

Alabama Management for Recreational Red Snapper



Draft Amendment 50D to the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico

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ABBREVIATIONS USED IN THIS DOCUMENT

| | |
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| ACL | annuals catch limit |
| ACT | annual catch target |
| AM | accountability measure |
| CEP | Conservation Equivalency Plan |
| Council | Gulf of Mexico Fishery Management Council |
| EFP | exempted fishing permit |
| FMP | Reef Fish Fishery Management Plan |
| Gulf | Gulf of Mexico |
| Magnuson-Stevens Act | Magnuson-Stevens Fishery Conservation and Management Act |
| NEPA | National Environmental Policy Act |
| nm | nautical miles |
| NMFS | National Marine Fisheries Service |
| Program Amendment | State Management Program for Recreational Red Snapper Amendment |
| TL | total length |

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CHAPTER 1. INTRODUCTION

1.1 Background

From 1996 – 2014, the recreational fishing season for red snapper in federal waters became progressively shorter. Despite regular increases in the recreational annual catch limit (ACL) since 2010 (Table 1.1.1), shorter federal seasons have continued as the quota is caught in a shorter amount of time and inconsistent state water seasons became longer. In 2015, the recreational sector was divided into a private angling component and a federal for-hire component. Separate fishing seasons are established for each component based on the component annual catch targets (ACT), which are reduced from the recreational sector's red snapper ACL by the established buffer (currently 20%).

Currently, the recreational harvest of red snapper in federal waters of the Gulf of Mexico (Gulf) is constrained by a 2-fish bag limit, 16-inch total length minimum size limit, and a fishing season that begins on June 1 and closes when the ACT of each recreational component (i.e., private angling and federal for-hire) is projected to be caught. For the 2018 and 2019 red snapper fishing seasons, the private angling component will be managed by each of the five Gulf states through exempted fishing permits (EFP), while the federal for-hire component will continue to be managed under a Gulf-wide season as estimated by the National Marine Fisheries Service (NMFS).¹ The EFPs allow the states to set the fishing season for red snapper in state and federal waters. The purpose of the EFPs is to allow states to demonstrate the effectiveness of state management of recreationally caught red snapper and data collection methods through 2-year pilot programs.

Fishermen from different areas of the Gulf have requested more flexibility in recreational red snapper management so that regulations provide greater socioeconomic benefits to their particular area. *State management* refers to allowing a state to set some recreational regulations (e.g., bag limits, fishing season dates) that would apply to fishing for red snapper in both state and federal waters, in contrast to uniform recreational regulations applied to fishing in all federal waters in the Gulf, regardless of the state in which the fish are landed.

A state management program developed through this Alabama Management for Recreational Red Snapper Amendment, hereafter referred to as the Alabama Amendment, would enable Alabama to establish various regulations specific to the recreational harvest of red snapper. This amendment is related to the State Management Program for Recreational Red Snapper Amendment (Program Amendment), which consists of actions affecting all Gulf states and the overall federal management of red snapper, regardless of whether or not all states pursue a state management program. In the Program Amendment, the Gulf of Mexico Fishery Management Council (Council) would establish the 1) the components of the recreational sector that would be included under a state's management program; and 2) the apportionment of the recreational red snapper ACL among the Gulf states.

¹ For more information, see:

http://sero.nmfs.noaa.gov/sustainable_fisheries/gulf_fisheries/LOA_and_EFP/2018/RS%20state%20pilot/home.html

This Alabama Amendment contains actions to define the Alabama state management program for the recreational harvest of red snapper. The first action considers two approaches for implementing state management: the *delegation* of limited authority to Alabama to specify management measures or the use of a *conservation equivalency plan* (CEP), in which Alabama would specify the fishing season (and other management measures, as selected) that would constrain harvest to Alabama's portion of the recreational sector ACL (established in the Program Amendment). Under either approach, Alabama could select the measures that it determines are most appropriate for management of its portion of the stock. For example, Alabama specific regulations could accommodate the local differences in tourist seasons or weather conditions from other parts of the Gulf. Alabama would establish the specific regulations pertaining to the season structure and possibly other management measures, using the process for the selected approach (delegation or CEP). The second action addresses quota adjustments to determine the action to take in the event the Alabama harvest of red snapper is greater or less than Alabama's portion of the recreational sector ACL.

The Council's preferred alternative in the Program Amendment is to allow each state to decide whether to manage its private angling component only, or to manage both its private angling and federal for-hire components. The private angling component consists of anglers fishing from privately owned and rented vessels, and state-licensed for-hire vessels. The federal for-hire component consists of anglers fishing from vessels with a federal charter/headboat permit for Gulf reef fish. For-hire vessels without a federal permit (i.e., state-licensed) fish under the private angling component ACL, but may not harvest red snapper from federal waters, including under state management. Upon Council approval of this Alabama Amendment, Alabama must notify NMFS by letter within one month specifying if it will manage its federal for-hire component.

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

Under state management, red snapper would remain a federally managed species. The Council and NMFS would continue to oversee management of the stock. This includes continuing to comply with the mandate to ensure the red snapper recreational ACL is not exceeded and that conservation objectives are achieved. The Council's Scientific and Statistical Committee would continue to determine the acceptable biological catch for red snapper, while the Council and NMFS would determine the total recreational sector ACL and ACT, a portion of which would be allocated to Alabama. All federal regulations for the harvest of red snapper would remain effective. The existing bag limit and season start date would be designated the default federal regulations and would be applicable to anglers landing red snapper in any state that does not have an approved state management program. Upon Alabama's state management program

approval and implementation, the default federal regulations would be waived for Alabama to establish the fishing season and other regulations for red snapper landed in the state from both federal and state waters, and possibly to establish other management measures, if selected by the Council. NMFS would retain authority for the remaining management regulations including implementing ACL adjustments, regulating federal permits, and managing the commercial red snapper individual fishing quota program.

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

Description of Boundaries between States

The boundaries in Figure 1.1.1 were agreed upon by the representatives from each state marine resource agency at the February 2013 Council meeting and would represent the boundaries between states for the purpose of any state having an active state management program. Federal waters refer to the area extending from the seaward boundaries of the Gulf states of Alabama, Florida, Louisiana, Mississippi, and Texas, as those boundaries have been defined by law, out to 200 nautical miles (nm) from shore. Since 2016, for purposes of management under the Reef Fish FMP, the seaward boundary of each of the Gulf states is 9 nm from shore.

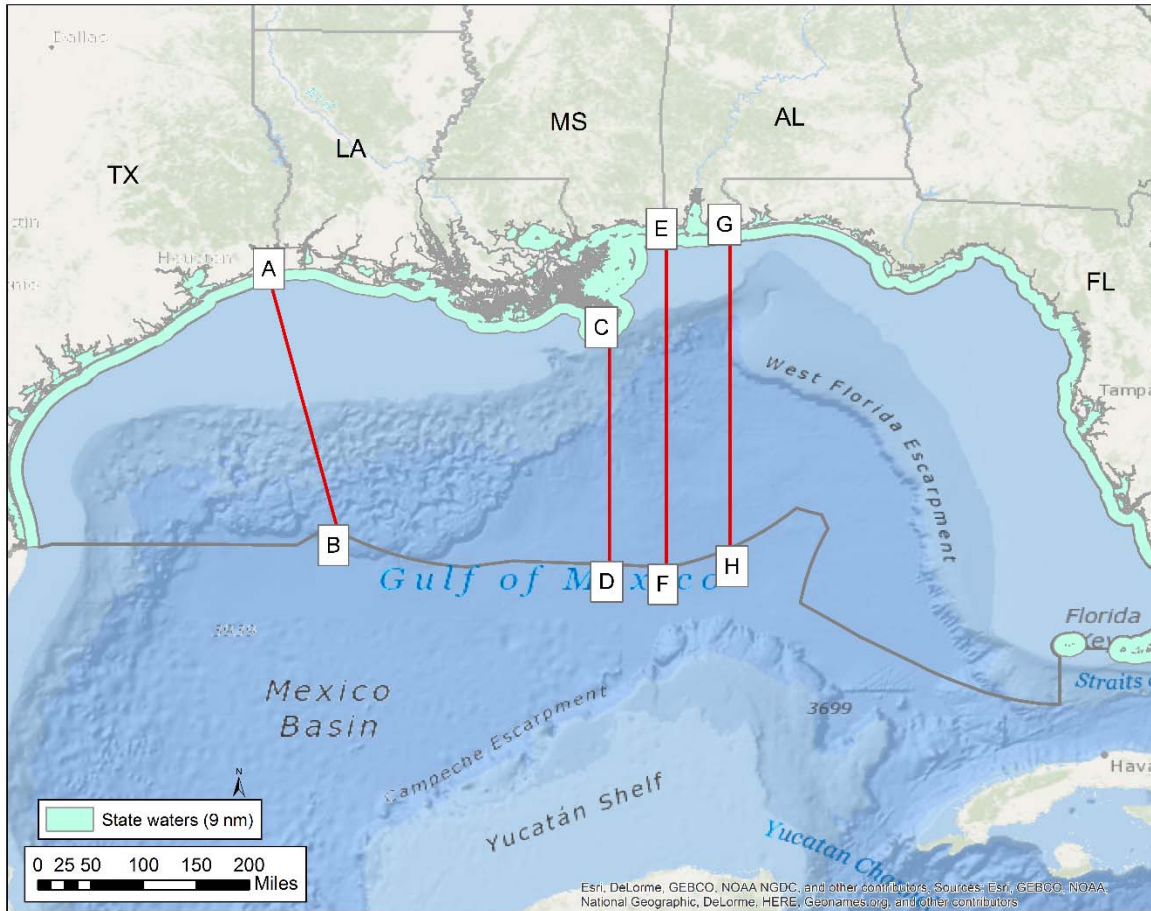


Figure 1.1.1. Map with state waters shaded and established and proposed boundaries between states extending into federal waters.

All lines begin at the boundary between state waters and federal waters. Line A-B, defining federal waters off Texas, is already codified in federal regulations as a line from 29°32.1' N latitude, 93°47.7' W longitude to 26°11.4' N latitude, 92°53.0' W longitude, which is an extension of the boundary between Louisiana and Texas (50 CFR 622.2). Likewise, line G-H, defining federal waters off Florida, is codified as a line at 87°31.1' W longitude extending directly south from the Alabama/Florida boundary (50 CFR 622.2). The other two lines have not been codified, but were agreed upon by the Council.

Line E-F is a line at 88°23.1' W longitude extending directly south from the boundary between Alabama and Mississippi.

Line C-D is a line at 89°10.0' W longitude extending directly south from the South Pass Light in the Mississippi River delta in Louisiana. Unlike the other lines, this line is not based on the boundary between Louisiana and Mississippi because doing so would be impracticable. Louisiana has jurisdiction over the Chandeleur Islands, which extend into waters south of Mississippi. A line based on the state waters boundary just north of the islands could result in

inequitable impacts on Mississippi anglers as it would identify federal waters that are off both Mississippi and Louisiana as being exclusively off Louisiana. A line based on the state land boundary would be even further west and would reduce the extent of federal waters off Louisiana. Therefore, this line was considered a fair compromise by representatives of both states.

1.2 Purpose and Need

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

The **need** is to reconsider the management of the recreational harvest of red snapper within the context of the states of the Gulf: to prevent overfishing while achieving, on a continuing basis, the optimum yield from the harvest of red snapper by the recreational sector²; take into account and allow for variations among, and contingencies in the fisheries, fishery resources, and catches³; and provide for the sustained participation of the fishing communities of the Gulf and to the extent practicable, minimize adverse economic impacts on such communities.⁴

1.3 History of Management

The Program Amendment contains a complete history of management pertinent to recreational red snapper and the Council's consideration of state management for the recreational harvest of red snapper, and is incorporated here by reference. A complete history of management for the Reef Fish Fishery Management Plan is available on the Council's website.⁵

² National Standard 1 https://www.ecfr.gov/cgi-bin/text-idx?SID=71b8c6026001cb90e4b0925328dce685&mc=true&node=se50.12.600_1310&rgn=div8

³ National Standard 6: https://www.ecfr.gov/cgi-bin/retrieveECFR?gp=&SID=6b0acea089174af8594db02314f26914&mc=true&r=SECTION&n=se50.12.600_1335

⁴ National Standard 8: https://www.ecfr.gov/cgi-bin/retrieveECFR?gp=&SID=6b0acea089174af8594db02314f26914&mc=true&r=SECTION&n=se50.12.600_1345

⁵ http://www.gulfcouncil.org/fishery_management_plans/reef_fish_management.php

CHAPTER 2. MANAGEMENT ALTERNATIVES

2.1 Action 1 – Authority Structure for State Management

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

Preferred Alternative 2: Establish a management program that delegates management authority in federal waters to Alabama. If Alabama’s red snapper harvest plan is determined to be inconsistent with the requirements of delegation, the recreational harvest of red snapper in the federal waters adjacent to Alabama would be subject to the default federal regulations for red snapper. Alabama must establish the red snapper season structure for the harvest of its assigned portion of the recreational sector annual catch limit (ACL), monitor landings, and prohibit further landings of red snapper when the ACL is reached or projected to be reached. In addition, delegated authority for managing the recreational harvest of red snapper may include establishing or modifying the:

Preferred Option 2a: bag limit

Preferred Option 2b: prohibition on for-hire vessel captains and crew from retaining a bag limit.

Preferred Option 2c: minimum size limit within the range of 14 to 18 inches total length (TL)

Preferred Option 2d: maximum size limit

Option 2e: requirements for live release devices (e.g., descending devices)

Option 2f: requirements for harvest gear

Option 2g: use of area or depth-specific regulations.

Alternative 3: Establish a management program in which Alabama submits a plan describing the conservation equivalency measures Alabama will adopt for the management of its portion of the recreational sector ACL in federal waters. The plan must specify the red snapper season structure and bag limit for the state’s harvest of its assigned portion of the recreational sector ACL. To be a conservation equivalency plan (CEP), the plan must be reasonably expected to limit the red snapper harvest to Alabama’s assigned portion of the recreational sector ACL. If Alabama’s plan is determined by the National Marine Fisheries Service (NMFS) to not satisfy the conservation equivalency requirements, then the recreational harvest of red snapper in the federal waters adjacent to Alabama would be subject to the default federal regulations for red snapper.

Option 3a: The plan will be submitted directly to NMFS for review.

Option 3b: The plan will first be submitted to a technical review committee. The technical review committee reviews and may make recommendations on the plan, which is either returned to Alabama for revision or forwarded to NMFS for final review.

Discussion:

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

(50 CFR Part 622) would need to be waived or suspended for those anglers and vessels subject to a state's consistent delegation or an approved CEP. Default federal regulations for the recreational harvest of red snapper would be applied to the federal waters adjacent to the state waters of Alabama in the event Alabama's delegation is determined to be inconsistent, its CEP is not approved, or if Alabama chooses not to participate in state management. A different process would be followed for delegation than for a CEP, in that delegation would remain in effect unless NMFS determines the delegation is inconsistent with the Reef Fish Fishery Management Plan (FMP; see Appendix A), while CEPs would require a periodic determination that the plan is the conservation equivalent of the default federal regulations. Federal waters adjacent to a state refer to the portion of federal waters bounded by the state's waters and the boundary line(s) shown in Figure 1.1.1 that separate federal waters off each state.

In the event that the default federal regulations are implemented for Alabama, NMFS would publish a notice with the Office of the Federal Register announcing such an action. Among other regulations that apply to reef fish fishing in general, the current federal regulations for the recreational harvest of red snapper include a 2-fish bag limit, minimum size limit of 16 inches TL, and a June 1 season opening; the season closes when the recreational annual catch target (ACT; currently set 20% below the ACL) or component ACT is projected to be met. These regulations have been established and revised over time through past actions, which considered a variety of alternatives that were analyzed as part of the decision-making process.

Alternative 1 (No Action) would retain current management measures for the recreational harvest of red snapper in federal waters of the Gulf, as described above for the federal default regulations. Currently, each Gulf state decides when to open and close its state waters to fishing, while NMFS opens and closes federal waters to fishing consistent with the regulations implementing the Reef Fish FMP. The states also decide on any other management measures (such as bag limit and minimum size limit) that are applicable in state waters while the Gulf of Mexico Fishery Management Council (Council) decides which management measures are applicable in federal waters. Many, but not all, of these management measures are consistent between the states as well as with the federal requirements.

Preferred Alternative 2 and **Alternative 3** propose different approaches to state management of red snapper by Alabama. Under both alternatives, red snapper would remain under federal jurisdiction, subject to Gulf-wide closure if NMFS determines that the total recreational sector ACL is met. Essentially, while Alabama would be given some management authority to determine some of the regulations that apply to the harvest of red snapper, none of these alternatives provide the complete authority to manage red snapper advocated for by some supporters of state management. The management measures implemented by Alabama must adhere to the goals of the rebuilding plan and be consistent with federal and other applicable laws.

By adopting state management under delegation (**Preferred Alternative 2**) or conservation equivalency (**Alternative 3**), Alabama would establish management measures, as appropriate, to constrain landings to its portion of the recreational sector ACL for the recreational harvest of red snapper by each component and would prohibit further landings and possession of red snapper after its portion of the quota has been caught. Enforcement of the fishing season would primarily

be carried out dockside. Anglers participating in Alabama's state management program may fish in Alabama state waters and federal waters. When Alabama closes its season, further landings of red snapper would be prohibited, from both state and federal waters.

Under both alternatives, the respective permit and/or license requirements for anglers and recreational vessels will remain in place. Anglers fishing from privately owned vessels must comply with the required permit or licensing requirements to possess and land red snapper in Alabama. Passengers on for-hire vessels would not be allowed to fish for or possess red snapper in federal waters unless the vessel has been issued a federal charter vessel/headboat permit for reef fish.

In addition to Alabama, the Council is evaluating red snapper state management for the remaining Gulf states in separate amendments. In the event some or all of the states have approved state management programs, the sum of all participating states' ACLs (as selected in the Program Amendment) would be subtracted from the recreational sector ACL, or component ACLs, as appropriate. Non-participating states would continue to be managed under the default federal regulations with the remaining balance of the recreational ACL. NMFS would reduce the ACLs by the established buffer, and establish federal season lengths for each component in federal waters adjacent to all states based on these ACTs.

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

While **Alternative 3** would grant less management authority directly to Alabama than **Preferred Alternative 2**, both alternatives provide flexibility to Alabama to modify the season structure for the harvest of its designated portion of the red snapper recreational ACL. Nevertheless, whether delegation (**Preferred Alternative 2**) or conservation equivalency (**Alternative 3**) is selected, Alabama's management measures must be consistent with the FMP, including the red snapper rebuilding plan and the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). Consistency with the FMP requires, among other things, preventing overfishing, rebuilding declining reef fish stocks, monitoring the reef fish fishery, conserving and increasing reef fish habitats, and minimizing conflicts between user groups.

The following sections describe the delegation and CEP alternatives in more detail.

Delegation (**Preferred Alternative 2**)

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

Under delegation (**Preferred Alternative 2**), Alabama would have management authority to establish the red snapper fishing season, as well as other management measures if selected as preferred (**Preferred Options 2a-2d, Options 2e-2g**). In setting the fishing season, the state would have the flexibility to select the season start date and could establish a fixed closed season, split seasons (e.g., spring and fall season), and alternate season structures (e.g., weekends, only). A state could also establish regional seasons, such as separate fishing seasons for the Florida Panhandle and west Florida. Provided the state constrains its landings of each component to that component's portion of the ACL, a state could establish different seasons for each component, if the state is managing both the private angling and federal for-hire components. In addition, the state could reopen its fishing season if quota remains after the initial season closes.

Preferred Options 2a-2d and **Options 2e-2g** provide management measures that may be delegated in addition to the fishing season. **Preferred Option 2a** would delegate authority to Alabama to establish the recreational bag limit and **Preferred Option 2b** would allow Alabama to modify the prohibition on the captain and crew of a for-hire vessel from retaining a bag limit. As with setting the fishing season, these options would allow bag limits to be set regionally or by component, if applicable. **Preferred Options 2c** and **2d** would delegate the red snapper size limit to Alabama. Establishing both a minimum (**Preferred Option 2c**) and maximum size limit (**Preferred Option 2d**) would create a slot limit for the recreational harvest of red snapper. A slot limit may be desirable as prohibiting anglers from landing the largest fish (which weigh the most) would slow the rate at which the quota is filled, helping to extend the fishing season. The current minimum size limit for red snapper is 16 inches TL in the Gulf for recreational anglers and for all state waters except Texas. In state waters off Texas the recreational red snapper minimum size limit is 15 inches TL. Modifying the minimum size limit among states may pose issues in terms of conducting stock assessments. The red snapper stock is still under a rebuilding plan and stock assessments must take into account minimum size limits for each sector and gear type. Previously, the Council expressed its intent to establish limitations on the minimum size limits that may be adopted by the states due to biological concerns associated with high-grading and discard mortality. Thus, the minimum size limit that may be delegated to the states is restricted to the range of 14 inches TL to 18 inches TL. All of the minimum size limits within the range are estimated to be greater than the size of reproductively mature fish. All red snapper (100%) are estimated to be reproductively mature at age-2 (SEDAR 31 2013) at approximately 358 mm or 14 inches TL using the age-length equation in Szedlmayer and Shipp (1994). For this

reason, minimum size limits smaller than 14 inches TL are not considered. The largest minimum size limit within the range that could be delegated is 18 inches TL, which has the largest spawning potential for the stock.

Options 2e and 2f would allow Alabama to establish requirements for the use of live release devices (e.g., descending devices and dehooking devices) and harvest gear, respectively. Both options would delegate authority that applies to the recreational harvest of red snapper, only. Federal regulations and guidance for live release devices and harvest gear are not specific to red snapper, but apply to reef fish or to finfish more generally. For example, the requirement to use non-stainless steel circle hooks when fishing with natural baits applies to the fishing of all reef fish. Because authority would be delegated only for the management of red snapper, delegating authority for these devices and gear could make enforcement more complicated if a state enacts a regulation that applies to red snapper, but not to other reef fish. Further, if a state's regulation is for a particular live release device (**Option 2e**) or harvest gear (**Option 2f**) be carried aboard, the regulation could be enforced dockside and not require delegation.

Option 2g proposes to allow a state to establish area or depth-specific regulations and is not possible without further information regarding the scope and purpose of any planned closure. Additional information pertaining to the scope and purpose (e.g., constrain rate of harvest) is needed to complete an analysis of this option and define the delegation and ensure environmental compliance. To implement a closed area NMFS will likely need to do additional rule making.

Option 2g would not allow states to establish marine protected areas within federal waters nor restrict commercial vessels from harvesting red snapper from these areas. *Without further information about the scope and purpose of the area or depth-specific regulations, Option 2g cannot be included in a state's delegation.*

For some of the options (**Preferred Options 2a-2c**), specific regulations in the Code of Federal Regulations (Appendix B) would need to be waived or suspended for anglers landing in the participating state. State management, as it has been previously considered by the Council, included management measures that would rely primarily on dockside enforcement, such as bag limits (**Preferred Options 2a and 2b**) and size limits (**Preferred Options 2c and 2d**). When in federal waters, enforcement would be of the most generous state regulation of a state with an open season (e.g., highest bag limit). Other management measures, such as gear requirements or area-specific regulations (**Options 2e-2g**), would require monitoring and enforcement of recreational fishing in federal waters. Thus, if any of these types of measures are delegated to the state (**Options 2e-2g**), lines demarcating the federal waters off each state (Figure 1.1.1) would be needed to identify the boundaries in which all of the applicable state's regulations apply. This would make state management more complicated and may create issues for enforcement.

Further, selecting some options as preferred would require a state to establish that regulation at the state level, because those regulations are currently in effect and would remain the federal default regulations (see above). The selection of other options as preferred would be optional for a state to establish as part of its state management program. For example, to remain consistent with the requirements of delegation, the fishing season (**Preferred Alternative 2**), bag limit (**Preferred Option 2a**), and minimum size limit (**Preferred Option 2c**) would need to be

specified in the state's regulations if those options are selected. Selecting other options (**Preferred Options 2b and 2d, Options 2e-2g**) would be optional (and may not be possible) for a state to establish under delegated authority, because any such existing regulations are not specific to red snapper but apply to fishing or reef fish fishing, generally.

Conservation Equivalency (Alternative 3)

Alternative 3 provides two options for the review process of CEPs. Under **Option 3a**, Alabama would submit its plan directly to NMFS for review while under **Option 3b**, Alabama would first submit its CEP to a technical review committee, which will consist of one member from each state designated by the state fisheries director. The technical review committee would provide the initial review of the CEPs and may make recommendations on the plan, which is either returned to Alabama for revision or forwarded to NMFS for final review and approval. Because of the additional time needed for the technical review committee to meet and review the CEPs, **Option 3b** would potentially entail a longer process for consistency determination than under **Option 3a**. On the other hand, the process under **Option 3b** provides for greater participation and input by state-level managers and stakeholders, increasing the involvement of local-level entities in the state management process. The proposed process under **Option 3b** is more similar to the Mid-Atlantic Fishery Management Council's management of summer flounder than is **Option 3a**.

Under **Alternative 3**, Alabama would have the opportunity to submit a CEP to establish state management measures, including season start and end dates, season structure, and bag limit, for the recreational harvest of red snapper on a yearly or biannual basis. These plans would be reviewed by NMFS to insure the proposed management measures are a conservation equivalent to the federal regulations. Table 2.1.1 provides an example timeline for the submittal and approval of the CEPs under **Alternative 3**. This process would be altered for the first year of the program if this action is implemented mid-year. Under **Option 3b**, the CEP would be submitted to the technical review committee and a separate timeline may be established by the committee. However, the established timeline may also be applied for this option. The finalized plans with the technical review committee recommendation for approval would need to be submitted to NMFS by November 1 to allow time to publish a notice in the Federal Register by January 1 identifying Alabama with an approved CEP. Without an approved CEP, Alabama would be subject to the default federal regulations. If the proposed management measures extend beyond the range analyzed in this amendment, then NMFS may recommend preparing the appropriate documentation for the applicable laws to support the decision (e.g., National Environmental Policy Act [NEPA] analysis). NMFS would collaborate with Alabama in developing the appropriate documentation with the understanding that the development of the document could delay NMFS' ability to approve the CEP and may need further Council action for implementation.

Table 2.1.1. Example timeline for the review of CEPs by NMFS or the technical review committee for **Alternative 3**.

| Timeline | Description |
|------------------------------|---|
| July 1 | The state provides a brief written description of its preliminary CEP for the following year (e.g., the regulations they hope to implement the following year) to NMFS and the Council and demonstrate the proposal is supported by the current year's landings and effort data. At this time, NMFS may flag any high-level concerns or alternative process requirements (e.g., additional NEPA documentation required if the proposed regulations are outside the scope of analysis this amendment and documentation for other applicable laws). |
| September 1 | The state submits the CEP to NMFS or the Technical Review Committee. |
| October 1 | NMFS or the Technical Review Committee responds to the state with the preliminary determination for whether the plan is a conservation equivalent to the federal default regulations. At this time, NMFS or the Technical Review Committee may approve the plan or request a revised CEP. |
| October 5 | The state provides a revised CEP to NMFS or the Technical Review Committee for approval, if necessary. |
| November 1 | If applicable, the Technical Review Committee provides the recommended state CEP to NMFS for final approval and processing. |
| January 1 (or sooner) | NMFS publishes a notice in the Federal Register identifying the state as having an approved CEP. |

Each CEP shall include the following:

- Point of contact for the CEP.
- Point of contact with the authority to implement fishery management measures.
- Proposed CEP including season structure and bag limit.
- Specify if the CEP is intended to be applicable for 1 or 2 years. Prior to approving the second year of the plan, it would be evaluated based on data from the first year. The plan may require revisions based on the NMFS review. A 2-year CEP could only be approved if there are 2 or more years before the program sunsets.
- Analysis demonstrating the ability of the CEP to constrain recreational harvest of red snapper to the allocated quota with a description of the methodology.
- Summary of the previous year's performance (e.g., was the harvest constrained at or below the state's quota?).
- Explanation of how the CEP will be enforced.
- If applicable, a description of the in-season monitoring program and plan to prohibit further harvest of red snapper if the state's portion of the recreational sector ACL is reached.
- If necessary, additional analysis and documentation supporting the proposed CEP, which may include NEPA, Magnuson-Stevens Act, or other applicable laws. This would only apply for CEP management strategies beyond the range analyzed in this amendment.
- Any other supporting documentation for the CEP, such as scientific research.

2.2 Action 2 – Post-Season Quota Adjustment

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

Alternative 2: If the combined Alabama recreational landings exceed or are less than the Alabama recreational ACL, then in the following year reduce or increase the total recreational quota and Alabama’s ACL, in accordance with Council procedures, by the amount of the ACL overage or underage in the prior fishing year, unless the best scientific information available determines that a greater, lesser, or no adjustment is necessary. If appropriate, the Alabama recreational ACT (or component ACTs) will be adjusted to reflect the established percent buffer.

Option 2a: If Alabama has both a private-angling ACL and a federal for-hire ACL, the adjustment will be applied only to the component(s) that exceeded or were under the applicable ACL.

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

Discussion:

This action would apply an overage or underage adjustment to the state ACLs and the recreational sector ACL. An overage adjustment, or payback provision, is a type of AM; in the event that the quota is exceeded, the following year’s quota would be reduced. An underage adjustment, or carryover provision, is the opposite. In the event that landings remain below the quota, the following year’s quota would be increased.

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

The use of an underage adjustment for state management programs would require that a carryover provision be in place, which the Council is currently developing in a draft amendment.⁶ By creating a carryover provision, the foregone yield resulting from a state's early closing for its red snapper harvest could be applied to the following year's state ACL, thereby providing additional social and economic opportunities without negatively affecting the stock.

Alternative 1 (No Action) would continue to apply the existing post-season overage adjustment AM Gulf-wide and would not apply an underage adjustment. In the event red snapper landings exceed the Gulf-wide recreational ACL while red snapper is classified as overfished, the amount of the overage would be deducted from the recreational ACL. This would occur whether or not Alabama was successful in constraining landings to below its ACL, but would result in a decrease to Alabama's ACL, because Alabama's ACL would be based on a percentage of the Gulf-wide ACL. Although the possibility of triggering an overage adjustment would encourage Alabama to constrain harvest to its ACL, the Gulf-wide approach may be perceived as inequitable. For example, if the recreational ACL is greatly exceeded, then the necessary overage adjustment (applied to the recreational ACL before Alabama's ACL is deducted) may reduce fishing opportunities under Alabama's ACL the following year, even if Alabama had not exceeded its portion of the recreational ACL. If this occurs, it may reduce the flexibility provided under state management. Alternately, if Alabama's landings cause the entire recreational sector ACL to be exceeded, while landings by other components remain within their respective portions of the ACL, anglers in the other components would lose fishing opportunities despite remaining within their respective portions of the ACL. Further, there would be no carryover provision applied under **Alternative 1**, meaning there would be no change to the recreational sector ACL in the event landings remain below the quota.

Alternative 2 would apply an overage adjustment (payback) to Alabama, only in the event that the Gulf-wide recreational sector ACL was exceeded. With the apportionment of the recreational sector ACL such that individual states may establish state management programs,⁷ **Alternative 2** would prevent an overage of the Gulf-wide ACL from affecting Alabama in the event its state ACL is not exceeded. However, if both the Alabama and the Gulf-wide ACLs were exceeded, the portion of the overage for which Alabama was responsible would be deducted from Alabama's ACL for the next year. The overage adjustments would need to be taken into account when Alabama develops its management plan (delegation or CEP), including the length of the fishing season for the following year. **Alternative 2** would encourage Alabama to constrain landings to its ACL to ensure that the overage adjustment is not applied to the recreational season for the following year.

In the event Alabama's landings do not exceed its state ACL, **Alternative 2** would increase Alabama's state ACL the following year. This alternative would only be possible following implementation of the amendment establishing a carryover provision for uncaught quota, currently under development by the Council. The underage adjustment proposed under **Alternative 2** would be limited to the parameters approved through that amendment, including any conditions on the status of the stock during which an overage adjustment may be applied.

⁶ Carryover Provisions and Framework Modifications Draft Generic Amendment

⁷ See the State Management Program for Recreational Red Snapper Amendment.

Option 2a and **Option 2b** under **Alternative 2** would apply only if the Council decides to include the federally permitted for-hire vessels in state management through the State Management Amendment. In the event the Gulf-wide recreational sector ACL is exceeded, **Option 2a** would apply the adjustment only to the Alabama component that exceeded or was under its ACL. This option would prevent the overage adjustment from affecting Alabama's other component that does not exceed its ACL. In the event of a quota underage, the quota increase the following year would likewise be applied to the component that remained under its quota, by the amount of the underage. **Option 2b** would apply the overage or underage adjustment evenly to both of Alabama's component ACLs, regardless if only one of the components exceeded or under-harvested its component ACL. Although the possibility of triggering an overage adjustment would encourage the components to constrain harvest to the respective ACLs, applying the overage equally to both components may be perceived as inequitable, should one component remain within its portion of the ACL, yet have its portion of the ACL reduced in the following year due to overages by the other component. It would also be considered inequitable should a component that met its quota have its quota increased in the following year, because the other component's landings were below its quota.

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

CHAPTER 3. REFERENCES

SEDAR 31. 2013. Stock assessment report Gulf of Mexico red snapper. Southeast Data, Assessment, and Review. North Charleston, South Carolina. 1103 pp.

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Szedlmayer, S.T. and R.L. Shipp 1994. Movement and growth of red snapper, *Lutjanus campechanus*, from an artificial reef area in the northeastern Gulf of Mexico. Bulletin of Marine Science 55:887-896.

APPENDIX A. DELEGATION PROVISION

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

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

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

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

(C) [Pertains to Alaska, only.]

(b) EXCEPTION.—

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

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

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

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

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

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

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

§622.8 Quotas—general.

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

§622.9 Prohibited gear and methods—general.

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

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

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

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

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

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

§622.11 Bag and possession limits—general applicability.

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

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

§ 622.20 Permits and endorsements.

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

§622.30 Required fishing gear.

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

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

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

§622.33 Prohibited species.

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

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

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

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

§622.35 Gear restricted areas.

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

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

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

§ 622.37 Size limits.

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

§ 622.38 Bag and possession limits.

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

§ 622.39 Quotas.

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

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

will apply to the recreational sector. For fishing years 2017 through 2022—2.848 million lb (1.292 million kg), round weight.

(C) *Private angling component quota.* The private angling component quota applies to vessels that fish under the bag limit and have not been issued a Federal charter vessel/headboat permit for Gulf reef fish any time during the fishing year. This component quota is effective for only the 2015 through 2022 fishing years. For the 2023 and subsequent fishing years, the applicable total recreational quota, specified in paragraph (a)(2)(i)(A) of this section, will apply to the recreational sector. For fishing years 2017 through 2022—3.885 million lb (1.762 million kg), round weight.

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

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

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

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

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

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

(B) *Federal charter vessel/headboat component ACT*. The Federal charter vessel/headboat component ACT applies to vessels that have been issued a valid Federal charter vessel/headboat permit for Gulf reef fish any time during the fishing year. This component ACT is effective for only the 2015 through 2022 fishing years. For the 2023 and subsequent fishing years, the applicable total recreational ACT, specified in paragraph (q)(2)(iii)(A) of this section, will apply to the recreational sector. The component ACT is 2.278 million lb (1.033 million kg), round weight, for fishing years 2017 through 2022.

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

APPENDIX C. DELEGATION LETTER TO STATES WITH RESPONSES

Tab B, No. 6f



Gulf of Mexico Fishery Management Council

Managing Fishery Resources in the U.S. Federal Waters of the Gulf of Mexico

2203 N. Lois Avenue, Suite 1100

Tampa, Florida 33607 USA

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www.gulfcouncil.org

October 23, 2017

Dear [respective state director/commissioner]:

The Council is exploring the establishment of state management programs for each Gulf State to manage the recreational harvest of red snapper in federal waters adjacent to that state. The Council is considering two approaches for *delegation* of authority to the respective states. The first *delegation* alternative delegates the authority to manage only season structure and bag limit for the state-assigned portion of the recreational sector's annual catch limit (ACL). The second *delegation* alternative has yet to be defined, but would delegate a broader range of management measures. Thus, this letter provides a list of relevant management measures the Council could delegate to a state, and requests you provide a detailed list of those management measures your state would like to establish for the recreational harvest of red snapper under the second alternative.

Under the *delegation* alternatives, the National Marine Fisheries Service would modify the *Code of Federal Regulations* to remove those federal management measures applicable to the recreational harvest of red snapper management that are delegated to the respective Gulf States (e.g. the dates and structure of the fishing season and bag limit). Under the Magnuson-Stevens Act, in order for the delegation to apply, the States laws and regulations must be consistent with the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico (Reef Fish FMP), which would include constraining the recreational harvest of red snapper to the state's portion of the recreational quota. This would likely require the monitoring of recreational landings of red snapper, either through a state's monitoring program or through the Marine Recreational Information Program, as appropriate. Note that under the first delegation alternative (season structure and bag limit) a state could establish regional seasons. For example, the State of Florida could establish separate west Florida shelf and Florida Panhandle fishing seasons.

To delegate any aspects of the management of the recreational harvest of red snapper requires the Council to specify the scope of the delegation in the amendment. While some federal regulations are specific to red snapper, the majority are applicable to all reef fish or fishing in general. Because the state management amendments would be specific to the recreational management of red snapper, the *delegation* would also be specific to the recreational harvest of red snapper. The following list includes management measures in existing federal regulations that your state may want included in the *delegation*. The list is divided into three sections: (1)

regulations that are specific only to red snapper, (2) regulations that are applicable to all reef fish, and (3) regulations that are general to all fishing in federal waters.

Red snapper specific

- Remove prohibition on for-hire captains and crew from retaining a bag limit of red snapper.
- Allow a state to modify the annual catch target (ACT) or manage toward the ACL.

Reef Fish

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

General

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

There may be additional management measures your state would like to consider in its state management program that are not listed above. Please add those measures to your list.

Under *delegation*, red snapper would remain a federally managed species in the Reef Fish FMP and would remain subject to all of the Magnuson-Stevens Act requirements, including 16 U.S.C. §1883(d), which requires a prohibition on recreational harvest of red snapper in federal waters when the total quota is determined to have been caught.

Management measures that cannot be delegated include those that are required to be in the Reef Fish FMP (such as specification of maximum sustainable yield, optimum yield, status determination criteria, and annual catch limits), or that affect all states or the commercial sector. These include:

- Federal permitting requirements, including renewal and transferability requirements.

- Reporting requirements for for-hire vessels selected by the Science and Research Director to participate in the southeast region headboat survey.
- Sea turtle release protocols and gear; smalltooth sawfish conservation measures.
- Area closures to protect Gulf reef fish within Madison Swanson, Steamboat Lumps, and The Edges. Establishing SMZs or marine protected areas in federal waters that restrict access by commercial vessels.
- Setting ACLs for each angling component.
- Post-season accountability measures, which will need to be modified by the Council to account for state management programs.

The Council will review a draft of the State Management Program for Recreational Red Snapper Amendment and the five related individual state management amendments at its January 29-February 1, 2018, meeting. To accommodate this timeline, we respectfully request a written response to this letter by January 12, 2018. If you have any questions, please contact Dr. Ava Lasseter at the Council office.

Sincerely,

Leann Bosarge, Chairman
Gulf Council

AL/kh

c: Gulf Council
Gulf Council Staff
Mara Levy
Lauren Waters
Sue Gerhart
Jack McGovern
Andy Strelcheck



January 12, 2018

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Leann Bosarge
Chair
Gulf of Mexico Fishery Management Council
2203 N. Lois Avenue
Tampa, FL 33607

Re: Delegation Preferences for State Management of Red Snapper

Dear Ms. Bosarge:

In response to the Gulf of Mexico Fishery Management Council's letter dated October 23, 2017, the Florida Fish and Wildlife Conservation Commission (Commission) recently discussed potential state management of the federal recreational red snapper fishery off Florida via the Council process. If management authority for the recreational red snapper fishery in federal waters off Florida is delegated to the state, the Commission would request the ability to use a broad suite of management tools that provide maximum flexibility in managing the fishery. Specifically, the Commission would request delegation of the following abilities:

- set seasons, size limits, bag limits (daily or per trip), and these tools be available to use regionally;
- modify the gear that could be used to harvest red snapper (e.g., descending devices);
- establish area- or depth-specific gear regulations;
- implement an angler registry for data collection or require angler reporting;
- manage toward the Florida annual catch limit (ACL) or adjust the Florida annual catch target (ACT) so that the ACL/ACT is met; and
- establish multi-year ACLs.

The Commission believes delegation of these management measures would be necessary for successful management of the recreational red snapper fishery in federal waters off Florida.

If you have questions about this request, please contact me or Martha Guyas in the Division of Marine Fisheries Management at 850-487-0554.

Sincerely,


Jessica McCawley
Director



JOHN BEL EDWARDS
GOVERNOR

State of Louisiana
DEPARTMENT OF WILDLIFE AND FISHERIES

JACK MONTUCET
SECRETARY

January 11, 2018

Leann Bosarge, Chairman
Gulf of Mexico Fishery Management Council
2203 N. Lois Avenue, Suite 1100
Tampa, Florida 33607

Dear Ms. Bosarge,

The State of Louisiana has taken the lead in promoting state or regional management for reef fish species such as red snapper. Our current preferred alternative in the Gulf Council's draft amendment for Louisiana Management for Recreational Red Snapper is to establish a program that delegates some management authority (season structure and bag limit) in federal waters to the state of Louisiana. While this alternative satisfies our needs for flexibility in managing the recreational red snapper fishery in federal waters, we and other representatives on the Gulf Council selected this preferred alternative prior to a motion being made for other states to review an alternative for full delegation.

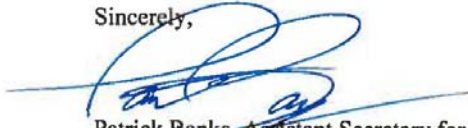
According to your October 23, 2017 letter, the Gulf Council is now considering a second delegation alternative which "has yet to be defined, but would delegate a broader range of management measures." We find it difficult to respond to your request for a detailed list of management measures to include in the second delegation alternative without further definition of this alternative from the Gulf Council and/or NOAA Fisheries. However, upon reviewing potential management measures for delegation, Louisiana would like to consider the following in future deliberations:

- Option to allow the captain and crew on for-hire vessels to retain their bag limit of red snapper. The for-hire component has not landed their portion of the recreational annual catch limit (ACL) since Reef Fish Amendment 40 was passed. Removing this prohibition may help this component attain their share of the catch. Louisiana can survey the state's federally permitted for-hire captains to determine if they prefer this measure in lieu of a slightly longer fishing season.
- Allow Louisiana the flexibility to manage closer to the ACL rather than the annual catch target (ACT) and remove or modify existing buffers. Through LA Creel, the state has demonstrated its ability to constrain recreational harvest to the ACL.
- Establish a carryover provision for unharvested quota (minus natural mortality) to be added to the next season from the previous season.
- Allow Louisiana to grant anglers a different bag limit (such as four fish) in lieu of a longer season, if they so desire.

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Thank you for the opportunity to request additional items for research and review. We look forward to further discussing and understanding this second delegation alternative as well as potential management measures to be included under this alternative.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Patrick Banks', with a long horizontal flourish extending to the left.

Patrick Banks, Assistant Secretary for Fisheries
Louisiana Department of Wildlife and Fisheries



STATE OF MISSISSIPPI

Phil Bryant
Governor

MISSISSIPPI DEPARTMENT OF MARINE RESOURCES

Joe Spraggins, Executive Director

January 29, 2018

Leann Bosarge, Chairman
Gulf of Mexico Fishery Management Council
2203 N. Lois Avenue, Suite 1100
Tampa, FL 33607

Dear Ms. Bosarge:

The State of Mississippi has always supported regional management for reef fish species such as Red Snapper. Our current alternative in the Gulf Council's draft amendment for Mississippi Management for Recreational Red Snapper is to establish a program that delegates some management authority (season structure and bag limit) in federal waters to the state of Mississippi. While this alternative satisfies our needs for flexibility in managing the recreational Red Snapper fishery in federal waters, we and other representatives of the Gulf Council selected this preferred alternative prior to a motion being made for other states to review an alternative for full delegation.

The Gulf Council is now considering a second delegation alternative which would delegate a broader range of management measures. After an intra-Agency review, Mississippi would like to consider the following potential management measures for delegation on future deliberations:

- Delegation authority to modify the annual catch target (ACT) or manage toward the ACL;
- Allow Mississippi to set seasons, size limits, bag limits, and these tools to be available regionally;
- Reopen the fishing season if the state's portion of the ACL is determined to not have been met, provided the state can constrain total landings to its portion of the ACL; and
- Allow Mississippi the flexibility to modify or update Delegation Authority rules as necessary during the requested Red Snapper season to address any unanticipated issues that may arise.

Thank you for the opportunity to request additional items for research and review. We look forward to further discussing this second delegation alternative as well as potential management measures to be included under this alternative.

Sincerely yours,


Joe Spraggins
Executive Director

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