

# Modification to the Recreational For-hire Red Snapper Annual Catch Target Buffer



## A.C.T.

### Framework Action to the Fishery Management Plan for Reef Fish Resources of the Gulf of Mexico

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# ENVIRONMENTAL ASSESSMENT COVER SHEET

## Name of Action

Framework Action to the Fishery Management Plan for Reef Fish Resources in the Gulf of Mexico: Modification to the Recreational For-hire Red Snapper Annual Catch Target Buffer including Environmental Assessment, Regulatory Impact Review, and Regulatory Flexibility Act Analysis.

## Responsible Agencies and Contact Persons

Gulf of Mexico Fishery Management Council (Council) 4107 W. Spruce Street, Suite 200 Tampa, Florida 33607 Ryan Rindone ( <a href="mailto:ryan.rindone@gulfcouncil.org">ryan.rindone@gulfcouncil.org</a> )	813-348-1630 813-348-1711 (fax) <a href="mailto:gulfcouncil@gulfcouncil.org">gulfcouncil@gulfcouncil.org</a> <a href="http://www.gulfcouncil.org">http://www.gulfcouncil.org</a>
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National Marine Fisheries Service (Lead Agency) Southeast Regional Office 263 13 <sup>th</sup> Avenue South St. Petersburg, Florida 33701 Peter Hood ( <a href="mailto:peter.hood@noaa.gov">peter.hood@noaa.gov</a> )	727-824-5305 727-824-5308 (fax) <a href="http://sero.nmfs.noaa.gov">http://sero.nmfs.noaa.gov</a>
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## Type of Action

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## ABBREVIATIONS USED IN THIS DOCUMENT

ABC	acceptable biological catch
ACL	annual catch limit
ACT	annual catch target
AM	accountability measures
APAIS	Access Point Angler Intercept Survey
comm	commercial
Council	Gulf of Mexico Fishery Management Council
CS	consumer surplus
DPS	distinct population segment
EA	environmental assessment
EFH	essential fish habitat
EFP	exempted fishing permits
EIS	environmental impact statement
EJ	environmental justice
ESA	Endangered Species Act
FMP	Fishery Management Plan
GMFMC	Gulf of Mexico Fishery Management Council
Gulf	Gulf of Mexico
HAPC	habitat areas of particular concern
IFQ	individual fishing quotient
IPCC	Intergovernmental Panel on Climate Change
IRFA	initial regulatory flexibility analysis
LAPP	Limited Access Privilege Program
Magnuson-Stevens Act	Magnuson-Stevens Fishery Conservation and Management Act
MFMT	maximum fishing mortality threshold
MMPA	Marine Mammals Protection Act
MRFSS	Marine Recreational Fisheries Statistics Survey
MRIP	Marine Recreational Information Program
MSST	minimum stock size threshold
NAICS	North American Industry Classification System
NARW	North Atlantic right whale
NMFS	National Marine Fisheries Service
NOAA	National Oceanic and Atmospheric Administration
NOR	net operating revenue
OFL	overfishing limit
opinion	biological opinion
PAH	polycyclic aromatic hydrocarbons
PS	producer surplus
rec	recreational
RFA	Regulatory Flexibility Act
RFFA	reasonably foreseeable future action
RIR	regulatory impact review
RQ	regional quotient

Secretary	Secretary of Commerce
SEDAR	Southeast Data, Assessment, and Review process
SEFSC	Southeast Fisheries Science Center
SERO	NMFS Southeast Regional Office
SPR	spawning potential ratio
SRHS	Southeast Region Headboat Survey
SSB	spawning stock biomass
SSC	Scientific and Statistical Committee
TAC	total allowable catch
TL	total length
TPWD	Texas Parks and Wildlife Department
tpy	tons per year
USCG	United States Coast Guard

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# CHAPTER 1. INTRODUCTION

## 1.1 Background

Quota-based management of recreational red snapper was implemented in 1997 (GMFMC 1997a) in response to a provision added to the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) by the Sustainable Fisheries Act of 1996. That provision, Section 407(d), requires that both the commercial and recreational red snapper harvests in the Gulf of Mexico (Gulf) be managed under a quota, and that fishing be prohibited when each respective quota is reached. The recreational quota is 49% of the total allowable catch. The recreational and commercial quotas are equivalent to the annual catch limits (ACL). In 2014, NMFS implemented a framework action that established an annual catch target (ACT) that is 20% less than the recreational quota and is used to project the season length. In 2015, under Amendment 40 to the Fishery Management Plan (FMP) for Reef Fish Resources in the Gulf of Mexico (Reef Fish FMP) (GMFMC 2014a), private angling and federal for-hire components of the recreational sector were established. The private angling component is comprised of private recreational anglers and for-hire operators who do not have a federal reef fish charter vessel/headboat permit. The federal for-hire component is comprised of all for-hire operators with a valid or renewable federal reef fish charter vessel/headboat permit. The recreational quota is allocated as 57.7% to the private angling component and 42.3% to the federal for-hire component.

The recreational sector is managed with bag limits, minimum size limits, and seasonal closures. Landings for the private angling component and the for-hire component of the recreational sector from 2001 – 2018 are shown in Table 1.1.1. Season durations from 2010 – 2019 are shown in Table 1.1.2.

**Table 1.1.1.** Red snapper federal recreational landings and quotas/ACLs. Landings are in pounds whole weight. Quotas/ACLs are in millions of pounds (mp) whole weight.

Year	Private Angling Component	For-Hire Component	Recreational Total	Quota/ACL (mp)	% of Quota/ACL Landed
2001	2,846,830	2,397,973	5,244,802	4.47	117.3%
2002	3,037,152	3,484,593	6,521,745	4.47	145.9%
2003	2,987,156	3,106,886	6,094,042	4.47	136.3%
2004	3,198,600	3,261,644	6,460,244	4.47	144.5%
2005	2,175,730	2,500,188	4,675,918	4.47	104.6%
2006	1,692,246	2,438,886	4,131,132	4.47	92.4%
2007	3,142,991	2,665,802	5,808,793	3.19	182.1%
2008	2,298,321	1,757,553	4,055,874	2.45	165.5%
2009	3,362,349	2,234,508	5,596,857	2.45	228.4%
2010	1,784,709	862,660	2,647,369	3.4	77.9%
2011	4,891,368	1,842,739	6,734,107	3.87	174.0%
2012	5,284,921	2,239,320	7,524,241	3.96	190.0%
2013	8,145,917	1,556,985	9,702,902	5.39	180.0%
2014	3,268,558	566,878	3,835,436	5.39	71.2%
2015	3,806,474	-	5,960,151	4.04	94.2%
	-	2,153,677		2.96	72.8%
2016	5,293,635	-	7,436,450	4.15	127.6%
	-	2,142,815		3.04	70.5%
2017	6,593,233	-	8,862,771	3.76	175.4%
	-	2,269,538		2.85	79.6%
2018*	4,048,188	-	6,355,938	3.76	107.7%
	-	2,307,750		2.85	81%

Source: Southeast Fisheries Science Center (SEFSC) Recreational ACL Data (April 2019).\* 2018 landings data are preliminary. The private angling component was managed under EFPs by the individual Gulf states for the 2018 and 2019 fishing seasons.

**Table 1.1.2.** Red snapper federal recreational season durations (in days) from 2010 - 2019. State seasons apply only to the private angling component.

Year	Federal Season	Federal For-Hire Season	Federal Private Angling Season	State Season				
				FL	AL	MS	LA	TX
2010	77	-	-	77	77	77	77	365
2011	48	-	-	48	48	48	48	365
2012	46	-	-	46	46	46	46	366
2013	42	-	-	65	42	42	115	365
2014	9	-	-	52	21	36	286	365
2015*	-	44	10	70	41	118	215	365
2016	-	46	11	85	66	102	272	366
2017**	-	49	42	65	67	102	135	365
2018***	***	51	***	40	24	76	60	51
2019***	***	62	***	32	27	81	****	97

\* 2015 marks the first year where the federal for-hire and private angling components were managed under separate catch limits.

\*\* The 2017 red snapper fishing season for private anglers was extended by 39 days on June 6, 2017 by the Secretary of Commerce.

\*\*\* The 2018 and 2019 fishing seasons for private anglers were/will be managed under exempted fishing permits for each Gulf state.

\*\*\*\* Louisiana State Season duration for 2019 will depend on the pace of landings in federal waters off that state.

## History of Recreational Catch Quotas and ACT Buffers

In 2009, the Gulf of Mexico Fishery Management Council’s (Council) Scientific and Statistical Committee (SSC) reviewed a red snapper update assessment (SEDAR 7 Update 2009). The Council’s ABC Control Rule had not yet been developed. In the absence of a control rule, the SSC in 2010 set the ABC at 75% of the OFL (GMFMC 2009). The ABC continued to be set at either 75% of OFL or the yield corresponding to 75% of the fishing mortality level at 26% of the spawning potential ratio ( $F_{26\% SPR}$ ) through 2012. After 2012, the ABC was set using the Council’s ABC Control Rule, which has typically resulted in more narrow differences between the ABC and the OFL (~ 2.58% in 2019).

Prior to 2014, the recreational red snapper season length was based on the projected time for landings to reach the ACL. On March 26, 2014, in response to a legal challenge from commercial anglers, the U.S. District Court for the District of Columbia ruled that the National Marine Fisheries Service (NMFS) failed to require adequate accountability measures for the recreational sector, failed to prohibit the retention of fish after the recreational ACL had been harvested, and failed to use the best scientific information available when determining whether there should be a 2013 fall fishing season. In April 2014, in response to the Court’s decision and to reduce the probability of the recreational sector exceeding its ACL, the Council reviewed an analysis of the likelihood of exceeding the ACL if the fishing season were projected to an ACT set at some percentage below the ACL (Figure 1.1.1). A 20% buffer between the ACL and ACT was expected to result in a 15% probability of exceeding the recreational ACL. The Council

requested, through an emergency rule, that NMFS implement an ACT that was 20% less than the 2014 recreational ACL and use the ACT to set the season length (Figure 1.1.1). An October 2014 framework action (GMFMC 2014b) subsequently established a recreational red snapper ACT that is 20% less than the recreational ACL primarily because of the quota overages in three of the four years (2010-2013) used for calculating the buffer, and established an overage adjustment in the year following a quota overage, if the stock is overfished.

## 2014 Red Snapper Season Lengths



Recreational Quota = 5.39 mp ww

Buffer (%)	Rec ACT (lbs ww)	Federal Season (days)	Prob. of Exceeding Quota
0%	5.39	17	50%
20%	4.312	11	15%
30%	3.773	8	5%
40%	3.234	5	<1%
60%	1.889	0	<1%



**Figure 1.1.1.** Analysis of probability of recreational red snapper quota being exceeded in 2014 at various ACT buffer levels.

Source: NMFS/SERO

The 20% buffer described above was derived by applying the ACL/ACT Control Rule developed in the Generic ACL/AM Amendment (GMFMC 2011c). The ACL/ACT Control Rule applies buffers to create target catch levels that account for management uncertainty in maintaining catches at or below the ACL. The ACL/ACT Control Rule is intended to be applied separately to the recreational and commercial sectors because each sector has different levels of management uncertainty. The ACL/ACT Control Rule recommended a 0% buffer for the commercial sector because the commercial red snapper harvest is managed by an individual fishing quota program, has accurate landings data, and has not exceeded its quota in the last seven years.

In the four years after the ACT was used to project season length, the actual recreational landings were below the ACL once (2015), and over the ACL twice (2016 and 2017). The overage in 2016 was partially the result of several Gulf states extending their state water seasons following the announcement of the federal fishing season. The overage in 2017 was the result of the extension of the recreational red snapper season for private anglers following the initial federal fishing season announcement.

When Amendment 40 (GMFMC 2014a) divided the recreational sector into the private angling and federal for-hire components, the 20% buffer between the ACL and the ACT was applied to both components individually, meaning that the ACT for each recreational component was 20% lower than that component's allocation of the recreational ACL. Similarly, the overage adjustment is component-specific and applies if the recreational ACL is exceeded and red snapper are classified as overfished. Amendment 40 also established a sunset provision, which would have ended sector separation in three years. Amendment 45 (GMFMC 2016) extended the sunset date by five years, from 2017 to 2022. In the four years since the separate components were established, the private angling component exceeded its ACT and ACL in three years and exceeded its ACT only in the other year (Table 1.1.1). The federal for-hire component did not exceed its ACT or ACL in any of the years (Table 1.1.1). The payback adjustment has only been applied once - to the 2017 private angling ACL because of a recreational ACL overage of 129,906 lb ww in 2016 (Table 1.1.2). As of 2017, the red snapper stock is no longer classified as overfished and the overage adjustment does not apply (Amendment 44; GMFMC 2017).

With the 20% ACT buffer in place, the total recreational harvest (private angling and for-hire vessels combined) was 28% below the ACL in 2014, 15% below the ACL in 2015, and 3% over the ACL in 2016, and 34% over the ACL in 2017. Under the first year of the EFPs in 2018, the total recreational harvest was 6% below the total recreational ACL.

#### *Private Recreational Component Exempted Fishing Permits*

In 2018, the five Gulf state marine resource agencies were issued exempted fishing permits (EFP) to test limited state management of the red snapper private angling component. The EFPs allocated a portion of the private-angling ACL to each state, to be harvested during the 2018 and 2019 fishing years. The EFPs allow the states to establish the private angling fishing season by exempting persons from the annual closed federal fishing seasons if they are landing red snapper in the participating states during the states' open season. Doing so allows the private angling component to be managed outside of the federal ACT while the EFPs are valid. The EFPs apply to private anglers who hold a valid recreational fishing license issued by the state in which they land red snapper, and who are in compliance with all other state requirements for landing red snapper.<sup>1</sup> Persons aboard state-licensed charter vessels without a federal permit are prohibited from fishing for or possessing red snapper in or from federal waters when under charter. They may legally harvest red snapper from state waters as long as the respective state's waters are open.

#### *Decrease in the For-hire ACT Buffer for 2019*

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<sup>1</sup> For more information: <https://www.fisheries.noaa.gov/southeast/state-recreational-red-snapper-management-exempted-fishing-permits>

At its August 2018 meeting, the Council approved a Framework Action to modify the Recreational Red Snapper Annual Catch Target Buffers (GMFMC 2018), which was implemented on April 4, 2019. This framework action reduced the difference between the ACT and the ACL for the federal for-hire component to 9% for the 2019 fishing year only. The private angling component ACT was unchanged at 20% below the private angling component ACL, with the total recreational sector ACT approximately 15% below the recreational sector's ACL. However, under the 2019 state-specific EFPs, each state specified its own buffer, if any, between the ACT and ACL.

### *Reef Fish Amendment 50*

At its April 2019 meeting, the Council approved Amendment 50 to the Reef Fish FMP (GMFMC 2019). Amendment 50 would establish a state management program for the private angling component's harvest of red snapper. Under Amendment 50, each Gulf state would be responsible for managing its allocation of the red snapper private angling component ACL, using size limits, bag limits, and seasonal closures. If a state exceeded its allocation in a given fishing year, then the amount of the overage would be reduced from that state's quota for the following fishing year. The individual Gulf states would be responsible for their own quota monitoring, and each has a system in place to monitor that a state's private angling landings. The individual states would determine if additional catch limit buffers (e.g., an ACT set lower than an ACL, with the fishing season based on the ACT) are necessary to successfully manage that state's allocated quota. The federal for-hire component's harvest of red snapper will continue to be directly federally managed even if the sunset provision on the separate management of the private angling and federal for-hire components (Amendment 40, GMFMC 2014b; Amendment 45, GMFMC 2016) is removed in Amendment 50.

## **1.2 Purpose and Need**

The purpose of this action is to reduce the buffer between the federal for-hire component ACL and ACT for red snapper to a level that will allow a greater harvest while continuing to constrain landings to the component ACL, as well as the total recreational ACL.

The need for this action is to allow the federal for-hire component to harvest red snapper at a level consistent with achieving optimum yield while preventing overfishing, and while rebuilding the red snapper stock.

## **1.3 History of Management**

This history of management covers events pertinent to red snapper allocation and setting quotas. A complete history of management for the Fishery Management Plan for Reef Fish Resources in the Gulf of Mexico (Reef Fish FMP) is available on the Council's website at <http://gulfcouncil.org/fishery-management/> and a history of red snapper management through 2006 is presented in Hood et al. (2007). The final rule for the Reef Fish FMP (with its associated environmental impact statement [EIS]) (GMFMC 1981) was effective November 8, 1984, and defined the reef fish fishery management unit, which included red snapper.

Recreational fishing for red snapper is managed with a 16-inch total length (TL) minimum size limit, 2-fish bag limit, and a season beginning on June 1 and ending when the recreational quota is projected to be caught. Currently this season only applies to the federal for-hire component operating under its component ACT and ACL. The private-angler component is currently being managed under state EFPs described above. Other reef fish fishery management measures that affect red snapper fishing include permit requirements for the commercial and federal for-hire fleets as well as season-area closures (e.g., Madison-Swanson and the Edges).

*Red snapper allocation and quotas:* The final rule for **Amendment 1** (GMFMC 1989) to the Reef Fish FMP (with its associated Environmental Assessment (EA), Regulatory Impact Review (RIR), and Initial Regulatory Flexibility Analysis [IRFA]) was effective in February 1990. The amendment specified a framework procedure for specifying the total allowable catch (TAC) to allow for annual management changes. A part of that specification was to establish a species allocation. This was based on the percentage of total landings during the base period of 1979-1987. For red snapper, the commercial sector landed 51% and the recreational sector landed 49% of red snapper over the base period. The recreational quota was established through a 1997 regulatory amendment (with its associated EA and RIR) (GMFMC 1995) with a final rule effective in October 1997. Prior to 1997, the recreational sector had exceeded its allocation of the red snapper TAC, though the overages were declining through more restrictive recreational management measures (see Section 3, Table 3.1.2). With the establishment of a recreational quota, the Regional Administrator was authorized to close the recreational season when the quota is reached as required by the Magnuson-Stevens Act. Commercial and recreational quotas, recreational allocations, and commercial and recreational landings are provided in Table 3.1.2.

Implemented in May 2016, **Amendment 28** (GMFMC 2015b) revised the commercial and recreational sector allocations of the red snapper ACLs by shifting 2.5% of the commercial sector's allocation to the recreational sector. The resulting sector allocations for red snapper were 48.5% commercial and 51.5% recreational and were applied to the 2016 quotas. For 2016, NMFS estimated the recreational red snapper fishing season duration in federal waters for each component and established an 11-day season for the private angling component and a 46-day season for the federal for-hire component.

On March 3, 2017, a U.S. district court vacated **Amendment 28** and subsequently ordered that the sector quotas for 2017 be set consistent with the previous sector allocations of 51% commercial and 49% recreational. For 2017, NMFS initially established a 3-day fishing season for the private angling component and a 49-day season for the federal for-hire component. The short private angling season in 2017 was due in part to a quota overage in 2016, which required an overage adjustment to the 2017 quota because the stock was overfished. The short season was also due to landings projected to occur in state waters while federal waters were closed. Shortly after the private angling season ended, NMFS reopened the private angling fishing season for an additional 39 days. During this time, the fishing season was open Fridays through Sundays, plus July 3-4 and September 4.

At its April 2014 meeting, the Council requested an emergency rule to revise the recreational accountability measures for red snapper by applying a 20% buffer to the recreational quota,

which resulted in a recreational ACT of 4.312 million pounds whole weight (NMFS 2014). The Council's decision to request an emergency rule was made following the decision of the U.S. District Court for the District of Columbia in *Guindon v. Pritzker* (March 26, 2014). A 2014 framework action created an ACT and a quota overage adjustment to apply to the 2015 fishing year and beyond (GMFMC 2014b). The action adopted an ACT based on a 20% buffer to the recreational quota. The Council also selected as preferred an overage adjustment that applies when red snapper are classified as overfished such that the amount by which the recreational quota is exceeded in a fishing season is deducted from the following year's quota.

The Council established a federal for-hire and a private angling component within the Gulf recreational sector fishing for red snapper through **Amendment 40** (with its associated EIS, RIR, and Regulatory Flexibility Act analysis) which was implemented by NMFS on May 22, 2015 (GMFMC 2014a). The federal for-hire component is comprised of all for-hire operators with a valid or renewable federal charter vessel/headboat permit for reef fish and the private angling component is comprised of other for-hire operators and private recreational anglers. Amendment 40 allocated the red snapper recreational quota and ACT among the federal for-hire (42.3%) and private angling (57.7%) components. **Amendment 45** (GMFMC 2016) extended the separate management of the federal for-hire and private angling components for an additional five years, through December 31, 2022.

*For-hire permit requirements:* The requirement to have a federal permit to operate for-hire vessels in the Gulf exclusive economic zone for reef fish fishing was implemented through **Amendment 11** (with its associated EA, RIR, and IRFA) on April 1, 1996 (GMFMC 1995). The initial purpose of the permits was to address potential abuses in the two-day bag limit allowance. It was thought that by having a permit to which sanctions could be applied would improve compliance with the two-day bag limit. In addition, the permit requirement was seen as a way to enhance monitoring of for-hire vessels in the recreational sector. **Amendment 20** (with its associated EA and RIR; GMFMC 2003), implemented on June 16, 2003, established a three-year moratorium on the issuance of new charter and headboat Gulf federal reef fish permits to limit further expansion in the for-hire fisheries, an industry concern, while the Council considered the need for more comprehensive effort management systems. The moratorium was extended indefinitely in **Amendment 25** (with its Supplemental EIS, RIR, and IRFA, implemented June 15, 2006 [GMFMC 2006]).

*2019 Reduction in the Federal For-hire Component's ACL/ACT Buffer:* A framework action to Modify the Recreational Red Snapper Annual Catch Target Buffers (GMFMC 2018) was implemented on April 4, 2019. This framework action established a new red snapper component ACT buffer for the federal for-hire component, set 9% below the federal for-hire component ACL for the 2019 fishing year only. The private angling component ACT remains at 20% below the private angling component ACL, with the total recreational sector ACT approximately 15% below the recreational sector ACL.

## CHAPTER 2. MANAGEMENT ALTERNATIVES

### 2.1 Action 1 – Modify the Red Snapper Recreational For-Hire Component Annual Catch Target (ACT)

**Alternative 1:** No Action. The red snapper annual catch target (ACT) for the recreational for-hire component for 2019 is 9% below the component annual catch limit (ACL).<sup>2</sup> For 2020 and subsequent years, the ACT for the for-hire component will be 20% below the component ACL.

**Alternative 2:** Apply the Gulf of Mexico (Gulf) Fishery Management Council’s (Council) ACL/ACT Control Rule, using federal for-hire landings data from 2014 – 2017, to set the component ACT buffer for the federal for-hire component. This results in a federal for-hire component ACT set 9% below the federal for-hire component ACL.

**Alternative 3:** Apply the Council’s ACL/ACT Control Rule, using federal for-hire landings from 2015 – 2018, to set the component ACT buffer for the federal for-hire component. This results in a federal for-hire component ACT set 5% below the federal for-hire component ACL.

#### **Discussion:**

The for-hire and private angling components of the red snapper recreational sector have a single, combined recreational ACL, per Section 407(d) of the Magnuson-Stevens Fishery Conservation and Management Act. As a result, the total recreational ACL for the for-hire and private angling components combined can be exceeded if one component exceeds its ACL, even if the other component harvests less than its component ACL.

At its January 2016 meeting, the Council’s Standing and Special Reef Fish Scientific and Statistical Committee (SSC) reviewed the methodology used by the National Marine Fisheries Service (NMFS) to set recreational red snapper season durations, which are currently based on the recreational sector ACT. The SSC discussed possible approaches that could be used to evaluate a change in the ACT buffer. However, because of the numerous sources of uncertainty, the SSC determined that there were too many unknown factors to establish a scientific justification for either changing or retaining the buffer, and suggested that the buffer be re-evaluated in three to four years when more landings data are available for the separate recreational sector components. During its August 2018 meeting, the Council approved a framework action to establish a new red snapper component ACT buffer for the federal for-hire component which was set 9% below the federal for-hire component ACL for the 2019 fishing year only. This buffer was determined using the Council’s ACL/ACT Control Rule.

Prior to the approval of the exempted fishing permits for the 2018 and 2019 fishing seasons, the duration of state private angling fishing seasons in recent years (2013+) generally increased, resulting in fewer fishing days for private anglers in federal waters (i.e., due to increased catches

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<sup>2</sup> The buffer of 9% for the federal for-hire component was implemented for the 2019 season only.

in state waters that count against the federal ACL; Table 1.1.2). This resulted in approximately 81% of the ACL for the private angling component initially being projected to be landed in state waters in the 2017 fishing season, leaving the remainder to be harvested during the season for federal waters (NMFS 2017). During its April 2019 meeting, the Council approved Amendment 50 (GMFMC 2019) to the Reef Fish FMP, which establishes a state management program for the private angling component’s harvest of red snapper. If Amendment 50 is approved and implemented by the Secretary of Commerce, each Gulf state would be responsible for managing its allocation of the red snapper private angling component ACL, and the individual states would determine if additional catch limit buffers (e.g., an ACT set lower than an ACL, with the fishing season based on the ACT) are necessary for management. For these reasons, changes to the private angling component buffer are not being considered in this amendment.

**Alternative 1** (No Action) keeps the red snapper ACT for the federal for-hire component for 2019 at 9% below the component ACL, and for 2020 and subsequent years at 20% below the component ACL. Since the implementation of separate management for the recreational components, landings from 2015 – 2018 by the federal for-hire component have not exceeded their ACL, and have only exceeded their ACT once by 1% (2018; Table 1.1.1). This suggests the fishing season duration resulting from the current 20% buffer (**Alternative 1**) is effectively constraining harvest for the federal for-hire component to its component ACT.

**Alternative 2** would set the component ACT buffer for the federal for-hire component at 9% below the federal for-hire component ACL, using landings data from 2014-2017 and applying the Council’s ACL/ACT Control Rule (Appendix A; Figure A.1.1). **Alternative 2** would extend the reduction of the federal for-hire ACT buffer currently in place for the 2019 fishing season (GMFMC 2018).

**Alternative 3** would apply the Council’s ACL/ACT Control Rule, using landings from 2015 – 2018, to set the component ACT buffer for the federal for-hire component 5% below its component ACL (Appendix A; Figure A.1.2). The buffer under **Alternative 3** was estimated the same way as with **Alternative 2**; however, **Alternative 3** uses a time series of landings data shifted one year forward, and is also adjusted to recognize the in-season monitoring which was used throughout the time series to close the fishing season once the federal for-hire ACT was projected to be met.

Table 2.1.1 shows the ACTs and ACLs corresponding to each of the alternatives presented in Action 1.

**Table 2.1.1.** Values in millions of pounds whole weight for the ACTs and ACLs corresponding to the alternatives presented in Action 1.

Alternative	For-hire ACL	For-hire ACT	% Difference	lbs Difference
1 (2019)	2,848,000	2,591,680	9%	256,320
1 (2020+)	2,848,000	2,278,400	20%	569,600
2	2,848,000	2,591,680	9%	256,320
3	2,848,000	2,705,600	5%	142,400

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# APPENDIX A: ACL/ACT CONTROL RULE WORKSHEETS

## A.1 ACT/ACT Control Rule for the For-hire Component of the Recreational Sector for Gulf of Mexico Red Snapper

ACL/ACT Buffer Spreadsheet		version 4.1 - April 2011		Red Snapper	
sum of points	2			For-Hire	Recreational - 2018/w 201
max points	5.0			Buffer between ACLand ACT (or ABC and ACL)	Unweighted 8
<b>Min. Buffer</b>	<b>0</b>	<b>min. buffer</b>	User adjustable		<b>Weighted 9</b>
Max Unw. Buff	19	max unwt. Buff			
<b>Max Wtd Buff</b>	<b>25</b>	<b>max wtd. buffer</b>	User adjustable		
Component	Element score	Element	Selection	Element result	
Stock assemblage	0	This ACL/ACT is for a single stock.	x	0	
	1	This ACL/ACT is for a stock assemblage, or an indicator species for a stock assemblage			
Ability to Constrain Catch	0	Catch limit has been exceeded 0 or 1 times in last 4 years	x	0	
	1	Catch limit has been exceeded 2 or more times in last 4 years			
		For the year with max. overage, add 0.5 pts. For every 10 percentage points (rounded up) above ACL	0.0		
		Not applicable (there is no catch limit)			
		Apply this component to recreational fisheries, not commercial or IFQ fisheries			
Precision of Landings Data Recreational	0	Method of absolute counting		1	
	1	MRIP proportional standard error (PSE) <= 20	x		
	2	MRIP proportional standard error (PSE) > 20			
		Not applicable (will not be included in buffer calculation)			
		Apply this component to commercial fisheries or any fishery under an IFQ program			
Precision of Landings Data Commercial	0	Landings from IFQ program		not applicable	
	1	Landings based on dealer reporting			
	2	Landings based on other			
		Not applicable (will not be included in buffer calculation)	x		
Timeliness	0	In-season accountability measures used or fishery is under an IFQ		1	
	1	In-season accountability measures not used	x		
			Sum	2	
Weighting factor					
	Element weight	Element	Selection	Weighting	
Overfished status	0	1. Stock biomass is at or above $B_{OY}$ (or proxy).		0.2	
	0.1	2. Stock biomass is below $B_{OY}$ (or proxy) but at or above $B_{MSY}$ (or proxy).			
	0.2	3. Stock biomass is below $B_{MSY}$ (or proxy) but at or above minimum stock size threshold (MSST).	x		
	0.3	4. Stock is overfished, below MSST.			
	0.3	5. Status criterion is unknown.			

**Figure A.1.1:** ACL/ACT Control Rule for the federal for-hire component of the recreational sector for Gulf of Mexico red snapper. 2017 landings were preliminary at the time of this analysis: 9 May 2018.



## **APPENDIX B: PUBLIC COMMENTS**

## APPENDIX C. 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 in federal waters of the exclusive economic zone. 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 and Marine Mammals Protection Act (Section 3.3), E.O. 12866 (Regulatory Planning and Review, Chapter 5) and E.O. 12898 (Environmental Justice, Section 3.5.2). 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.

### **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 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 fishery management plans (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 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 listed on, or eligible for listing on, the National Register of Historic Places and aims to minimize damage to such places.

Typically, fishery management actions in the Gulf of Mexico are not likely to affect historic places with exception of the *U.S.S. Hatteras*, located in federal waters off Texas, which is listed in the National Register of Historic Places. Mutton snapper and gag do not typically occur off Texas; therefore, the proposed actions are not likely to increase fishing activity above previous years. Thus, no additional impacts to the *U.S.S. Hatteras* would be expected.

### **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 USFWS 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 of Mexico. 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 mutton snapper and gag. 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 of Mexico. The existing areas are entirely within federal waters of the Gulf of Mexico. They do not affect any areas reserved by federal, state, territorial, tribal or local jurisdictions.