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May 12, 2020

Dr. Roy Crabtree, Regional Administrator
Mara Levy, General Counsel
263 13th Ave South
Saint Petersburg, FL 33701

RE: Temporary Rule for Data Calibration, Reef Fish Amendments 50A-F

Dear Dr. Crabtree and Ms. Levy:

Ocean Conservancy¹ urges the National Marine Fisheries Service (NMFS) to promptly issue a Temporary Rule to implement state data calibrations for the private recreational red snapper fishery in the Gulf of Mexico.

Ocean Conservancy affirmatively supports Amendment 50's delegation of some aspects of management of the private recreational red snapper fishery to the five Gulf States. However, discrepancies between the state survey data units and the Marine Recreational Information Program (MRIP) Coastal Household Telephone Survey (CHTS) units currently used to set ACLs raise the significant possibility that states will exceed their individual portions as well as the total private recreational ACL without triggering the necessary accountability measures to prevent catch overages.² It is critical that NMFS complete simple-ratio calibrations to convert data between the state and MRIP surveys. Anything short of swift implementation of data calibrations undermines the federally mandated red snapper rebuilding plan, puts the livelihoods of Gulf fishermen at risk and jeopardizes the future of the recreational red snapper fishery.

The COVID-19 pandemic has prevented the Gulf of Mexico Fishery Management Council from discussing and acting upon the data calibration issue. The March meeting of the Gulf Council was cancelled due to public health precautions. Similarly, it is unlikely that the Council will be able to meet in June. Meanwhile, state fishing seasons will open soon — Alabama and Louisiana plan to open for long weekends beginning May 22, Texas will open June 1, and Florida will open June 11. Several states have completed the peer-review process for preparing the simple-ratio calibrations for their surveys and are awaiting their application. In addition, anecdotal reports indicate that private angler fishing is up, yet

¹ Ocean Conservancy is working to protect the ocean from today's greatest global challenges. Together with our partners, we create science-based solutions for a healthy ocean and the wildlife communities that depend on it.

² Gulf of Mexico Fishery Management Council, Reef Fish Management Committee, IP Casino & Resort, Biloxi, Mississippi (April 2, 2019), available at <http://gulfcouncil.org/wp-content/uploads/GMFMC-Reef-Fish-April-2019.pdf>.

data collection is not occurring as previously prescribed, increasing the uncertainty and ability for the sector to remain accountable.

NMFS must complete and implement a common currency calibration to make its data comparable and compatible across surveys, reduce uncertainty and ensure fairness and equitability. NMFS acknowledged in the response to public comments for the final rule for Amendment 50 that without calibration, the rule is not compliant with the Magnuson-Stevens Act.³ If NMFS fails to address the data problem, the agency will be violating its statutory duty to ensure that management does not allow overfishing and to use the best scientific information available.

At this point, the best path forward is for NMFS to issue a Temporary Rule from the Secretary as soon as possible to restate the current ACLs in their calibrated forms. As the states have completed or nearly completed peer-review of the calibrations, they are aware of the need for and scale of calibrations necessary, and are able to adjust their season lengths accordingly for 2020. Calibrating now is imperative, both so that states are reporting against appropriate benchmarks, and to ensure transparency to managers and anglers in case paybacks are necessary next year for overages this season. As indicated in the agency's response to comment #5 in Amendment 50, each state's landings will be compared to the *revised* ACL to determine overages and paybacks that would be required for any overages.⁴

Without calibration, uncertainty increases while accountability decreases and the rule continues to violate federal law. This is the wrong start to state management under Amendment 50. The agency itself has acknowledged the problem and identified workable solutions. We now urge the agency to finalize the calibrations via Temporary Rule as soon as possible.

Sincerely,

Meredith Moore
Director, Fish Conservation Program

Ivy Fredrickson
Staff Attorney, Conservation Programs

cc:

Chris Oliver, Assistant Administrator for Fisheries

³ Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Reef Fish Fishery of the Gulf of Mexico; Amendments 50A-F, Final Rule, 85 Fed. Reg. 6819, 6822 (Response to Comment 5).

⁴ *Id.*