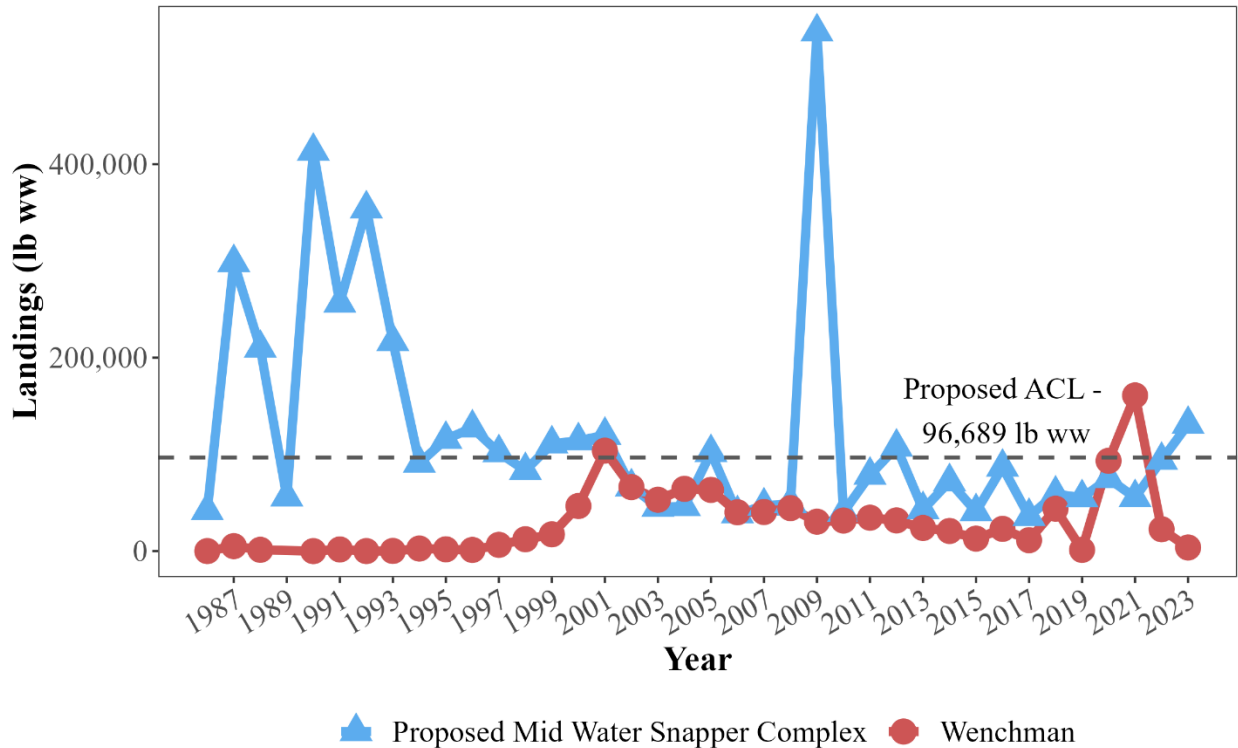


Figure 1.1.3. Recreational and commercial wenchman landings from 1986 through 2023. Total landings are in pounds whole weight and recreational landings include MRIP-FES data units.

An analysis of MWS landings by species indicated that the proportion of landings attributed to each species annually, from 2014 through 2023, were somewhat mixed until 2020 and 2021 when the proportion of wenchman landings increased. Other than those two years, within this 10-year time period, the highest proportion of landings from the MWS were attributed to silk snapper (Figure 1.1.2; 1.1.3). However, in May 2023, the SSC found this 2009 landings estimate for silk snapper to be dubious and unsuitable for inclusion in revised catch limit projections (see below, and Table 1.1.4). Wenchman becomes the largest component of the MWS to be harvested when averaged over that same ten-year period because of the higher landings in 2020 and 2021 (Table 1.1.4).

Table 1.1.3. Proportion of species landed in the midwater snapper complex based on total landings (recreational and commercial) over a 10-year period from 2014 through 2023. Recreational landings include MRIP-FES units.

Species	2014-2023 Sum	Percentage
Blackfin Snapper	78,893	7.2
Queen Snapper	238,637	21.7
Silk Snapper	387,633	35.3
Wenchman	394,007	35.8

At the Council’s request, revised catch limits were considered by the Council’s Scientific and Statistical Committee (SSC). During meetings in 2022, butterfish trawl fishermen described their fishery to the SSC, which also evaluated historical logbooks, landings analyses by the

GSMFC, available life history information. During its May 2023 meeting⁵, SSC members agreed that wenchman should be removed from the MWS and that landings, excluding wenchman, could be examined to determine catch limits for the other species in the complex. Landings from 2011 through 2021 were deemed to be most consistent, a time-period which excluded an anomalous spike in 2009 for silk snapper with a very high proportional standard error. The SSC also reiterated data issues due to confidentiality for wenchman, rare occurrences in MRIP surveys, and that stock assessments cannot be conducted. Because landings data are limited and management intervention may only be needed if there is a drastic change in the fishery, the SSC recommended using Tier 3a for setting the OFL (mean of landings + 2* standard deviations [SD]) and option A for the ABC (mean of landings + 1.5*SD) for the MWS, excluding wenchman. All landings are in MRIP-FES units (Table 1.1.4).

Table 1.1.4. SSC catch level recommendations for the midwater snapper complex, excluding wenchman. The reference period used for landings is recommended to be 2012-2021. These catch limits are in MRIP-FES units.

Catch Level	Pounds whole weight
OFL	107,904
ABC	96,689

At its June 2023 meeting, the Council discussed the MWS and made a motion to consider removal of wenchman from the Reef Fish FMP, and to set ACLs and AMs for the remaining species in the MWS. At its January 2024 meeting, the Council added that it would like to evaluate keeping wenchman in the Reef Fish FMP as an ecosystem component species. Councils may choose to identify stocks within their FMPs as ecosystem component species if a Council determines that the stocks do not require conservation and management. Ecosystem component species may be identified at the species or stock level, and may be grouped into complexes. The National Standard 1 guidelines provide that a Council may, but is not required to use, an ecosystem component classification. Ecosystem component species are not considered to be “in the fishery” and thus are not required to have annual catch limits. The guidelines provide that species may be declared ecosystem component species for any of the following reasons: for data collection purposes; for ecosystem considerations related to specification of optimum yield for the associated fishery; as considerations in the development of conservation and management measures for the associated fishery; and/or to address other ecosystem issues. Because the reasons for which a Council might designate an ecosystem component species as such are variable, no specific guidance for making such a determination is offered in the MSA. Further, species designated as ecosystem component species do not need to be managed using ACLs⁶. The Council recognizes that it needs to consider whether wenchman needs conservation and management, and intends to review the non-exhaustive list of factors in the NS Guidelines⁷ at its April 2024 meeting.

⁵ <https://gulfcouncil.org/wp-content/uploads/Gulf-Standing-RF-Socio-Eco-SSC-Summary-May-2023-05172023.pdf>

⁶ 50 C.F.R. § 600.305 (c)(5)

⁷ 50 C.F.R. § 600.305 (c)(1).

1.2 Purpose and Need

The purpose of this action is to determine if wenchman is still in need of federal conservation and management, and to modify the catch limits for the remaining species in the MWS.

The need is to update existing MWS composition and catch limits based on the best scientific information available and to achieve optimum yield while preventing overfishing, consistent with the requirements of the MSA.

1.3 History of Management

The Original Reef Fish FMP, implemented in November 1984, was designed to rebuild declining reef fish stocks. It included prohibitions on the use of fish traps, roller trawls, and powerhead-equipped spear guns within an inshore stressed area; and, data reporting requirements.

Amendment 1, including an Environmental Assessment (EA), regulatory impact review (RIR), and regulatory flexibility analysis (RFA), implemented in February 1990, set objectives to stabilize long-term population levels of all reef fish species (including MWS species) by establishing a survival rate of biomass into the stock of spawning age fish to achieve at least 20% spawning stock biomass per recruit by January 1, 2000. It also set a 10-snapper recreational bag limit on snappers in aggregate, excluding red, lane, and vermilion snapper; allowed a two-day possession limit for charter vessels and headboats on trips that extend beyond 24 hours; established a longline and buoy gear boundary at the 50-fathom depth contour west of Cape San Blas, Florida, and the 20-fathom depth contour east of Cape San Blas, inshore of which the directed harvest of reef fish with longline gear and buoy gear was prohibited, and the retention of reef fish captured incidentally in other longline operations (e.g., sharks) was limited to the recreational daily bag limit; limited trawl vessels to the recreational size and daily bag limits of reef fish; established fish trap permits (up to 100 fish traps per permit holder); and established a commercial reef fish vessel permit.

The Generic ACL/AM Amendment (with its associated EIS, RIR, and RFA), implemented in January 2012, created the MWS and established an OFL, ABC, and ACL equal to the ABC, and an ACT based on the Council's ACL/ACT Control Rule. It also established the post-season AM for the MWS.

CHAPTER 2. PROPOSED MANAGEMENT ALTERNATIVES

2.1 Action 1 – Reconsider Inclusion of Wenchman in the Fishery Management Plan for Reef Fish Resources in the Gulf of Mexico

Alternative 1: No Action – Retain wenchman in the Fishery Management Plan for Reef Fish Resources (Reef Fish FMP) in the Gulf of Mexico (Gulf).

Alternative 2: Remove wenchman from the Reef Fish FMP. This would modify the composition of the Mid-water Snapper Complex (MWS) to include only queen snapper, blackfin snapper, and silk snapper.

Alternative 3: Remove wenchman from the MWS, but retain it within the Reef Fish FMP as an ecosystem component species. This would modify the composition of the MWS to include only queen snapper, blackfin snapper, and silk snapper.

Discussion:

Wenchman is managed as a component of the MWS within the Reef Fish FMP, which also includes queen snapper, blackfin snapper, and silk snapper. The MWS and its associated catch limits were created in 2012 under the Generic Comprehensive Annual Catch Limits / Accountability Measures (ACL/AM) Amendment (GMFMC 2011). The species included in the MWS were thought to be caught in similar regions and depths, in that they were generally reef-associated but usually found in the water column above that reef structure. During the creation of the Generic ACL/AM Amendment, there was discussion about the inclusion/exclusion of species within the FMPs managed by the Gulf of Mexico Fishery Management Council (Council). Ultimately, and similar to the consideration occurring in this action, the Council chose to remove the Stone Crab FMP from federal management. The Council reviewed the considerations contained within the Magnuson-Stevens Fishery Conservation and Management Act as reauthorized in 2007 (MSA), which includes provisions for consideration before deciding whether a species needs federal conservation and management (specifically, Section 302(h)(1)). Citing adequate conservation and management measures in place by the State of Florida, and Florida's willingness and capability to assume management of stone crab in state and federal waters, the Council removed the Stone Crab FMP in the Generic ACL/AM Amendment.

Between 2021 and 2023, the Council heard public testimony and reviewed fishery data about wenchman in the Gulf. Specifically, in 2020 and 2021, wenchman landings were considerably higher than in previous years, leading to a quota closure in the MWS fishery in 2021. Wenchman is not caught using the same methods as the other species in the MWS, nor is it typical of the same habitats and distribution. Wenchman landings have come primarily from the butterfly trawl fishery, per fishery data curated by the Gulf States Marine Fishery Commission

(GSMFC). Due to data confidentiality preclusions, the data necessary to annually evaluate wenchman harvest separate from the other MWS species compared to a stock ACL are not currently able to be publicly disseminated. Of note, the Council does not manage butterflyfish. During discussions for the Generic ACL/AM Amendment, the Council determined that butterflyfish was not in need of federal conservation and management, as this responsibility was already satisfactorily fulfilled by the Gulf states. Wenchman acts as a choke species for the butterflyfish trawl fishery, which lands most wenchman caught in the Gulf. This means if wenchman cannot be landed because the stock ACL for MWS has been met, then butterflyfish trawl fishermen would be required to sort and discard all wenchman from their trawl catch at sea before returning to port and selling their remaining catch. Wenchman is indistinguishable from butterflyfish by a trawl fisherman using modern bottom sounding equipment. As such, fishermen do not know whether they have caught any wenchman when trawling for butterflyfish until the trawl is retrieved and emptied. Mortality of trawl-caught fish is expected to be considerably high, and sorting catch on the deck of the fishing vessel is time-consuming. Thus, if the MWS ACL has been met and that fishery is closed, butterflyfish vessels cannot operate efficiently enough to justify the costs of fishing.

A stock assessment on wenchman was attempted under SEDAR 49 (2016); however, there were insufficient data to complete even a data-limited assessment for the species. No measurable improvements to the precision of wenchman landings or meaningful advances in science about the species have occurred since to better parameterize another stock assessment. Further, no such advances are expected in the near-term, meaning that the stock status of wenchman is likely to remain unknown for some time.

Under **Alternative 1**, wenchman would continue to be managed as part of the MWS within the Reef Fish FMP. Under the current management paradigm, wenchman would continue to be a component of the MWS with queen snapper, blackfin snapper, and silk snapper, and those four species would be managed together under a single stock ACL. **Alternative 1** would continue to provide federal conservation and management for wenchman, and minimally, at the level at which such conservation and management is currently provided. The Council would still be unlikely to have the data necessary to manage wenchman independently on an annual scale due to the aforementioned data confidentiality issues. Further, the imprecision of the landings data, the inconsistency of the magnitude of those landings between years, the uncertainty about the condition of the stock, and the unlikelihood of any of these factors improving in the near future are expected to confound federal management efforts. Ultimately, wenchman was not considered for removal from the Reef Fish FMP in the Generic ACL/AM Amendment (GMFMC 2011), due in large part to the thinking at the time that the species was caught often along with other MWS species. This determination has not been revisited since, and **Alternative 1** would retain wenchman in the Reef Fish FMP based on that rationale.

Alternative 2 would remove wenchman from the Reef Fish FMP and modify the composition of the MWS. If wenchman is removed from the Reef Fish FMP, then the MWS would be modified to include only queen snapper, blackfin snapper, and silk snapper. These three remaining species are all caught via hook and line fishing gear, and are usually targeted along with other deeper-water reef-associated species like those in the deep-water grouper complex (i.e., snowy grouper, warsaw grouper, speckled hind, and yellowedge grouper). Contemporary knowledge of fishery

dynamics indicates that wenchman is not a target species by Gulf fishermen, but rather is a bycatch species of a fishery not under federal management (i.e., the butterfly trawl fishery). On the contrary, there are regions in the Gulf that directly target at least queen and silk snapper in the MWS, such as in waters deeper than 100 meters (330 feet) of Galveston, Texas, and Key West, Florida. Considerate of all of this information, and the aforementioned points about the data-limited nature of the wenchman landings and its status as a non-target species, the Council's Scientific and Statistical Committee in May 2023 recommended a revised MWS overfishing limit (OFL) and acceptable biological catch (ABC), not inclusive of wenchman. Subsequently, the Council made a motion in June 2023 to consider removal of wenchman from the Reef Fish FMP. Doing so allows the Council to reconsider the inclusion/exclusion of wenchman in the Reef Fish FMP, and to revise the MWS catch limits, should the Council choose to do so.

Prior to removing wenchman from the Reef Fish FMP, the Council will need to reconsider whether wenchman still requires federal conservation and management pursuant to the provisions in Section 302(h)(1) of the MSA (listed in Chapter 1, above). The Council will need to evaluate these provisions and provide rationale for its decision. These provisions are not exhaustive; however, these guidelines also state that the principle implicit in National Standard 7 of the MSA is that not every fishery requires federal conservation and management. The MSA further states that Councils should prepare fishery management plans “only for overfished fisheries and for other fisheries where regulation would serve some useful purpose and where the present or future benefits of regulation would justify the costs.”⁸

Alternative 3 would remove wenchman from the MWS, but retain wenchman in the Reef Fish FMP as an ecosystem component species. The Council discussed this option briefly during its January 2024 meeting, with some concerns expressed about the possibility of a future fishery for wenchman developing in an under-regulated manner. Some Council members thought that at least some monitoring of wenchman landings should continue; Council and GSMFC staff stated that landings reported at the state and federal levels would still be retained by the GSMFC and available for review upon request. Councils may choose to identify a stock within an FMP as an ecosystem component species if they determine that the stock does not require conservation and management. Ecosystem component species designations may be used for a number of reasons, such as to collect data, minimize bycatch or bycatch mortality, protect the associated role of the ecosystem component species in the ecosystem, and/or to address other ecosystem issues⁹. Because the justification for an ecosystem component species can vary, the MSA does not specify explicit criteria for making such a designation. Further, species designated as ecosystem component species are not required to be managed to an ACL.

Potential management efficiencies could be achieved by choosing **Alternative 2** or **Alternative 3**, without compromising federal conservation and management objectives. Although wenchman and other MWS species inhabit a similar broad depth range, the prosecution of the wenchman fishery compared to the other species is decidedly different (trawl versus hook and line). Removal of wenchman from the Reef Fish FMP (**Alternative 2**) may allow the MWS to remain open for longer periods of time than if the MWS catch limit was subject to the highly variable nature of wenchman landings, and would mitigate commercial discard mortality within the

⁸ 50 C.F.R. §600.340

⁹ 50 C.F.R. § 600.305 (c)(5)

butterfish fishery. To this latter point, it is expected that any wenchman discarded from the butterfish trawl fishery would be dead discards. It is also unlikely that removal of wenchman from the Reef Fish FMP would result in a change in prosecution of the commercial butterfish fishery, as wenchman is a bycatch species therein. However, if wenchman is retained within the Reef Fish FMP under **Alternative 1**, it would be expected to continue to serve as a choke species for the commercial butterfish fishery, potentially be subject to considerable discard mortality, and the Council would continue to be tasked with its management despite lacking the data necessary to do so with appreciable confidence. If wenchman is retained within the Reef Fish FMP as an ecosystem component species under **Alternative 3**, it would be expected to continue to be monitored for changes in landings trend and magnitude, and would allow the Council to take up management of wenchman more explicitly in the future if necessary.

2.2 Action 2 – Modify Catch Limits for the Mid-water Snapper Complex

Alternative 1: No Action – The MWS OFL, ABC, and ACL will remain as implemented in 2012 by the Generic ACL/AM Amendment. These data are expressed inclusive of Marine Recreational Fisheries Statistics Survey (MRFSS) data for the recreational portion of the landings. Catch limits below are in pounds (lb) whole weight (ww):

Midwater Snapper Complex	OFL	ABC	ACL	ACT
Silk snapper				
Queen snapper	209,000	166,000	166,000	136,000
Wenchman	lb ww	lb ww	lb ww	lb ww
Blackfin snapper				

Alternative 2: Update MWS catch levels based on the SSC’s OFL and ABC recommendation for a modified MWS that includes only queen snapper, blackfin snapper, and silk snapper. These data are expressed inclusive of Marine Recreational Information Program (MRIP) survey data, using the Fishing Effort Survey (FES) for the recreational portion of the landings:

Catch Level	Pounds whole weight
OFL	107,904
ABC	96,689

Discussion:

Action 2 is dependent on the preferred alternative chosen in Action 1. If Alternative 1 in Action 1 is chosen as the preferred alternative, then **Alternative 2** in Action 2 is not viable. If Alternative 2 or Alternative 3 in Action 1 is chosen as the preferred alternative, then **Alternative 1** in Action 2 is not viable. This is because whether wenchman is included in the catch level calculations for MWS (Action 2) is entirely predicated on whether or how wenchman is included in the Reef Fish FMP (Action 1).

Alternative 1 (No Action) would retain the catch limits for the current composition of the MWS as determined in the Generic ACL/AM Amendment (GMFMC 2011). These catch limits were developed using the average landings of the four MWS species (wenchman, queen snapper, blackfin snapper, and silk snapper) from 1999 – 2008. None of these species exhibited consistent landings greater than 100,000 lb ww during this time period. **Alternative 1** is only viable if Alternative 1 in Action 1 is selected as preferred. Under the catch limits set forth in **Alternative 1**, the MWS ACL has been exceeded twice, in 2020 (100.5% of the ACL landed) and 2021 (130.5% of the ACL landed, quota closure issued on September 19, 2021).

Alternative 2 would modify the MWS catch levels based on the SSC’s recommendations, which excluded wenchman from the catch level calculations. These catch levels were recommended

based on the SSC's review of MWS aggregate landings from 2011 – 2021. The SSC recognized that the high MWS landings in 2020 and 2021 were likely due to wenchman harvest within the commercial butterfish trawl fishery. The SSC also identified an anomalous spike in silk snapper landings in 2009 that seemed dubious, and thus excluded 2009 landings data from further consideration. This spike was more than an order of magnitude greater than the silk snapper landings in the surrounding years. Ultimately, the SSC recommended using landings data from 2011 – 2021, which appeared consistent. The SSC also noted that MWS appear to be rare event species for MRIP due to their historical nature as species caught incidentally while fishing for other species. Further, the SSC acknowledged that the vessels recreationally fishing for MWS species in greater than 100 meters (330 feet) depth were likely larger offshore fishing vessels. These vessels are much less likely to be launched from and return to public access points, making the probability of their catch being accounted for in MRIP unlikely. However, the SSC also acknowledged a growing desire by for-hire and private recreational fishermen to target some MWS species, and in particular, silk snapper and queen snapper. The SSC used Tier 3a of its ABC Control Rule to set the OFL and ABC for the remaining MWS species in the complex; this tier is reserved for species for which a stock assessment is unavailable or for which the data are highly uncertain. Further, the SSC acknowledged that management intervention was unlikely unless there is a drastic change in fishery dynamics and performance for queen snapper, blackfin snapper, and silk snapper.

The catch levels expressed in **Alternative 1** and **Alternative 2** of Action 2 are not directly comparable for two reasons. First, the data in **Alternative 1** use MRFSS data for the recreational fisheries, compared to MRIP-FES in **Alternative 2**, and a comparison of these data is not available for MWS at this time. Second, the data in **Alternative 1** include wenchman in the catch level calculation, and do not in **Alternative 2**. Thus, even if a conversion of the catch levels between the different data units were available, the catch levels in **Alternative 1** would differ materially from those in **Alternative 2**. As such, these alternatives will not be directly compared on the basis of the amount of harvest allowed under each.

CHAPTER 3. REFERENCES

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APPENDIX A. OTHER APPLICABLE LAW

The Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) (16 U.S.C. 1801 et seq.) provides the authority for management of stocks included in fishery management plans (FMP) in federal waters of the exclusive economic zone (EEZ). However, management decision-making is also affected by a number of other federal statutes designed to protect the biological and human components of U.S. fisheries, as well as the ecosystems that support those fisheries. Major laws affecting federal fishery management decision-making include the Endangered Species Act (Section 3.3.3), E.O. 12866 (Regulatory Planning and Review, Chapter 5) and E.O. 12898 (Environmental Justice, Section 3.5). Other applicable laws are summarized below.

Administrative Procedure Act

All federal rulemaking is governed under the provisions of the Administrative Procedure Act (5 U.S.C. Subchapter II), which establishes a “notice and comment” procedure to enable public participation in the rulemaking process. Under the Act, the National Marine Fisheries Service (NMFS) is required to publish notification of proposed rules in the *Federal Register* and to solicit, consider, and respond to public comment on those rules before they are finalized. The Act also establishes a 30-day waiting period from the time a final rule is published until it takes effect. Proposed and final rules will be published before implementing the actions in this amendment.

Coastal Zone Management Act

Section 307(c)(1) of the federal Coastal Zone Management Act of 1972 (CZMA), as amended, requires federal activities that affect any land or water use or natural resource of a state’s coastal zone be conducted in a manner consistent, to the maximum extent practicable, with approved state coastal management programs. The requirements for such a consistency determination are set forth in the National Oceanic and Atmospheric Administration (NOAA) regulations at 15 CFR part 930, subpart C. According to these regulations and CZMA Section 307(c)(1), when taking an action that affects any land or water use or natural resource of a state’s coastal zone, NMFS is required to provide a consistency determination to the relevant state agency at least 90 days before taking final action.

Upon submission to the Secretary of Commerce, NMFS will determine if this plan amendment is consistent with the Coastal Zone Management programs of the states of Alabama, Florida, Louisiana, Mississippi, and Texas to the maximum extent possible. Their determination will then be submitted to the responsible state agencies under Section 307 of the CZMA administering approved Coastal Zone Management programs for these states.

Data Quality Act

The Data Quality Act (Public Law 106-443) effective October 1, 2002, requires the government to set standards for the quality of scientific information and statistics used and disseminated by

federal agencies. Information includes any communication or representation of knowledge such as facts or data, in any medium or form, including textual, numerical, cartographic, narrative, or audiovisual forms (includes web dissemination, but not hyperlinks to information that others disseminate; does not include clearly stated opinions).

Specifically, the Act directs the Office of Management and Budget to issue government wide guidelines that “provide policy and procedural guidance to federal agencies for ensuring and maximizing the quality, objectivity, utility, and integrity of information disseminated by federal agencies.” Such guidelines have been issued, directing all federal agencies to create and disseminate agency-specific standards to: (1 ensure information quality and develop a pre-dissemination review process; (2 establish administrative mechanisms allowing affected persons to seek and obtain correction of information; and (3 report periodically to Office of Management and Budget on the number and nature of complaints received.

Scientific information and data are key components of FMPs and amendments and the use of best available information is the second national standard under the Magnuson-Stevens Act. To be consistent with the Magnuson-Stevens Act, FMPs and amendments must be based on the best information available. They should also properly reference all supporting materials and data, and be reviewed by technically competent individuals. With respect to original data generated for FMPs and amendments, it is important to ensure that the data are collected according to documented procedures or in a manner that reflects standard practices accepted by the relevant scientific and technical communities. Data will also undergo quality control prior to being used by the agency and a pre-dissemination review.

National Historic Preservation Act

The National Historic Preservation Act (NHPA) of 1966, (Public Law 89-665; 16 U.S.C. 470 *et seq.*) is intended to preserve historical and archaeological sites in the United States of America. Section 106 of the NHPA requires federal agencies to evaluate the impact of all federally funded or permitted projects for sites on listed on, or eligible for listing on, the National Register of Historic Places and aims to minimize damage to such places.

Historical research indicates that over 2,000 ships have sunk on the Federal Outer Continental Shelf between 1625 and 1951; thousands more have sunk closer to shore in state waters during the same period. Only a handful of these have been scientifically excavated by archaeologists for the benefit of generations to come. Further information can be found at: <http://www.boem.gov/Environmental-Stewardship/Archaeology/Shipwrecks.aspx>

The proposed action does not adversely affect districts, sites, highways, structures, or objects listed in or eligible for listing in the National Register of Historic Places nor is it expected to cause loss or destruction of significant scientific, cultural, or historical resources. In the Gulf of Mexico (Gulf), the *U.S.S. Hatteras*, located in federal waters off Texas, is listed in the National Register of Historic Places. Fishing activity already occurs in the vicinity of this site, but the proposed action would have no additional adverse impacts on listed historic resources, nor would they alter any regulations intended to protect them.

Executive Orders (E.O.)

E.O. 12630: Takings

The E.O. on Government Actions and Interference with Constitutionally Protected Property Rights that became effective March 18, 1988, requires each federal agency prepare a Takings Implication Assessment for any of its administrative, regulatory, and legislative policies and actions that affect, or may affect, the use of any real or personal property. Clearance of a regulatory action must include a takings statement and, if appropriate, a Takings Implication Assessment. The NOAA Office of General Counsel will determine whether a Taking Implication Assessment is necessary for this amendment.

E.O. 12962: Recreational Fisheries

This E.O. requires federal agencies, in cooperation with states and tribes, to improve the quantity, function, sustainable productivity, and distribution of U.S. aquatic resources for increased recreational fishing opportunities through a variety of methods including, but not limited to, developing joint partnerships; promoting the restoration of recreational fishing areas that are limited by water quality and habitat degradation; fostering sound aquatic conservation and restoration endeavors; and evaluating the effects of federally-funded, permitted, or authorized actions on aquatic systems and recreational fisheries, and documenting those effects. Additionally, it establishes a seven-member National Recreational Fisheries Coordination Council (NRFCC) responsible for, among other things, ensuring that social and economic values of healthy aquatic systems that support recreational fisheries are considered by federal agencies in the course of their actions, sharing the latest resource information and management technologies, and reducing duplicative and cost-inefficient programs among federal agencies involved in conserving or managing recreational fisheries. The NRFCC also is responsible for developing, in cooperation with federal agencies, States and Tribes, a Recreational Fishery Resource Conservation Plan - to include a five-year agenda. Finally, the E.O. requires NMFS and the United States Fish and Wildlife Service to develop a joint agency policy for administering the ESA.

E.O. 13089: Coral Reef Protection

The E.O. on Coral Reef Protection requires federal agencies whose actions may affect U.S. coral reef ecosystems to identify those actions, utilize their programs and authorities to protect and enhance the conditions of such ecosystems, and, to the extent permitted by law, ensure actions that they authorize, fund, or carry out do not degrade the condition of that ecosystem. By definition, a U.S. coral reef ecosystem means those species, habitats, and other national resources associated with coral reefs in all maritime areas and zones subject to the jurisdiction or control of the United States (e.g., federal, state, territorial, or commonwealth waters).

Regulations are already in place to limit or reduce habitat impacts within the Flower Garden Banks National Marine Sanctuary. Additionally, NMFS approved and implemented Generic Amendment 3 for Essential Fish Habitat (GMFMC 2005), which established additional habitat

areas of particular concern (HAPCs) and gear restrictions to protect corals throughout the Gulf. There are no implications to coral reefs by the actions proposed in this amendment.

E.O. 13132: Federalism

The E.O. on Federalism requires agencies in formulating and implementing policies, to be guided by the fundamental Federalism principles. The E.O. serves to guarantee the division of governmental responsibilities between the national government and the states that was intended by the framers of the Constitution. Federalism is rooted in the belief that issues not national in scope or significance are most appropriately addressed by the level of government closest to the people. This E.O. is relevant to FMPs and amendments given the overlapping authorities of NMFS, the states, and local authorities in managing coastal resources, including fisheries, and the need for a clear definition of responsibilities. It is important to recognize those components of the ecosystem over which fishery managers have no direct control and to develop strategies to address them in conjunction with appropriate state, tribes and local entities (international too).

No Federalism issues were identified relative to the action to modify the management of the recreational harvest of greater amberjack. Therefore, consultation with state officials under Executive Order 12612 was not necessary. Consequently, consultation with state officials under Executive Order 12612 remains unnecessary.

E.O. 13158: Marine Protected Areas

This E.O. requires federal agencies to consider whether their proposed action(s) will affect any area of the marine environment that has been reserved by federal, state, territorial, tribal, or local laws or regulations to provide lasting protection for part or all of the natural or cultural resource within the protected area. There are several marine protected areas, HAPCs, and gear-restricted areas in the eastern and northwestern Gulf. The existing areas are entirely within federal waters of the Gulf. They do not affect any areas reserved by federal, state, territorial, tribal or local jurisdictions.