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Texas Management for Recreational Red Snapper

Final Amendment 50F
to the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico

Including Environmental Assessment, Regulatory Impact Review, and Regulatory Flexibility Act Analysis

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AMENDMENT 50F TO THE FISHERY MANAGEMENT PLAN FOR THE REEF FISH RESOURCES IN THE GULF OF MEXICO INCLUDING ENVIRONMENTAL ASSESSMENT (EA)

Proposed Actions: This individual state amendment EA is prepared pursuant to the National Environmental Policy Act to assess the environmental impacts associated with a regulatory action. This EA tiers off Amendment 50A to the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico, which includes a programmatic environmental impact statement (EIS). The EIS analyzes the impacts of a reasonable range of alternatives intended to provide limited authority to Florida, Mississippi, Alabama, Louisiana, and Texas to manage recreational fishing of red snapper. These actions would allow those states the flexibility to manage recreational fishing of red snapper in federal waters in the Gulf of Mexico adjacent to their state waters. This amendment contains the environmental assessments that address the authority structure and quota adjustments for Texas. The programmatic EIS analyzes the direct, indirect, and cumulative effects of the actions and alternatives included in all six documents.

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Type of Action

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ABBREVIATIONS USED IN THIS DOCUMENT

ACL	annuals catch limit
ACT	annual catch target
AM	accountability measure
CEP	conservation equivalency plan
Council	Gulf of Mexico Fishery Management Council
CS	consumer surplus
EA	environmental assessment
EEZ	exclusive economic zone
EFP	exempted fishing permit
EIS	environmental impact statement
E.O.	Executive Order
FIS	fishery impact statement
FMP	fishery management plan
Gulf	Gulf of Mexico
LAPP	limited access privilege program
Magnuson-Stevens Act	Magnuson-Stevens Fishery Conservation and Management Act
mp	million pounds
MRIP	Marine Recreational Information Program
NAICS	North American Industry Classification System
NEPA	National Environmental Policy Act
nm	nautical miles
NMFS	National Marine Fisheries Service
NOR	net operating revenue
Program Amendment	State Management Program for Recreational Red Snapper Amendment
PS	producer surplus
RFA	Regulatory Flexibility Act
RFFA	reasonably foreseeable future actions
RIR	Regulatory Impact Review
SEDAR	Southeast Data Assessment and Review
SEFSC	Southeast Fisheries Science Center
SERO	Southeast Regional Office
SRHS	Southeast Region Headboat Survey
TL	total length
ww	whole weight

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FISHERY IMPACT STATEMENT

The Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) requires that a fishery impact statement (FIS) be prepared for all amendments to fishery management plans. The FIS contains: 1) an assessment of the likely biological/conservation, economic, and social effects of the conservation and management measures on fishery participants and their communities; 2) an assessment of any effects on participants in the fisheries conducted in adjacent areas under the authority of another Fishery Management Council; and 3) the safety of human life at sea. Detailed discussion of the expected effects for all alternatives considered is provided in Chapter 4. The FIS provides a summary of these effects.

In recent years, the recreational fishing season for red snapper in Gulf of Mexico (Gulf) federal waters became progressively shorter despite regular increases in the recreational annual catch limit (ACL). In response, recreational anglers asked for greater flexibility in the management of the recreational harvest of red snapper including setting the fishing season. This Amendment 50 to the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico establishes the structure through which a Gulf state may establish a state management program that provides flexibility in the recreational management of red snapper for the state's private anglers.

Amendment 50 consists of six amendments: Amendment 50A consists of actions affecting all Gulf states and the overall federal management of red snapper, regardless of whether all states have a state management program. In addition, each Gulf state has its own amendment (Amendments 50B-50F) consisting of management actions applicable to the state. The Gulf of Mexico Fishery Management Council (Council) selected the same suite of preferred alternatives for each state in Amendments 50B-50F. Table 1 provides an outline of the separate amendments, actions, and preferred alternatives in Amendment 50.

Table 1. Overview of amendments, actions, and preferred alternatives.

Amendment 50A – Program Amendment	
Action 1.1 – Preferred Alternative 2	Include private angling component only in state management.
Action 1.2 – Not applicable	This action is not applicable because for-hire vessels are not included in the preferred alternative under Action 1.1.
Action 2 – Preferred Alternative 8	Divide the private angling ACL among the states: Alabama (26.298%), Florida (44.822%), Louisiana (19.120%), Mississippi (3.550%), and Texas (6.210%).
Action 3 – Preferred Alternative 2	Allow Texas, Florida, and Alabama to request closure of specified areas of federal waters adjacent to their respective state waters to recreational fishing for red snapper.
Amendments 50B-50F – Individual state amendments for Louisiana, Mississippi, Alabama, Florida, and Texas	
Action 1 – Preferred Alternative 2, Options 2a, 2c, 2d	Delegate the authority to establish the fishing season, bag limit, minimum size limit, and optionally a maximum size limit, for the recreational harvest of red snapper by private anglers.
Action 2 – Preferred Alternative 2	Adjust the state's quota based on landings from the previous year, by increasing the quota by the amount of an underage, and decreasing the quota by the amount of an overage.

Amendment 50A would allow state management programs to be established for the private angling component only. The private angling component includes anglers fishing from privately owned vessels and for-hire vessels without a federal permit (e.g., state-licensed). (Because the Council decided to include only the private angling component in state management, Action 1.2 is not applicable as it pertains to the inclusion of federally permitted for-hire vessels.) The remaining actions would divide the private angling component ACL among the five states and establish a procedure for Texas, Florida, and Alabama to request closure of specified federal waters adjacent to their state waters to recreational fishing for red snapper. Texas intends to close all federal waters adjacent to its state waters for the duration of the year except during a specified time during which a portion of Texas' quota would be designated to be caught in federal waters. Florida and Alabama may use the authority to close federal waters beyond the approximate 20-fathom or 35-fathom depth contour while the respective state waters are open.

As approved for each of the five Gulf states, Amendments 50B-50F would delegate to each state the authority to establish the fishing season, bag limit, minimum size limit, and optionally to establish a maximum size limit, for the harvest of red snapper by the state's private angling component of the recreational sector. With delegation, red snapper remains under federal jurisdiction, subject to Gulf-wide closure if the National Marine Fisheries Service determines that the total recreational sector ACL has been met. Further, each state's management of the recreational harvest of red snapper by private anglers must adhere to the goals of the red snapper rebuilding plan and be consistent with the Magnuson-Stevens Act and other applicable laws. Amendments 50B-50F also establish a state-specific quota adjustment, such that each state's quota would be decreased by the amount the state's quota that was exceeded the previous year (i.e., overage adjustment), or increased by the amount the state's quota remained unharvested in the previous year (i.e., carryover). The carryover of unused quota would be available only if the separate amendment developing this provision is implemented.[1]

Biological Effects

The delegation established through Amendments 50A-50F could result in positive biological effects if the states are better at constraining private angling component landings to the ACL(s) than under federal management. These effects would be more likely for state management programs that rely on more comprehensive and timely monitoring of landings and are able to close the fishing season and prohibit further harvest before the quota is reached. If the states are unable to successfully constrain landings to the private angling component ACLs, there could be increased negative impacts if the ACL is exceeded. However, each state is required to constrain private angler landings to its ACL and payback any overage in the event the state's quota is exceeded. This payback would help ensure that in the event the state's landings are not constrained to the ACL, the state responsible for the overage is held accountable the following fishing year by having its portion of the ACL reduced, thereby reducing the biological impact in subsequent years. In the event a state's landings do not meet its quota, implementing a carryover provision would increase impacts to the biological environment through ensuring the maximum amount of fish are landed, but should not significantly affect the stock because the allowable catch is based on assuming landings will meet the ACL. Because the carryover provision would not be applied in the event the total stock ACL was exceeded in a given fishing year, fishing

[1] Carryover Provisions and Framework Modifications Amendment

mortality beyond what had been prescribed in the approved catch limits would not occur. This would be beneficial to the biological environment due to constraining the harvest and continuing to rebuild the stock.

Establishing a procedure to allow states to request closure of portions of federal waters adjacent to that state's waters for the recreational harvest of red snapper by private anglers could indirectly impact the biological environment by affecting when and where fishing is conducted. Effects from fishing on the biological environment are generally tied to fishing effort, and a closure in one area could shift effort to another area. Under this scenario, an increase in fishing in a particular area or over a particular time period would likely add to any adverse effects on the biological environment from fishing. Adverse effects would be lessened if resultant area closures for red snapper resulted in a reduction in fishing effort for red snapper or reef fish. Although the net effects from establishing this procedure are not expected to be different than under current management, there could be differences in effects within particular areas and these effects may change in time. For example, if state management results in management measures that allow fishing effort within an area to increase compared to present levels, then there would likely be an increase in adverse effects. Further, this action would require boundary lines to establish the area(s) within which a state would prohibit the harvest of red snapper by private anglers. Thus, the effects to the biological environment would only be within those closed areas. The biological environment of areas closed to fishing that were traditionally open could benefit due to less impacts from recreational red snapper fishing pressure and fishing gear. However, if fishing is constrained or shifts to specific smaller areas, those areas would experience increased negative effects on the biological environment due to increased fishing pressure on a smaller area. The impacts on the biological environment would include an increase in dead discards, barotrauma, or increased fishing pressure on younger fish. If deeper areas are closed to fishing, this would be biologically beneficial. Closing deeper areas would decrease fishing pressure on older larger red snapper that live in deeper waters. However, discards of red snapper in the closed area could increase because fishing for other species could continue; mortality of those discards would be higher than discards in shallower water due to barotrauma.

Delegating the authority to the states to modify the bag and size limits could affect the biological environment in different ways. A lower bag limit could increase the number of discards, resulting in negative impacts. However, a higher bag limit could result in reaching the ACL more quickly, which would reduce the number of fishing days and potentially increase discards during a state's closed season. For delegation of the minimum size limit, the greater the minimum size, the more likely fishermen would need to discard undersized fish, and therefore, fishing effort and negative effects on the biological environment would increase; however, at the same time larger fish would contribute to meeting the ACL more quickly and reduce the amount of effort, decreasing negative impacts to the biological environment. More importantly, a larger minimum size limit allows more red snapper to survive longer and contribute reproductively to the stock, which would be beneficial to the biological environment. A maximum size limit would overall be a beneficial impact to the biological environment, because it would reduce fishing mortality of larger, older fish, which contribute to the reproductive potential of the stock more than smaller younger fish. However, larger fish are generally found in deeper water; therefore, fish discarded because they are larger than the maximum size limit would likely have a higher mortality rate due to barotrauma.

Economic Effects

The delegation established through Amendments 50A-50F is expected to result in economic benefits to the private angling component due to the additional management flexibility it grants participating states. The expected economic benefits cannot be quantified, because they would depend on the measures implemented by each state. Further, economic benefits cannot be quantified at the state level, because available estimates of economic value per fish harvested are not state-specific, and shifting resources from one state to another would result in distributional effects that would not be expected to result in direct economic effects, as long as the aggregate red snapper private angling ACL remains constant. However, the selected allocation would be expected to result in indirect economic benefits by contributing to making state management possible and thus affording additional management flexibility to Gulf states. Establishing a framework procedure to allow Gulf states to request that the National Marine Fisheries Service close some or all federal waters adjacent to their respective state waters to red snapper fishing by private anglers would not be expected to affect aggregate recreational red snapper harvests and would not be expected to result in changes in economic value.

Delegating the authority to establish the bag limit, minimum size limit, and optionally a maximum size limit to the Gulf states could result in management measures better suited to private anglers in these states. Indirect economic benefits would be expected to result due to these state-specific management measures following implementation of state management. Implementing state-specific accountability measures would be expected to result in indirect economic effects due to the increased likelihood of overage paybacks and underage carryovers for Gulf states. For paybacks and carryovers, indirect economic losses and benefits would be expected to result to individual states, respectively.

Social Effects

The magnitude of the expected social benefits from delegating limited management authority to the states would depend on the degree to which flexibility for managing toward local preferences is increased or decreased from current management. A central assumption underlying state management is that social benefits would increase by allowing greater regional flexibility in the recreational harvest of red snapper, because management measures could be established that better match the preferences of local constituents. On the other hand, there may be a trade-off in terms of maximizing flexibility at the expense of an overly complex regulatory system. Establishing an allocation of the private angling component ACL among the states that closely reflects actual participation and fishing effort by each state would be expected to minimize any potential negative effects. However, fishing participation and effort may not remain constant, as many factors affect change in effort and participation. Further, the portion of total recreational landings by each state varies from year to year, and by removing the flexibility of variable annual landings, some negative effects may occur. Constraining landings to a greater number of smaller ACLs could be more complex and require increased monitoring of landings. The greater number of small ACLs would also increase the likelihood of triggering a post-season overage adjustment, which would be applied in the event a state exceeds its portion of the private angling component ACL. However, because the overage adjustment would only apply to an individual state that exceeded its portion of the ACL, other states would not be affected by having their

ACLs reduced, which would result in some positive effects for anglers in those other states. Further, in the event a quota carryover is triggered for a state, positive effects would be expected for the state's anglers, as the amount of unused quota would be added to the state's portion of the ACL in the following year.

Indirect effects may result from establishing a procedure to allow states to request closure of areas of federal waters adjacent to state waters, and these effects would relate to how the use of closed areas restricts fishing activity that would otherwise occur. If a state establishes closed areas within federal waters adjacent to the state, negative effects would be expected to result for anglers fishing from neighboring states. These negative effects would be greater for anglers who fish near the state that is establishing the closed areas. However, a state intending to close federal waters would do so to extend fishing opportunities for its anglers in shallower waters, as fewer and smaller fish are generally caught closer to shore. Thus, there is a trade-off in the use of closures in federal waters, which may provide some benefits to a state's anglers if the length of the season were to be longer, and negatively affect anglers, both of the state adopting the closure and of other states who prefer to catch larger fish further offshore.

The closures that may be requested include closing all federal waters off Texas, or closing federal waters beyond the approximation of the 20-fathom or 35-fathom depth contour off Florida and Alabama. To accomplish the closure described for Texas, federal waters would be closed for all but the dates of the open season. In contrast, the closures proposed by Florida and Alabama would entail much shorter closures, as the areas of federal waters would only be closed while the respective state's season is open. Ultimately, the proximity to other states could render greater negative effects. However, the ability to extend the season length for harvest by closing the selected areas of federal waters could be expected to result in greater benefits for that state's anglers. Nevertheless, negative social effects for anglers from other states, frequent openings and closings of federal waters to match a potential weekend-only season, and enforcement difficulties when state and federal water regulations differ would be expected to be greater under this closure authority.

Delegating the authority to establish the bag limit, minimum size limit, and optionally a maximum size limit to the Gulf states could result in management measures better suited to private anglers in these states. Indirect social benefits would be expected to result due to these state-specific management measures following implementation of state management.

The Gulf red snapper stock is managed under the Council's Reef Fish Fishery Management Plan. Therefore, the actions of this amendment are not expected to impact fishery participants in areas adjacent to the Gulf, such as fisheries managed under the Caribbean and South Atlantic Councils' jurisdictions.

Recreational anglers are not expected to have additional incentives to participate in red snapper fishing under adverse weather or ocean conditions as a result of the proposed limited delegation to the states. Therefore, safety-at-sea issues are not expected to result from this action.

CHAPTER 1. INTRODUCTION

1.1 Background

From 1996 – 2014, the recreational fishing season for red snapper in Gulf of Mexico (Gulf) federal waters became progressively shorter. Despite regular increases in the recreational annual catch limit (ACL) since 2010, 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, the recreational harvest of red snapper in federal waters of the 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 season was set by each of the five Gulf states through exempted fishing permits (EFP), while the federal for-hire component season was set by the National Marine Fisheries Service (NMFS).[2] 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) in contrast to uniform recreational regulations applied to fishing in all federal waters in the Gulf.

A state management program developed through this Texas Management for Recreational Red Snapper Amendment (Amendment 50F), hereafter referred to as the Texas Amendment, would enable Texas 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 (Amendment 50A; 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 1) the components of the recreational sector that would be included under a state's management program, 2) the apportionment of the recreational red snapper ACL among the Gulf states, and 3) a procedure for states to request closure of federal waters adjacent to state waters. The Council has also developed individual state amendments for each of the other Gulf states (Amendments 50B-E).

[2] For more information, see: http://sero.nmfs.noaa.gov/sustainable_fisheries/gulf_fisheries/LOA_and_EFP/2018/RS%20state%20pilot/home.html

This Texas Amendment contains actions to define the Texas 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 Texas to specify management measures or the use of a ***conservation equivalency plan*** (CEP). Under the delegation, Texas would specify the fishing season as well as other limited management measures, as authorized. Under a CEP, Texas would specify the fishing season and bag limit that would constrain harvest to Texas' portion of the recreational sector ACL (established in the Program Amendment). Under either approach, Texas could select the applicable measures that it determines are most appropriate for management of its portion of the stock. For example, Texas specific regulations could accommodate the local differences in tourist seasons or weather conditions from other parts of the Gulf. Texas 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 adjusting the recreational red snapper ACLs (quotas) in the event the Texas harvest of red snapper is greater or less than Texas' portion of the recreational sector ACL.

The private angling component consists of anglers fishing from privately owned vessels, rented vessels, and for-hire vessels without a federal permit (i.e., state-licensed for-hire vessels). These state-licensed for-hire vessels may not harvest red snapper from federal waters, including under any state management plan. The federal for-hire component consists of anglers fishing from vessels with a federal charter/headboat permit for Gulf reef fish. The Council's preferred alternative in the Program Amendment is for state management to include only the private angling component. If the Council changes its preferred alternative in the Program Amendment to allow Texas to choose whether to manage the for-hire component, Texas would have to notify NMFS by letter specifying if it will manage that component within 30 days of Council approval of the Program Amendment.

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 Texas establishes its season when fishing effort is greatest. However, providing Texas with the flexibility to establish some management measures is expected to result in social and economic benefits, as it is assumed that Texas 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 Texas' 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 total 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 Texas. 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 Texas' state management program approval and implementation, the applicable existing default federal regulations would be waived for anglers on vessels landing in Texas, or fishing in Texas' area of jurisdiction in federal waters, as described in more detail below. 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 must be 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

If not all states participate in state management, the federal default regulations would apply to defined areas of federal waters off of each non-participating state. For a state with an approved state management program, the default federal regulations would be waived in the defined area off that state and the state would establish its fishing season for red snapper landed in the state from both federal and state waters, and potentially other management measures consistent with the delegation or CEP. 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, if needed. 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 Fishery Management Plan, the seaward boundary of each of the Gulf states is 9 nm from shore.

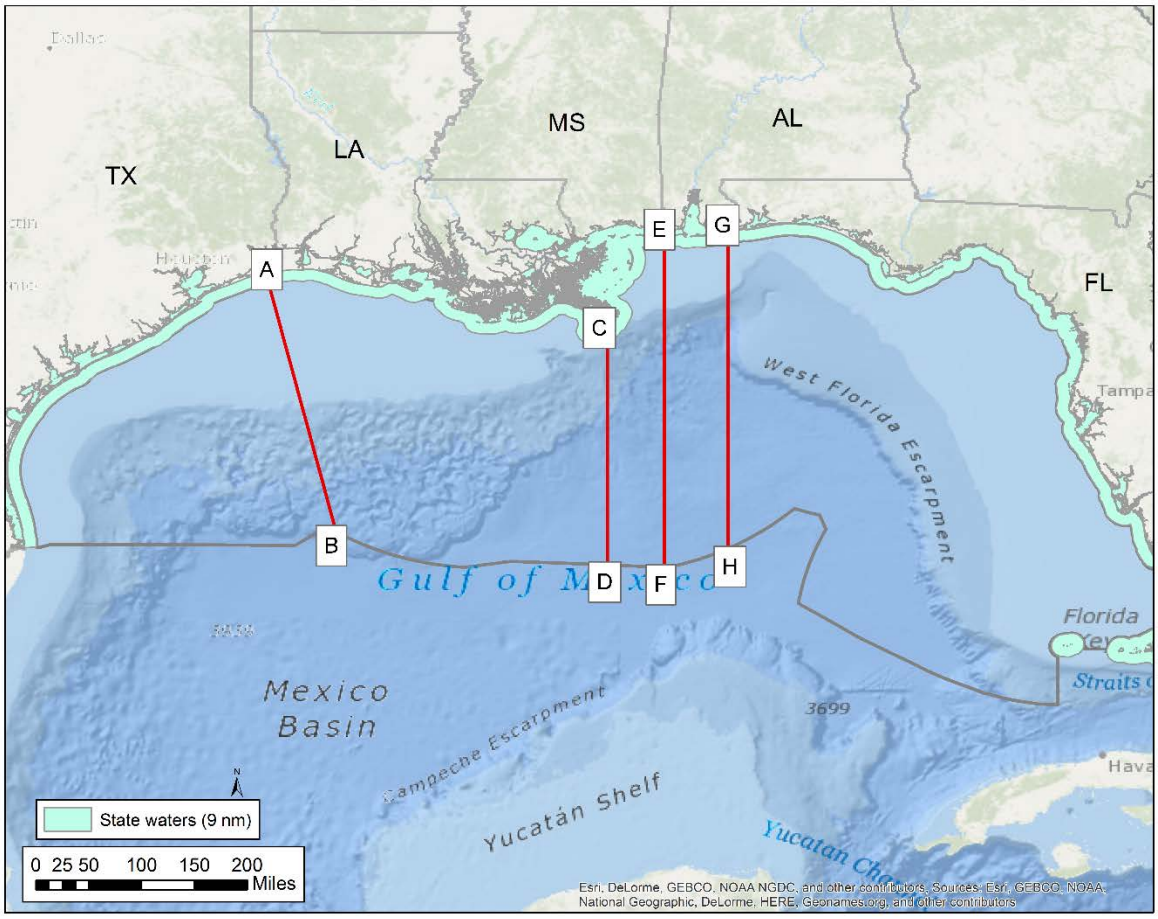

Figure 1.1.1. Map with green shading to identify state waters from federal waters and established and proposed boundaries between states extending into federal waters. The gray line passing through points B, D F, and H indicates the outer boundary for federal waters.

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 Texas the flexibility to establish certain management measures for the recreational harvest of red snapper by Texas anglers.

The **need** is to reconsider the management of the recreational harvest of red snapper within the context of the states of the Gulf: to prevent overfishing while achieving, on a continuing basis, the optimum yield from the harvest of red snapper by the recreational sector[3]; take into account and allow for variations among, and contingencies in the fisheries, fishery resources, and catches[4]; 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.[5]

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.[6]

[3] National Standard 1 https://www.ecfr.gov/cgi-bin/text-idx?SID=71b8c6026001cb90e4b0925328dce685&mc=true&node=se50.12.600_1310&rgn=div8
[4] National Standard 6: https://www.ecfr.gov/cgi-bin/retrieveECFR?gp=&SID=6b0acea089174af8594db02314f26914&mc=true&r=SECTION&n=se50.12.600_1335
[5] National Standard 8: https://www.ecfr.gov/cgi-bin/retrieveECFR?gp=&SID=6b0acea089174af8594db02314f26914&mc=true&r=SECTION&n=se50.12.600_1345
[6] 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 for recreational red snapper fishing in federal waters to Texas. If Texas' 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 Texas would be subject to the default federal regulations for red snapper. Texas 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

Alternative 3: Establish a management program in which Texas submits a plan describing the **conservation equivalency** measures Texas will adopt for the management of its portion of the recreational sector ACL in federal waters. The plan, which may be submitted annually or biannually, 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 Texas' assigned portion of the recreational sector ACL. If Texas' 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 Texas 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 Texas 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 would be waived or suspended for those anglers and vessels subject to a state's active delegation or 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 Texas in the event Texas' delegation is determined to be

inconsistent, its CEP is not approved, or if Texas 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 Texas, 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, a 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 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 regulations.

Preferred Alternative 2 and **Alternative 3** propose different approaches to state management of recreational red snapper fishing by Texas. 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. The Council would also continue to set the stock status determination criteria and catch limits. Essentially, while Texas 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 Texas 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**), Texas 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 (if applicable) and would prohibit further landings and possession of red snapper after its quota has been caught. Unless it is necessary to establish state management areas in federal waters, enforcement would primarily be carried out in state waters and dockside. Anglers participating in Texas' state management program may fish in Texas state waters and

federal waters. When Texas closes its recreational season, further landings of red snapper in Texas would be prohibited, regardless of where harvested.

Under both alternatives, the respective permit and/or license requirements for anglers and recreational vessels would 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 Texas. 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 Texas, the Council is evaluating recreational red snapper state management for the remaining Gulf states in separate amendments. In the event some states do not 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. Anglers landing red snapper in non-participating states or fishing in federal waters in a non-participating state's area of jurisdiction, as applicable, would continue to be managed under the default federal regulations with the remaining balance of the recreational or component 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. Section 2.1 of the Program Amendment further describes how regulations would be applied in this situation, which would vary depending on the alternatives chosen by the Council.

While **Alternative 3** would grant less management authority directly to Texas than **Preferred Alternative 2**, both alternatives provide flexibility to Texas 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, Texas' 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. Texas would provide updates to the Council, as requested, on the status of its state management program, including but not limited to its most recent landings, red snapper fishing season and any other regulations, and its plan to address any quota overruns.

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. 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**), Texas would have management authority to establish the recreational red snapper fishing season, as well as other recreational management measures if selected (**Preferred Options 2a-2d**). 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 off different parts of the state. If the state is managing both the private angling and federal for-hire components, the state could establish different seasons for each component, but the state must constrain landings of each component to that component's portion of the ACL. In addition, the state could reopen its fishing season if quota remains after the initial season closes.

Preferred Options 2a-2d provide recreational management measures that may be delegated in addition to the fishing season. **Preferred Option 2a** would delegate authority to Texas to establish the recreational bag limit and **Preferred Option 2b** would allow Texas 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. This would allow the states to balance catch rates and season length for optimal fishing opportunities. Currently, the Texas bag limit is four fish per person per day in state waters. No fish are allowed to be retained by captain and crew. Because the Council's preferred alternative in the Program Amendment is to include the private angling component only, **Preferred Option 2b** is not applicable and would have no effect, as it applies to bag limits on for-hire vessels.

Preferred Options 2c and **2d** would delegate setting the recreational red snapper size limit to Texas. 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. Having different minimum size limits 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. This option constrains 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 (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.

For **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. Therefore, if the delegation includes the bag limit (**Preferred Option 2a**) or minimum size limit (**Preferred Option 2c**), the state would be required to establish the season as well as those management measures to remain consistent with the delegation. For **Preferred Option 2b** and **Preferred Option 2d**, establishing state regulations would be optional. However, as noted above, **Preferred Option 2b** would not be applicable if the Council does not include the federal for-hire component in state management.

Conservation Equivalency (Alternative 3)

Under **Alternative 3**, Texas 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.

Alternative 3 provides two options for the review process of CEPs. Under **Option 3a**, Texas would submit its plan directly to NMFS for review while under **Option 3b**, Texas would first submit its CEP to a technical review committee, which would include 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 would either be returned to Texas 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**.

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 Texas with an approved CEP.

Without an approved CEP, Texas anglers 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 Texas 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 recent years' landings and effort data. At this time, NMFS would relay concerns or alternative process requirements (e.g., additional NEPA documentation required if the proposed regulations are outside the scope of analysis in 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 season structure and bag limit, and other proposed management measures.
- Specification 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 state management sunsets (if applicable).
- 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., if the harvest constrained at or below the state's quota, any implementation of accountability measures).
- 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 and do not add a state-specific overage adjustment. 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 (carryover).

Preferred Alternative 2: Add a **Texas-specific** overage and underage adjustment to the existing post-season AM for the recreational sector red snapper ACL. If the combined Texas recreational landings exceed or are less than the Texas combined recreational ACLs (if applicable), then in the following year reduce or increase the total recreational quota and Texas's component ACL(s), in accordance with Council procedures, by the amount of the respective component ACL overage or underage in the prior fishing year (as applicable), unless the best scientific information available determines that a greater, lesser, or no adjustment is necessary. If appropriate, the Texas component ACTs will be adjusted to reflect the established percent buffer.

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 ACL is exceeded, the following year's ACL would be reduced. An underage adjustment, or carryover provision, is the opposite. In the event that landings remain below the ACL, the following year's ACL would be increased. This action would be in addition to the existing post-season accountability measure (AM) for an overage of the recreational sector's ACL.

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. Section 303(a)(15) of the Magnuson-Stevens Act requires ACLs and associated measures to ensure accountability. 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 that required NMFS to determine the recreational season length based on an ACT that is set 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 payback provision. This AM applies if red snapper is classified as overfished and requires NMFS to

reduce the recreational sector ACL in the year following an overage by the full amount of the overage unless the best scientific information available determines that a greater, lesser, or no overage adjustment is necessary (**Alternative 1**). Red snapper is not currently classified as overfished; therefore, overage adjustments are not currently implemented.

The Individual State Amendments include both in-season and post-season AMs. Each alternative in Action 1 requires the state to "establish the red snapper season structure for the harvest of its assigned portion of the recreational sector ACL, monitor landings, and prohibit further landings of red snapper when the ACL is reached or projected to be reached." This is the same as the current in-season AM, except that closures would occur separately for each state. Action 2 addresses the post-season AM, requiring a payback of any ACL overage. The payback under **Preferred Alternative 2** would be in addition to the current post-season AM and is not dependent on stock status; the overage must be repaid even if the stock is not considered overfished. In addition, the payback would occur separately for each state.

Alternative 1 (No Action) would continue to apply the existing post-season overage adjustment AM Gulf-wide and would not apply an underage adjustment. Because this AM applies Gulf-wide, it would not be possible to apply **Alternative 1** to the individual states. 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 Texas was successful in constraining landings to below its ACL, but would result in a decrease to Texas' ACL, because Texas' ACL would be based on a percentage of the Gulf-wide ACL. Although the possibility of triggering a payback would encourage Texas 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 payback (applied to the recreational ACL before Texas' ACL is deducted) may reduce fishing opportunities under Texas' ACL the following year, even if Texas had not exceeded its portion of the recreational ACL. If this occurs, it may reduce the flexibility provided under state management. Alternately, if Texas' landings cause the entire recreational sector ACL to be exceeded, while landings by other states remain within their respective portions of the ACL, anglers in the other states would lose fishing opportunities despite remaining within their respective portions of the ACL. Because red snapper is not currently classified as overfished, there would be no payback under **Alternative 1**. 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. However, the Council is developing an amendment to allow carryover of certain species with potential limitations. If that amendment is implemented using the current preferred alternatives, carryover would be allowed for the red snapper recreational sector.

Preferred Alternative 2 would apply a payback and carryover to Texas's state quota(s), in the event that the Texas quota is exceeded or not reached. **Preferred Alternative 2** would prevent an overage by another state, or of the Gulf-wide ACL if red snapper is classified as overfished, from affecting Texas in the event its state quota is not exceeded. However, if the Texas quota is exceeded, the overage would be deducted from Texas' quota for the next year. The overage adjustment would need to be taken into account when Texas develops its management plan (delegation or CEP), including the length of the fishing season for the following year. **Preferred Alternative 2** would encourage Texas to constrain landings to its quota to ensure that the

overage adjustment is not applied to the recreational season for the following year. Selecting **Preferred Alternative 2** would not remove the existing post-season AM that applies if the total recreational sector ACL is exceeded when red snapper is classified as overfished (**Alternative 1**). Rather, **Preferred Alternative 2** would add a state-specific quota adjustment to a state management program.

In the event Texas' landings do not exceed its state quota, **Preferred Alternative 2** would increase Texas' state quota the following year. 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 an amendment.[7] The carryover proposed under **Preferred Alternative 2** would be limited to the parameters approved through that amendment, including any conditions on the status of the stock during which a payback may be applied. The National Standard 1 guidelines, revised in October 2016, expressly address carrying over unused quota to the following fishing year. 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.

If the Council decides to include the federally permitted for-hire vessels in state management through the Program Amendment, **Preferred Alternative 2** would apply the overage or underage adjustment only to the component that exceeds or remains under its portion of the ACL. This would prevent the overage adjustment from affecting Texas' 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.

For the 2018 and 2019 red snapper fishing seasons, the private angling component season is being set by Texas through an exempted fishing permit (EFP), while the federal for-hire component season continues to be set by the National Marine Fisheries Service (NMFS).[8] The purpose of the EFP is to allow Texas to demonstrate the effectiveness of state management of recreationally caught red snapper and data collection methods through the 2-year pilot programs. Because the EFP ends in 2019 and state management is expected to be implemented for the 2020 fishing year, this Action 2: Quota Adjustment, as adopted through this individual state amendment, would apply an overage or underage adjustment (as appropriate) for 2019 to Texas's portion of the 2020 private angling ACL. Thus, following implementation of Texas's individual state amendment, its initial state ACL would be increased or reduced based on the difference between Texas's landings and its quota during the 2019 fishing year under the EFP.

[7] Carryover Provisions and Framework Modifications Draft Generic Amendment: http://gulfcouncil.org/wp-content/uploads/E-8-Draft-Public-Hearing-Generic-Amendment-for-Quota-Carryover-and-Framework-Modification-011619_508.pdf

[8] For more information, see: http://sero.nmfs.noaa.gov/sustainable_fisheries/gulf_fisheries/LOA_and_EFP/2018/RS%20state%20pilot/home.html

CHAPTER 3. AFFECTED ENVIRONMENT

3.1 Description of the Red Snapper Component of the Reef Fish Fishery

A description of the red snapper component of the reef fish fishery is included in the State Management Program for Recreational Red Snapper Amendment (Program Amendment) and associated environmental impact statement (EIS) and is incorporated here by reference. The referenced description includes a discussion of the stock status of red snapper, history of quotas, and management history for the recreational sector. Recreational red snapper fishing is divided into two components: the federal for-hire component includes vessels with a Gulf of Mexico (Gulf) charter/headboat permit for reef fish, and the private angling component includes anglers fishing from privately owned and rental boats, as well as for-hire vessels without a federal permit. The description also includes information on effort in each component, including number of permits by hailing port and directed angler trips for the federal for-hire component and number of directed angler trips for the private angling component. Texas' red snapper landings by component for recent years are also provided. Because this amendment only affects the recreational sector, no additional summary of the commercial sector is included. The following summarizes the information in the Program Amendment that pertains to Texas.

In 2018, all five Gulf states applied for exempted fishing permits (EFP) for a pilot study to test limited state management of the private angling component. The EFPs granted the requested allocation of the red snapper recreational quota to each state, to be harvested during the 2018 and 2019 fishing years by private anglers. The EFPs allowed the states to establish the private angling fishing season in state and federal waters for anglers landing red snapper in that state. The EFPs exempted private anglers who hold a valid recreational fishing permit issued by the state they are landing in, and who are in in compliance with all other state requirements for landing red snapper. For Texas, the EFP was for private anglers and state-licensed charter vessels included in Texas' angler registry and land red snapper in Texas.

Federal For-hire Component

Any for-hire fishing vessel that takes paying anglers into Gulf federal waters where it harvests red snapper or any other species in the reef fish fishery must have a valid limited access Gulf charter/headboat permit for reef fish that is specifically assigned to that vessel. As of November 13, 2017, there were 1,278 vessels with a for-hire permit and another 32 with a historical captain for-hire permit. Over recent years, approximately 17% of for-hire permits are located in Texas by mailing address (Table 3.1.1).

Table 3.1.1. Number of charter/headboat permits for reef fish with hailing port of vessel in Texas, 2012-2016, and percent change in number of permits within Texas between 2012 and 2016.

Year	2012	2013	2014	2015	2016	Average	Percent Change 2012-2016
Number of permits	221	219	230	232	232	227	5.0%

Source: National Marine Fisheries Service, Southeast Regional Office (NMFS SERO).

From 2012 through 2016, for-hire vessels took an estimated average of 201,348 directed angler trips annually. These are trips when red snapper was the primary or secondary target or was caught by anglers. Approximately 14% of the annual directed angler trips by charter vessels are out of Texas.

Private Angling Component

From 2012 through 2016, an average of 228,122 directed angler trips were estimated to be taken annually by private anglers Gulf-wide. These are trips when red snapper was the primary or secondary target, although red snapper may not have been caught. Information on directed angler trips is not available for Texas.

Recreational Landings

Table 3.1.2 provides red snapper landings in Texas by component and the percent of Gulf-wide recreational landings from Texas for 2012 through 2016. For the years 2012 through 2016, approximately 8% of recreational landings of red snapper were in Texas.

Table 3.1.2. Texas red snapper landings by component and state from 2012-2016, and the percent of Texas' recreational landings out of Gulf-wide recreational landings. Landings are in pounds whole weight.

Year	Federal For-hire	Private Angling	Texas Total	Percent of Gulf-wide landings
2012	445,429	171,308	616,737	8.2%
2013	234,549	254,563	489,112	5.0%
2014	193,705	201,894	395,599	10.3%
2015	365,077	235,305	600,382	10.1%
2016	358,399	135,398	493,797	6.6%

Source: Southeast Fisheries Science Center (SEFSC) (July 2017).

3.2 Physical Environment

A description of the physical environment is included in the Program Amendment and associated EIS, and is incorporated here by reference. The referenced description includes information on

the habitats for reef fish generally and red snapper specifically, environmental sites of special interest, and the single Gulf site listed in the National Register of Historic Places. This is the wreck of the *U.S.S. Hatteras*, located in federal waters off Texas.

3.3 Biological Environment

A description of the biological environment is included in the Program Amendment and associated EIS and is incorporated here by reference. The referenced description includes information on red snapper life history and biology, status of the red snapper stock, general information on reef fish species and the status of these stocks, bycatch, protected species, the northern Gulf hypoxic zone, climate change, and the *Deepwater Horizon* MC252 oil spill. The information is general to the Gulf and not specific to Texas.

3.4 Economic Environment

3.4.1 Commercial Sector

A description of the red snapper individual fishing quota program can be found on NMFS' Limited Access Privilege Programs (LAPP) webpage.[9] That description is incorporated herein by reference. Additional economic information on the commercial harvest of red snapper in the Gulf is contained in Amendment 28 (GMFMC 2015b). This proposed amendment does not concern the commercial harvest of red snapper or any other reef fish. Therefore, no additional information on the commercial sector is provided.

3.4.2 Recreational Sector

The following section focuses on the economic contribution of the recreational effort and harvest of red snapper. Recreational fishing for red snapper or any Gulf reef fish means fishing or fishing activities which result in the harvest of fish, none of which (or parts thereof) is sold, traded, or bartered (50 CFR 622.2).

In 2014, Amendment 40 divided the recreational sector of harvesting red snapper from federal waters into two parts based on the mode of transportation that anglers use to fish for red snapper in those waters: federal for-hire (vessel) and private (vessel) angling components (GMFMC 2014). The for-hire component applies to businesses that operate vessels that have been issued a federal Gulf reef fish for-hire permit during any time of the fishing year. These permits may be valid or renewable/transferable; however, the vessel must have a valid permit for any person onboard to fish for or possess Gulf red snapper in federal waters (50 CFR 622.20(b)).

The private angling component applies to vessel operators that have not been issued a federal charter/headboat permit for Gulf reef fish any time during the year. Amendment 40 defined the private angling component as including operators of private vessels and state-permitted for-hire

[9] http://sero.nmfs.noaa.gov/sustainable_fisheries/lapp_dm/index.html

vessels. Although vessels used by these operators may have multiple purposes (commercial, for-hire, and personal), trips involving and landings of red snapper by this component of the recreational sector occur only when the vessels are not operating as a business in federal waters.

Each component has its share of the recreational ACL, which in 2018 is 6.733 million pounds (mp) whole weight (ww). The federal for-hire component has an ACL of 2.848 mp ww (42.3%) and the private angling component has an ACL of 3.885 mp ww (57.7%). Additional information about the recreational sector of the reef fish fishery can be found in the description of the fishery (Section 3.1.2) and Amendment 45 (GMFMC 2016).

Federal For-Hire Component

Vessels with a valid or renewable charter/headboat permit for reef fish make up the federal for-hire component. From 2012 through 2016, an annual average of 227 vessels with a hailing port in Texas had a valid/renewable charter/headboat reef fish permit. There was a 5.0% increase over that time (Table 3.4.2.1).

As of October 24, 2017, there were 232 for-hire fishing vessels with a hailing port in Texas that had the permit, and approximately 90% of those vessels had a passenger capacity of six (Table 3.4.2.2). While the average vessel had a capacity of 11 passengers, the median Texas vessel had a capacity of six (Table 3.4.2.3). Texas vessels combined to have approximately 18% of total Gulf-wide capacity.

Table 3.4.2.1. Number of charter/headboat permits for reef fish for vessels with Texas hailing port, 2012-2016, and percentage change from 2012 to 2016.

2012	2013	2014	2015	2016	Average	Percent Change from 2012-to 2016
221	219	230	232	232	227	5.00%

Source: NMFS SERO.

Table 3.4.2.2. Number and percentage of Texas permitted for-hire vessels by passenger capacity as of October 24, 2017.

6	7 - 14	15 and greater	Total	6	15 and greater
209	0	23	232	90.1%	9.9%

Source: NMFS SERO LAPP, November 21, 2017.

Table 3.4.2.3. Range, average, median, and total passenger capacity of Texas permitted for-hire vessels and Texas percentage of total Gulf-wide capacity as of October 24, 2017.

Range	Average	Median	Total	Percentage of Total Gulf-Wide
6 - 132	11	6	2,659	17.8%

Source: NMFS SERO LAPP, November 21, 2017.

When the above vessels are operating under the for-hire permit, the businesses that own them are participating in the charter fishing and party fishing boats industry (North American Industry

Classification System [NAICS] code 4872012). The U.S. Census Bureau conducts the Economic Census of the United States every 5 years, which surveys business establishments with employees. Over the past four economic censuses, there was an average of 30 employer establishments in the charter fishing and party fishing boats industry in Texas (Table 3.4.2.4).

Table 3.4.2.4. Number of employer establishments in Texas in NAICS code 4872012 (charter fishing and party fishing boats industry), 1997, 2002, 2007, 2012.

1997	2002	2007	2012	Average
36	32	27	24	30

Source: 1997, 2002, 2007, 2012 Economic Census of the United States.

The Economic Census can be used to estimate the average annual receipts for employer establishments in an industry, and the average establishment in the charter fishing and party fishing boats industry in Texas had annual receipts of $553,875 in 2012 (Table 3.4.2.5). Each establishment does not necessarily represent a unique business; a business may have multiple establishments.

Table 3.4.2.5. Number of employer establishments, total receipts and average receipts of establishments in Texas in NAICS code 4872012 in 2012 (2012 $).

Number of Establishments	Total Receipts	Average Receipts per Establishment
24	$13,293,000	$553,875

Source: 2012 Economic Census of the United States.

The employee establishments in the charter fishing and party fishing boats industry represent part of the broader scenic and sightseeing water transportation industry (NAICS code 487201), and in Texas they represent a declining percentage of employer establishments in the broader industry (Table 3.4.2.6). Average receipts for establishments in the excursion and sightseeing boats industry tend to be higher than those for establishments in the charter fishing and party fishing boats industry. In Texas, the average receipts for an establishment in the excursion and sightseeing boats industry in 2012 was approximately 59% larger than for an establishment in the charter fishing and party fishing boats industry. It is expected that there are vessels in the for-hire component that are also used for excursions and sightseeing.

Table 3.4.2.6. Percentage of employer establishments in Texas in NAICS code 487201 that are in the charter fishing and party fishing boats industry, 1997, 2002, 2007, 2012.

1997	2002	2007	2012	Average
70.6%	58.2%	47.4%	48.0%	56.0%

Source: 1997, 2002, 2007, 2012 Economic Census of the United States.

The U.S. Census Bureau (Census) surveys non-employer businesses as well; however, non-employer statistics are not publically available at the relevant 6 or 7-digit NAICS code level. In 2015, there were 287 non-employer establishments in the scenic and sightseeing (water and land) transportation industry (NAICS code 487) in Texas, and most (248) were individual (or sole)

proprietorships (Table 3.4.2.7). Self-employed individuals are included in the individual proprietorship category.

Table 3.4.2.7. Number of Texas non-employer establishments by legal form in the scenic and sightseeing transportation industry (NAICS code 487), 2015.

C-corporations	S-corporations	Individual proprietorships	Partnerships	Total
6	17	248	16	287

Source: Census Bureau, 2015 Non-employer Statistics by Legal Form.

For the purpose of this and related documents, charter vessels and headboats are differentiated by passenger capacity and the method passengers pay. Specifically, a headboat is defined as a federally permitted for-hire vessel that participates in the Southeast Region Headboat Survey (SRHS), and a vessel in the SRHS meets all or a combination of the following criteria: 1) is licensed to carry 15 or more passengers, 2) fishes in federal waters or state and adjoining waters for federally managed species, and 3) charges primarily per angler (by the head). A charter vessel is defined as a federally permitted for-hire fishing vessel that does not participate in the SRHS.

Data from the Marine Recreational Information Program (MRIP) and Texas creel surveys are used to generate estimates of effort of charter vessels in the federal for-hire component in Texas. From 2012 through 2016, charter vessels from Texas took an average of 27,700 directed angler trips annually (Table 3.4.2.8). These are trips when red snapper was the primary or secondary target or was caught by anglers.

Table 3.4.2.8. Estimates of numbers of directed angler trips by charter vessels in for-hire component in Texas, 2012 - 2016.

Year	Number of Directed Angler Trips
2012	29,323
2013	25,652
2014	20,055
2015	32,885
2016	30,585
Average	**27,700**

Source: NMFS SERO LAPP, August 28, 2017.

Directed angler trips by charter vessels generate jobs and other economic impacts. There is insufficient information to estimate the economic impacts of the directed trips made by Texas charter vessels to the state of Texas. However, the impacts of the trips by Texas charter vessels are evaluated at the Gulf region level (Table 3.4.2.9).

Table 3.4.2.9. Number of average annual directed angler trips by Texas charter vessels from 2012 through 2016 and estimates of economic impacts of those trips.

Directed Angler Trips	Jobs	Income (1,000s 2015$)	Sales (1,000s 2015$)	Value-added (1,000s 2015$)
27,700	172	$8,585	$24,838	$13,308

Source: Estimates of economic impacts calculated by NMFS SERO using model developed for NMFS.

Similar analysis of recreational effort is not possible for headboats because headboat trip data are not collected at the individual angler level, but instead at the vessel level, and target intent are not included, only species caught and landed. The length of a headboat trip varies considerably, from 3 to 5.5 hours (half a day) to 10 hours or more; however, the majority of trips are no more than 6 hours. The United States Coast Guard requires a vessel that makes a trip over 12 hours long to have two captains and two deckhands, which increases the cost of a trip. Also, if overnight, a headboat will have fewer paying passengers on board to free up space for passengers to have a place to sleep.

Estimates of effort by headboats are provided in terms of angler days, or the number of standardized 12-hour fishing days that account for the different half, three-quarter, full-day and longer fishing trips by these vessels. For purposes of estimating angler days and landings, the SRHS divides the Gulf into several areas. On average, from 2012 through 2016, the Texas area accounted for an annual average of 27,700 angler days (Tables 3.4.2.10).

Table 3.4.2.10. Number of angler days (Texas headboats), 2012 – 2016.

Year	Number of Angler Days
2012	**29,323**
2013	**25,652**
2014	**20,055**
2015	**32,885**
2016	**30,585**
Average	27,700

Source: SERO SRHS.

Fifteen headboats from Texas had red snapper landings in 2016 (SEFSC SRHS). Those vessels represent approximately 26% of all headboats that landed red snapper that year.

Because SRHS data do not identify species that are targeted during a trip, the economic impacts of headboat trips that may target red snapper cannot be estimated. For estimates of the average fee per angler charged by headboats, see Carter 2015, 2016; for species targeted by the for-hire component, see Savolainen et al. 2012; and for estimates of producer surplus, see Amendment 45 (GMFMC 2016), which are incorporated by reference. To see how Texas's federal for-hire component compares to the component in the other Gulf states, see the description of the Economic Environment (Section 3.4) in the Program Amendment.

Private Angling Component

Angler fishing effort refers to the estimated number of angler fishing trips taken, and an angler trip is an individual fishing trip taken by a single angler for any amount of time, whether it is half an hour or an entire day. During the years used in this analysis, angler fishing effort was estimated by conducting telephone surveys of coastal households (Coastal Household Telephone Survey) and for-hire (charter) vessel captains (For-Hire Survey), as well as on-site survey methods (MRIP Access Point Angler Intercept Survey). From these survey interviews, NMFS can estimate how many people are fishing, where people are fishing, and how often people go

fishing. Moreover, with the MRIP Access Point Angler Intercept Survey (survey of anglers by the private boat, charter vessel and shore modes as they complete a trip), NMFS can estimate how many trips target red snapper, how many trips catch red snapper and how many are being caught, how many red snapper are kept, how many are discarded, the condition of discarded fish, and the size and weight of red snapper caught. There is insufficient data to estimate effort (directed angler trips) of the private angling component in Texas and the economic impacts of that effort.

Additional information about the private angling component can be found in Amendments 40 (GMFMC 2014), 28 (GMFMC 2015), and 45 (GMFMC 2016), and are incorporated by reference. For information concerning the private angling component in the other Gulf states, see the description of the Economic Environment (Section 3.4) in the Program Amendment.

3.5 Social Environment and Environmental Justice Considerations

A description of social environment of recreational red snapper is included in the Program Amendment and associated EIS and is incorporated by reference. The referenced description includes recreational landings by state, federally permitted for-hire vessels by state, and federal for-hire vessels included in the SRHS with landings of red snapper by state, in order to provide information on the geographic distribution of fishing involvement. Descriptions of the top recreational fishing communities based on recreational engagement are included, along with the top ranking communities by the number of federal for-hire permits, number of charter vessels by homeport, number of headboats by homeport, and communities with SRHS landings of red snapper. Community level data are presented in order to meet the requirements of National Standard 8 of the Magnuson-Stevens Fishery Conservation and Management Act, which requires the consideration of the importance of fishery resources to human communities when changes to fishing regulations are considered. Lastly, social vulnerability data are presented to assess the potential for environmental justice concerns.

Portions of the referenced description, which are relevant to Texas, are summarized here. For the years 1986 through 2015, the proportion of Gulf recreational red snapper landed in Texas has ranged from 5% to 33.4%. The Texas communities of Galveston, Port Aransas, and Freeport are included in the top twenty Gulf communities that are engaged and reliant upon recreational fishing in general and demonstrates a high level of recreational engagement. In 2016, operators in Texas held 17.7% of federal for-hire permits for reef fish. The Texas communities of Galveston, Corpus Christi, Freeport, Houston, and Port Aransas are included in the top ranking communities based on the number of federal for-hire permits for Gulf reef fish. When the distribution of charter vessels with federal for-hire permits around the Gulf is displayed, a pattern of abundance for charter vessels is evident with large clusters of charter vessels in Galveston, Freeport, Corpus Christi, Port Aransas, Port O'Connor, and Matagorda. Large clusters of headboats with federal for-hire permits of Gulf reef fish are located in Nueces County. In 2016, 15 federal for-hire vessels with addresses in Texas and registered in the SRHS, landed red snapper. Headboats with red snapper landings in Texas are located in Galveston, Port Aransas, and South Padre Island. When social vulnerability data are assessed, one Texas community exceeds the threshold of one standard deviation above the mean for all three indices, Freeport.

Several Texas communities exceed the threshold of one-half standard deviation above the mean for more than one index (Freeport, Galveston, and Houston). These communities would be the most likely to exhibit vulnerabilities to social or economic disruption due to regulatory change.

3.6 Administrative Environment

A description of the administrative environment is included in the Program Amendment and associated EIS and is incorporated here by reference. The referenced description includes information on the agencies responsible for federal fishery management. Additional information for the Texas Parks of Wildlife Department can be found at http://tpwd.texas.gov/.

CHAPTER 4. ENVIRONMENTAL CONSEQUENCES

4.1 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 for recreational red snapper fishing in federal waters to Texas. If Texas' 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 Texas would be subject to the default federal regulations for red snapper. Texas 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.

Alternative 3: Establish a management program in which Texas submits a plan describing the **conservation equivalency** measures Texas will adopt for the management of its portion of the recreational sector ACL in federal waters. The plan, which may be submitted annually or biannually, 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 Texas' assigned portion of the recreational sector ACL. If Texas' 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 Texas 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 Texas for revision or forwarded to NMFS for final review.

4.1.1 Direct and Indirect Effects on the Physical Environment

Establishing the authority structure for state management of recreational red snapper in the Gulf would have no direct effects on the physical environment, because the authority structure does not in and of itself affect fishing effort or how fishing affects the physical environment. Potential effects would be specific to the options within the authority structure and are discussed below. Any indirect effects would be impacts that could occur if landings are not constrained to

the ACL; see Section 4.1.1 of the State Management Program for Recreational Red Snapper Amendment (Program Amendment) for more information. Effects on the physical environment from this action, regardless of the alternative selected, would likely be minimal because no significant change in effort is expected.

Alternative 1 (No Action) would continue management of the recreational harvest of red snapper in federal waters of the Gulf, and there would be no change in the effects to the physical environment. **Preferred Alternative 2** would delegate management authority for recreational red snapper fishing in federal waters. If Texas' 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 Texas would be subject to the default federal regulations for red snapper. Texas must establish the red snapper season structure for the harvest of its assigned portion of the recreational sector ACL, monitor landings, and prohibit further landings of red snapper when the ACL is reached or projected to be reached. If the state can more successfully constrain landings to the ACL, negative impacts to the physical environment would be reduced compared to **Alternative 1.**

Preferred Options 2a and **2b** would result in minimal positive or negative impacts to the physical environment compared to **Alternative 1**, because allowing the state to modify the bag limit would not affect the total number of fish landed to meet the ACL. An increase in the bag limit could result in a shorter season for red snapper, decreasing negative impacts; and a decreased bag limit could result in a longer season for red snapper, increasing negative impacts. For **Preferred Option 2c**, if a state chose to increase the minimum size limit, this could result in an increase in fishing effort to catch a legal size fish. An increase in effort could increase negative impacts on the physical environment. However, the harvest of larger fish could result in more quickly meeting the ACL and reduce the season length, decreasing impacts to the physical environment. For **Preferred Option 2d**, a maximum size limit would likely increase the number of discards and slow the harvest meeting the ACL, thereby increasing the season length and potentially negative impacts to the physical environment.

Under **Alternative 3** Texas would submit a plan describing the conservation equivalency measures the state would adopt for the management of its portion of the recreational sector ACL in federal waters. The plan would 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 CEP, the plan must be reasonably expected to limit the red snapper harvest to the state's assigned portion of the recreational sector ACL. If the state can more successfully constrain landings to the ACL, then positive effects would result for the physical environment compared to **Alternative 1**. Changes in the bag limit would have the same impacts as those described above. If Texas' plan is determined not to satisfy the conservation equivalency requirements, then the recreational harvest of red snapper in federal waters adjacent to Texas would be subject to the default federal regulations for red snapper. **Options 3a** and **3b** are also administrative in nature. The process for submitting and reviewing the CEP would not have direct or indirect effects on the physical environment.

4.1.2 Direct and Indirect Effects on the Biological Environment

Direct and indirect effects from fishery management actions have been discussed in detail in several red snapper framework actions (GMFMC 2010, 2012, 2013) and are incorporated here by reference. Management actions that affect the biological environment mostly relate to impacts of fishing on a species' population size, life history, and the role of the species within its habitat. Removal of fish from the population through fishing reduces the overall population size. Fishing gear have different selectivity patterns which refer to a fishing method's ability to target and capture organisms by size and species. This would include the number of discards, mostly sublegal fish or fish caught during seasonal closures, and the mortality associated with releasing these fish.

For red snapper, the most likely indirect effect on the stock from this action would be on discard mortality. Regulatory discards are fish that are caught, but not kept because they are too small, would put a fisherman over the bag limit, or are caught out of season. A certain percentage of these fish die and are called dead discards. If fishing effort shifted spatially, the discard mortality rate could change as well. Red snapper landed from greater depths have a greater potential of experiencing barotrauma and mortality, even if properly vented or returned with a descending device. In recent years private angling fishing effort in deeper federal waters has been limited by the shorter season. If private angling fishing effort shifted offshore because there are no longer inconsistencies between state and federal water seasons and more fish are landed from deeper waters, there is the potential that discard mortality could increase. For more information see the Program Amendment, Section 4.1.2.

Establishing the authority structure for state management of recreational red snapper in the Gulf would have no direct effects on the biological environment, because the authority structure does not in and of itself affect fishing effort or how fishing effects the physical environment. Potential indirect effects would be specific to the options within the authority structure and are discussed below. Effects on the biological environment from this action, regardless of the alternative selected, would likely be minimal because no significant change in effort is expected.

Alternative 1 (No Action) would continue management of the recreational harvest of red snapper in federal waters of the Gulf, and there would be no change in the effects to the biological environment. **Preferred Alternative 2** would delegate management authority through an approved state management plan. Texas must establish the red snapper season structure for the harvest of its assigned portion of the recreational sector ACL, monitor landings, and prohibit further landings of red snapper when the ACL is reached or projected to be reached. If the state can more successfully constrain landing to the ACL, there would be less negative effects on the biological environment compared to **Alternative 1.**

Preferred Options 2a and **2b** could change impacts to the biological environment compared to **Alternative 1**. While a change in bag limits would not change the total number of fish landed to meet the ACL, it could increase the number of discards resulting in negative impacts to the biological environment. However, a larger bag limit could result in reaching the ACL more quickly, which would reduce the number of fishing days and potentially more discards during the closed season.

For **Preferred Option 2c**, the greater the minimum size limit, the more likely fishermen will need to discard undersized fish, and therefore, fishing effort and negative effects on the biological environment would increase; however, at the same time larger fish would contribute to meeting the ACL quicker and reduce the amount of fishing effort, decreasing negative impacts to the biological environment. More importantly, a larger minimum size limit allows more red snapper to survive longer and contribute reproductively to the stock, which would be beneficial to the biological environment. Historically, red snapper began reproducing around 2 years of age (approximate 11 to 14 inches in the eastern Gulf and 9.5 to 12.5 inches in the western Gulf) (SEDAR 52 2018). However, evidence shows a recent shift toward a slower progression to sexual maturity as well as reduced egg production, especially among young, small, female red snapper. Slower maturation rates among young fish ages 2 to 6, and decreased spawning frequency have been observed, and were especially pronounced in the northwestern Gulf. Young fish have been contributing far less to the spawning stock in recent years (Kulaw et al. 2017).

For **Preferred Option 2d**, a maximum size limit would overall be a beneficial impact to the biological environment because it would reduce fishing mortality of larger, older fish, which contribute to the reproductive potential of the stock more than smaller, younger fish (SEDAR 52 2018). However, larger fish are generally found in deeper water; therefore, fish discarded because they are larger than the maximum size limit would likely have a higher mortality rate due to barotrauma.

Alternative 3 would require Texas to submit a CEP that is reasonably expected to limit the red snapper harvest to the state's assigned portion of the recreational sector ACL. Texas would have to specify the fishing season and bag limit. Therefore, any impacts to the biological environment would be similar to those described for **Preferred Alternative 2** and **Preferred Option 2a**.

Preferred Alternative 2 and **Alternative 3** allow flexibility in the management of recreational red snapper. If a state can constrain landings to the ACL, this would reduce negative impacts to red snapper compared to **Alternative 1**. There is no information to indicate that state-collected landings are less reliable or significantly different from Marine Recreational Information Program (MRIP) landings, but current ACLs are based on MRIP landings. The use of state-reported data to monitor harvest is not expected to result in significant impacts to the red snapper stock or the rebuilding plan. For more information see the Program Amendment, Section 4.5.2.

Alternative 3, **Options 3a** and **3b** are administrative in nature and how the CEP is submitted and reviewed would not have direct or indirect effects on the biological environment.

4.1.3 Direct and Indirect Effects on the Economic Environment

Alternative 1 (No Action) would retain current federal regulations for the management of recreational red snapper in federal waters adjacent to Texas. **Alternative 1** would not allow Texas to manage red snapper in federal waters and would not be expected to affect recreational red snapper fishing practices or harvests. Therefore, **Alternative 1** would not be expected to result in direct economic effects.

Preferred Alternative 2 and **Alternative 3** consider various mechanisms to transfer some of the management responsibilities for recreational red snapper to Texas. **Preferred Alternative 2** would establish a program that delegates management authority for recreational red snapper to Texas. Texas must establish recreational red snapper fishing seasons based on its allotted portion(s) of the recreational red snapper ACL. Under **Preferred Alternative 2**, Texas can also elect to manage bag limits (**Preferred Option 2a**), the prohibition on for-hire vessel captains and crew from retaining a bag limit (**Preferred Option 2b**), the minimum size limit between 14 to 18 inches TL (**Preferred Option 2c**), and the maximum size limit (**Preferred Option 2d**). **Alternative 3** would establish a program allowing Texas to devise conservation equivalency management measures the state will adopt for the management of its allotted portion of the recreational red snapper ACL. The conservation equivalency plan would specify the fishing season and bag limit and must realistically be expected to constrain landings within Texas's allotted portion of the recreational red snapper ACL. Conservation equivalency plans developed by Texas could either be submitted directly to NMFS for review (**Option 3a**) or first be submitted to a technical review committee for approval before submission to NMFS for final review (**Option 3b**).

Preferred Alternative 2 and **Alternative 3**, in and of themselves are administrative in nature and would therefore not be expected to result in direct economic effects. However, because the devolution of some management responsibilities to Texas could result in management measures better suited to its anglers, **Preferred Alternative 2** and **Alternative 3** would be expected to result in indirect economic benefits that would stem from the management measures implemented following delegation or the approval of CEPs.

For anglers, economic benefits, would be measured by changes in economic value expected to result from the recreational management measures considered in this action. Changes in economic value would be evaluated based on consumer surplus (CS) changes. CS per additional fish kept during a trip is defined as the amount of money an angler would be willing to pay for a fish in excess of the cost to harvest the fish. The CS value per fish for a second red snapper kept is estimated at $82.34 (2017 dollars). Economic value for for-hire vessels can be measured by producer surplus (PS) per passenger trip (the amount of money that a vessel owner earns in excess of the cost of providing the trip). Estimates of the PS per for-hire passenger trip are not available. Instead, net operating revenue (NOR), which is the return used to pay all labor wages, returns to capital, and owner profits, is used as a proxy for PS. For vessels in the Gulf, the estimated NOR value is $158 (2017 dollars) per charter angler trip (Liese and Carter 2011, updated to 2017 dollars). The estimated NOR value per headboat angler trip is $52 (C. Liese, NMFS SEFSC, pers. comm.).

The positive economic effects expected to result from **Preferred Alternative 2** and **Alternative 3** cannot be quantified at this time, because the management measures the state would implement remain unknown. It is noted that, for a given set of management measures implemented by Texas, a greater number of Gulf states electing to accept a transfer of management authority would be expected to result in greater aggregate economic benefits. It follows that expected economic benefits would decrease if some of the Gulf states do not participate in state management. Furthermore, the lack of participation by some of the states, requiring the

partitioning of Gulf federal waters into state portions, may increase enforcement challenges and possibly costs.

4.1.4 Direct and Indirect Effects on the Social Environment

A central assumption underlying this proposed amendment is that social benefits would increase by allowing greater flexibility in the recreational harvest of red snapper, because management measures could be established that better match the preferences of Texas' anglers. Further, as the federal fishing season continued to shorten despite increasing quotas and progress in rebuilding the stock, recreational fishermen have grown frustrated with current red snapper management. Although additional effects are not usually expected from maintaining red snapper management (**Alternative 1**), the dissatisfaction with current management would continue. Positive social effects would be expected under either **Preferred Alternative 2** (delegation) or **Alternative 3** (conservation equivalency), each of which would enable some control for decision-making and management to be turned over to Texas and by addressing the dissatisfaction with current management.

The primary differences between **Preferred Alternative 2** and **Alternative 3** concern where management authority is held and the process for Texas to establish its recreational management measures for red snapper. Delegation (**Preferred Alternative 2)** would involve a devolution of some management control from NMFS to Texas, although any state regulation under the delegation would need to be consistent with the fishery management plan (FMP) and NMFS could take action to suspend the delegation if warranted. Under conservation equivalency (**Alternative 3)**, the states would be allowed to set the season and bag limit upon submission and approval of a CEP. Texas would either provide its proposed management measures first to a review body, then to NMFS for final approval (**Option 3b**), or directly to NMFS for review and approval (**Option 3a**). Cooperation between Texas and federal level agencies would still be a critical component for successful state management. Under both alternatives, indirect effects would be expected to result from, and be in proportion to, the success or failure of the cooperation among managing institutions and Texas. Differential indirect effects may result should Texas be deemed inconsistent with the requirements of delegation or have its CEP not approved. The process for addressing an issue with delegated authority or a CEP is different, and as a result, the effects may differ. It is difficult to anticipate what these effects would be, and in both cases, default regulations would remain in place and be applied to Texas in the event its delegation is inactive or its CEP is not approved. For delegation, Texas would retain delegated authority throughout the process of addressing the inconsistency, while under a CEP, NMFS' disapproval of a plan and application of the default federal regulations would occur more quickly. In the event that there is a disruption due to the suspension of a delegation or disapproval of a CEP, it is possible for some additional, unknown effects to occur.

Because this action would provide the management authority to establish Texas-specific management measures, but does not establish those measures themselves, it is not possible to predict the specific management measures that would result for Texas and the effects thereof. Thus, any resulting social effects would be indirect and relate to whether flexibility for managing toward local preferences is increased or decreased from current management (**Alternative 1**).

Although positive effects are expected in general, these effects could be undermined, and potentially eliminated, if the adopted suite of management measures results in the quota being caught faster. There is a trade-off between providing greater flexibility to establish Texas' preferred management measures and a resulting increase in effort as the management measures provide anglers access under preferred conditions. For example, a longer season is generally preferred by fishermen, but a fishing season that coincides with times of greatest fishing effort would likely result in a state's quota being caught faster, thereby resulting in a shorter season than it may have otherwise been.

Under either delegation (**Preferred Alternative 2**) or conservation equivalency (**Alternative 3**), it is possible that the same suite of management measures could be adopted by Texas. Texas would be able to modify the season, bag limits, and size limits under **Preferred Alternative 2**, **Preferred Options 2a-2d**, or **Alternative 3**. Thus, the effects from either approach would be similar to the social environment compared to **Alternative 1**. Because the Council's preferred alternative in the Program Amendment is to include the private angling component only, **Preferred Option 2b** would have no effect, as it applies to bag limits on for-hire vessels only.

4.1.5 Direct and Indirect Effects on the Administrative Environment

Alternative 1 would continue management of the recreational harvest of red snapper in federal waters of the Gulf. NMFS would continue to set seasons, track landings, and apply accountability measures (AM), and the Council would continue to determine bag limits, size limits, gear requirements, AMs, and other regulations. States would continue to be responsible for management in state waters, out to nine miles. There would be no additional impacts to the administrative environment of the states or of NMFS, and therefore, **Alternative 1** would have less negative effects on the administrative environment than **Preferred Alternative 2** and **Alternative 3**.

For **Preferred Alternative 2** and **Alternative 3**, establishing management of the recreational harvest of red snapper by the Gulf states would increase administrative impacts to states participating in state management, compared to **Alternative 1**. The impacts would include the additional cost and time to analyze fishery data to set management measures such as bag limits and seasons to constrain recreational red snapper landings to the allocated ACL. Each state would need to maintain its monitoring program. It would also include impacts regarding implementing those management measures and preparing regular updates for the Council on the status of the state management programs, including but not limited to most recent landings, red snapper season and other regulations, and how they intend to address any quota overruns.

Even with state management of both components of the recreational sector, NMFS is still obligated through the Magnuson-Stevens Act to prohibit recreational harvest of red snapper if the recreational ACL is reached. NMFS is also obligated to maintain the default regulations that would be in place for a state not participating in state management. Additional administrative impact to NMFS would be specific to the Southeast Fisheries Science Center. Management history varies by state, and if there is increased variability in size limits or bag limits, populations could be differentially affected, which could complicate the stock assessment process. The potential impact on other fishery dependent inputs may also require further evaluation.

Under **Preferred Alternative 2**, the state is required to establish the season length; whereas **Alternative 3** requires the state to establish the season length and bag limit. Under **Preferred Alternative 2** additional management measures may be set by the state. The state could adopt different regulations for each management measure, such as different size and bag limits. In that case, increased variation in regulations among states could increase the burden on law enforcement.

Under **Alternative 3**, the state and NMFS would have the additional burden of regularly reviewing CEPs. The state would need to submit a CEP every 1 or 2 years for review. **Option 3a** would only involve review by NMFS, whereas **Option 3b** would also require the creation of a technical review committee. The review burden for NMFS would be the same for both options, but the burden on the state to convene the technical review committee would be greater with **Option 3b**.

4.2 Action 2 – Post-Season Quota Adjustment

Alternative 1: No Action. Retain the current post-season AM for managing overages of the recreational sector ACL in federal waters of the Gulf and do not add a state-specific overage adjustment. 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 (carryover).

Preferred Alternative 2: Add a **Texas-specific** overage and underage adjustment to the existing post-season AM for the recreational sector red snapper ACL. If the combined Texas recreational landings exceed or are less than the Texas combined recreational ACLs (if applicable), then in the following year reduce or increase the total recreational quota and Texas's component ACL(s), in accordance with Council procedures, by the amount of the respective component ACL overage or underage in the prior fishing year (as applicable), unless the best scientific information available determines that a greater, lesser, or no adjustment is necessary. If appropriate, the Texas component ACTs will be adjusted to reflect the established percent buffer.

4.2.1 Direct and Indirect Effects on the Physical Environment

A Gulf-wide post-season AM is currently in place to mitigate for an overage of the total recreational ACL if red snapper is classified as overfished. Establishing state-specific post-season AMs and the method to adjust the quota allows for additional flexibility. This action would establish a payback and a carryover provision. In the event of an overage, a payback provision would reduce the catch in the following year, reducing effort and impacts on the

physical environment. In the event of an underage, implementing a carryover provision would increase negative impacts to the physical environment through increasing effort. **Alternative 1** (No Action) and **Preferred Alternative 2** would ensure that impacts to the physical environment are constrained, at a maximum, to those attributed to the effort to harvest the ACL. Since **Alternative 1** does not have a payback for an underage, an underage in a given year would result in fewer physical impacts that year and that would not occur the following year due to an increase in the ACL. **Preferred Alternative 2** would establish a payback, and therefore, any unrealized physical impacts from an underage could occur the following year. Effects on the physical environment from this action regardless of the alternative selected would likely be minimal compared with **Alternative 1**, because no significant change in overall fishing effort is expected.

4.2.2 Direct and Indirect Effects on the Biological Environment

A Gulf-wide post-season AM is currently in place to mitigate for an overage of the total recreational ACL if red snapper is classified as overfished. Establishing state-specific post-season AMs and methods to adjust the quota allows for additional flexibility. This action would establish a payback provision that applies regardless of whether the stock is overfished and whether the total recreational ACL is exceeded, and a carryover provision if carryover is permitted under established Council procedures. In the event of an overage, a payback provision would reduce the catch in the following year, mitigating the impacts on the biological environment. The mechanism by which a carryover would be allowed is being developed in another amendment; this action would be dependent on implementation of that amendment.

In the event of an underage, implementing a carryover provision would increase impacts to the biological environment through ensuring the maximum amount of fish are landed, but should not significantly affect the stock because the allowable catch is based on assuming landings will meet the ACL. During its January 2018 meeting, the Council's Scientific and Statistical Committee reviewed simulations developed by the Southeast Fisheries Science Center that demonstrated the effects of a carryover provision on red snapper. The simulations showed that fish not caught in the previous fishing year could be harvested, pound for pound, without causing harm to the subject fish stock or jeopardizing the rebuilding plan. The acceptable biological catch (ABC) cannot exceed the overfishing limit, and as long as the overfishing limit is not exceeded, overfishing would not be expected to occur in a carryover year. The Council is developing a Generic Carryover Amendment for all finfish stocks, which would create the mechanism by which a carryover could occur. The draft amendment has options to exclude stocks from the carryover provision if they meet certain criteria, such as overfished stocks and stocks with high scientific uncertainty; these exceptions are intended to reduce the risk of impacts to the stock. If the red snapper stock met any of the exclusion criteria, carryover would not be allowed.

The indirect effects would be similar to those outlined in Section 4.1.2, which describes additional impacts that could occur if landings are not constrained to the ACL. The current total recreational ACL and AMs have been established to maximize yield while constraining landings. Therefore, effects to the biological environment from this action regardless of the alternative selected would likely be minimal compared with **Alternative 1**.

Alternative 1 would maintain the current post-season AM, which requires a payback of any overage if the total recreational ACL is exceeded and the red snapper stock is classified as overfished. No additional impacts would occur to the biological environment compared with **Alternative 1**. In the event of an overage or underage of a given year's ACL, **Preferred Alternative 2** would implement a post-season increase or decrease in the total recreational quota and a state's ACL equal to that overage or underage, respectively. **Preferred Alternative 2** could result in more negative biological impacts than **Alternative 1**, because **Preferred Alternative 2** would allow for greater harvest in the year following an underage. However, **Preferred Alternative 2** requires a payback regardless of whether the total recreational ACL is exceeded, which may result in more positive biological impacts compared to **Alternative 1**. The unused portion of the ACL considered for carryover would apply to the smallest divisible managed portion (individual state) from which the remaining ACL or quota went unharvested. Applying the carryover only to the smallest divisible managed portion of the private angling component would ensure that any fish that are allowed to be caught in a successive fishing year are caught under the same assumptions about size and age selectivity by gear and component, thereby reducing negative biological impacts. For instance, 100 lbs of fish carried over to the next fishing year from the western Gulf may be equivalent to 10 fish, but from the eastern Gulf may be equivalent to 5 fish. The effect on the stock of removing larger and, typically, more reproductively influential fish from the population may disproportionately affect the overall health of the stock if the carryover is disproportionately applied. Because the carryover provision would not be applied in the event the total stock ACL was exceeded in a given fishing year, fishing mortality beyond what had been prescribed in the approved catch limits would not occur. This would be beneficial to the biological environment by constraining the harvest and continuing to rebuild the stock. It is possible that forage species and competitor species could increase or decrease in abundance in response to a decrease or increase in the abundance of red snapper. However, significant changes in the prosecution of the red snapper harvest are not expected from this action, so no significant effects to non-target species or protected resources are anticipated.

4.2.3 Direct and Indirect Effects on the Economic Environment

Alternative 1 (No Action) would maintain the existing post-season AM Gulf-wide while red snapper is classified as an overfished stock. If Gulf-wide recreational landings exceed the aggregate recreational ACL and red snapper is overfished, then the overage would be deducted from the following year's ACL. Although **Alternative 1** would not be expected to result in Gulf-wide economic effects, it could be perceived as unfair and could potentially be detrimental to some participating states. Texas could maintain its red snapper harvests within its allotted portion of the recreational ACL and still be penalized the same as the states who went over their allocation, thereby unduly suffering economic losses. However, these potential economic losses to Texas would not materialize as long as red snapper is not classified as an overfished stock.

Preferred Alternative 2 would implement post-season quota adjustments specific to the state of Texas. Under **Preferred Alternative 2**, if Texas total recreational landings exceed (or are less than) its allotted share of the recreational red snapper ACL, then in the following year the state's next year ACL would be reduced (or increased) (and consequently reduce/increase the Gulf-wide

ACL) by the amount of the ACL overage or underage, unless the best scientific information available determines otherwise. Quota adjustments in Texas would be limited to the recreational component responsible for the underage or overage. **Preferred Alternative 2** would promote fairness and provide more incentives to Texas's federal for-hire and private angling components to stay within their allotted portions of the quota because it only requires a payback from the component responsible for the overage. **Preferred Alternative 2** would not be expected to result in direct economic effects. The federal for-hire and private angling components of the recreational sector are more likely to be subject to quota adjustments (payback or carryover) under **Preferred Alternative 2**. Therefore, relative to **Alternative 1, Preferred Alternative 2** would be expected to result in indirect economic effects due to the increased likelihood of overage paybacks and underage carryovers. For paybacks and carryovers, **Preferred Alternative 2** would be expected to result in indirect economic losses and benefits to Texas, respectively. Although the expected economic effects cannot be quantified, they would be determined by the expected value of the paybacks (carryover), i.e., the likelihood of overage paybacks (underage carryover) times the value of excess harvest (under harvest) to be paid back (carried over).

4.2.4 Direct and Indirect Effects on the Social Environment

The overage adjustment that would reduce the recreational sector ACL in the year following an overage by the amount it is exceeded applies when red snapper is classified as overfished (**Alternative 1**). Red snapper is not currently classified as overfished and there would be no overage adjustment under **Alternative 1** if Texas, with an approved state management plan, exceeds its portion of the ACL, as this provision is applicable Gulf-wide and would not apply to an individual state. This would allow Texas to avoid the negative effects of having to payback a quota overage, but may be perceived as unfair by other states. On the other hand, if Texas constrained its landings to below its portion of the quota, under **Alternative 1**, the uncaught quota would no longer be available for harvest and Texas would not be able to realize an increased portion of the ACL in the following year, by the amount of uncaught quota.

For a Texas-approved state management plan, **Preferred Alternative 2** would apply an overage or underage adjustment to Texas' ACL(s) based on its landings in the previous year, beginning with its landings under the EFP in 2019: if Texas constrained its landings to below its portion of the recreational sector ACL, the amount of quota remaining would be added to its ACL(s) in the following year, and if Texas' landings exceeded its portion of the ACL, the amount of the overage would be deducted from Texas' ACL in the following year. (It is important to note that the underage adjustment would be applied as implemented through the Generic Carryover Amendment and would not be in effect until such time.) Because the overage adjustment would only apply to an individual state that exceeded its portion of the ACL, other states (with or without approved state management plans) would not be affected by having their ACL(s) reduced. In the event an overage adjustment is triggered for Texas under **Preferred Alternative 2**, some positive effects would be expected for anglers in other states that do not exceed their respective portions of the ACL, as anglers in other states are not affected by the overage, either in the short-term setting of the following year's ACL (would only occur if red snapper is classified as overfished), or the long-term health of the stock. In the event a quota carryover is triggered for Texas under **Preferred Alternative 2**, positive effects would be expected for

anglers in Texas, as the amount of uncaught quota would be added to Texas' portion of the ACL (or component ACLs, as applicable) in the following year.

Because the current preferred alternative is to include only the private angling component in state management, the quota adjustment would apply only to that component. If the preferred alternative changes and Texas manages both its private angling and federal for-hire components, any overage or underage adjustments would be based on the landings of each component and reflect the amount that each component's landings were over or under its portion of the ACL. Some benefits would be expected for a component that does not exceed its portion of the ACL, as an underage adjustment would be applied that increases that component's ACL in the following year up to the amount that component's ACL remained unharvested. At the same time, each component would be protected from the potential overharvest of the other component's ACL, by being responsible for paying back only its own ACL overage.

4.2.5 Direct and Indirect Effects on the Administrative Environment

Alternative 1 (No Action) would result in no additional impacts or effects on the administrative environment. A Gulf-wide post-season AM is currently in place to mitigate for an overage of the total recreational ACL if red snapper is classified as overfished. Landings are currently monitored and any impacts to the administrative environment would be minor.

Preferred Alternative 2 would require NMFS to adjust the ACL in the following year for any state that has landings less than or greater than the ACL. It is unlikely that landings would be exactly at the ACL in any year, so some adjustment would be expected each year, although a cap for carryover may be established in the Generic Carryover Amendment. Because 5-10 state ACLs (total among the alternatives evaluated in Action 1.1 of the Program Amendment) could be established in addition to the recreational and component ACLs, NMFS could potentially need to adjust up to 13 values each year; therefore, **Preferred Alternative 2** would have a greater administrative burden than **Alternative 1**.

4.3 Cumulative Effects Analysis

Amendment 50A to the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico (Program Amendment) with environmental impact statement (EIS) consists of actions affecting all Gulf states and the overall federal management of recreational red snapper in federal waters of the Gulf, regardless of whether or not all states implement a state management program. This amendment (Amendment 50F) and environmental assessment (EA), along with Amendments 50B, C, D, and E (Individual State Amendments) with EAs tier off the Program Amendment, which includes a programmatic EIS. While the selection of preferred alternatives for each amendment will be made within the respective document, the six amendments are directly related and the effects are intertwined.

As directed by the National Environmental Policy Act (NEPA), federal agencies are mandated to assess not only the indirect and direct impacts, but cumulative impacts of actions as well. The cumulative effects from managing the reef fish fishery and actions within the Program Amendment and Individual State Amendments are analyzed in Section 4.7 of the Program

Amendment. Additional pertinent actions are summarized in the history of management of the Program Amendment (Section 1.3). The programmatic EIS analyzes the impacts of a reasonable range of alternatives intended to provide limited authority to Florida, Mississippi, Alabama, Louisiana, and Texas to manage recreational fishing of red snapper. The programmatic EIS analyzes the direct, indirect, and cumulative effects of all six documents. As such, the cumulative effects analysis within the Program Amendment identifies the potential cumulative effects relevant to the actions taking in this amendment.

The objective of state management is to provide flexibility to the state to establish management measures that account for the differences between each state's stakeholders while maintaining current requirements to monitor and constrain landings to the ACL, as well as implement AMs should the ACL be exceeded. While NMFS would still oversee the management strategies of each state to determine consistency, the states would have limited authority to establish various regulations. The short and long-term direct and indirect effects of each these actions are provided in Sections 4.1-4.6 of the Program Amendment (Amendment 50A).

The cumulative effects of past, present, and reasonably foreseeable future actions (RFFAs) are not expected to impact how the red snapper fishery is prosecuted. Current allowable gear types can adversely affect hard bottom areas; however, these impacts are not considered significant. Damage caused from reef fish fishing, although minor, is associated with the level of fishing effort. Therefore, actions reducing levels of effort would result in greater benefits to the physical environment because fishing related interactions with habitat would be reduced. If the states can better constrain the private angling component landings, and NMFS continues to constrain the for-hire component landings to the ACL, less fishing effort could occur reducing negative impacts to the physical environment.

The present red snapper harvest levels are based on a rebuilding plan put in place by Reef Fish Amendment 27/Shrimp Amendment 14 (GMFMC 2007). The current plan has allowed harvests to increase as the stock rebuilds. These measures have also limited the red snapper harvest sufficiently to end overfishing on the stock and remove it from an overfished status. Sector separation (Amendment 40) has successfully held landings by the federal for-hire component to the allocated ACL. However, in part because of inconsistent state seasons, the private angling component has not been successfully constrained to its quota. If the states are better able to constrain the private angling component to the ACL, less fishing effort could occur reducing negative impacts to the biological environment.

Fishery management RFFAs are expected to benefit managed species. These actions are expected to manage the stocks at optimum yield per National Standard 1. This amendment, as well as the framework action to reduce the for-hire ACT buffer and the amendment to review the sector allocation, are intended to improve the management of the recreational sector and components in ways that are likely to better keep harvests within the quotas. Other RFFAs described in the cumulative effects analysis of the Program Amendment are intended to improve the management of reef fish stocks either through revising ACLs, improving data reporting, or allowing more flexibility in management.

Because red snapper is but one species in the reef fish complex, any adverse effects to the economic or social environment may be mitigated through effort shifting to other species and may not be significant. This action may increase the resources needed by the administrative environment through the increased complexity of enforcement. This complexity develops from each state setting regulations for the season, bag limit, size limits, and potential area closures. In contrast, the current management sets a Gulf-wide area, minimum size limit, bag limit, and season for federal waters. Most states have had inconsistent seasons at least once over the years. Thus, the current management system could increase the degree of state inconsistency.

Changing from one to potentially five management regimes through these actions could lead to overfishing if proper controls on fishing are not implemented. However, the effects of the proposed action are, and will continue to be, monitored through collection of landings data by each of the five Gulf states as well as NMFS, stock assessments and stock assessment updates, life history studies, economic and social analyses, and other scientific observations. Additionally, the individual states will prepare regular reports for the Council on the status of their recreational red snapper programs and how they will address issues such as quota overruns. Developing state management for the harvest of recreational red snapper is expected to be a conservation equivalent to the current management strategy concerning the impacts on the physical and biological environments. The apportionment of the recreational quota to the states would mitigate for overharvest by maintaining the total harvest to the Gulf-wide recreational ACL even though it is divided among the five states. The range of minimum size limits for red snapper would set boundaries on the states' ability to establish minimum size limits and aid enforcement. The impacts of the management strategies established by the states would be further mitigated by limiting management measures that the state can change. The quota adjustments are intended encourage the states to constrain harvest each year to prevent a reduction of their quota for the following year.

CHAPTER 5. REGULATORY IMPACT REVIEW

5.1 Introduction

The National Marine Fisheries Service (NMFS) requires a Regulatory Impact Review (RIR) for all regulatory actions that are of public interest. The RIR does three things: 1) it provides a comprehensive review of the level and incidence of impacts associated with a proposed or final regulatory action; 2) it provides a review of the problems and policy objectives prompting the regulatory proposals and an evaluation of the major alternatives that could be used to solve the problem; and, 3) it ensures that the regulatory agency systematically and comprehensively considers all available alternatives so that the public welfare can be enhanced in the most efficient and cost-effective way. The RIR also serves as the basis for determining whether the regulations are a "significant regulatory action" under the criteria provided in Executive Order (E.O.) 12866. This RIR analyzes the impacts this action would be expected to have on the recreational red snapper component of the Gulf of Mexico (Gulf) reef fish fishery.

5.2 Problems and Objectives

The problems and objectives addressed by this action are discussed in Section 1.2.

5.3 Description of Fisheries

A description of the red snapper component of the Gulf reef fish fishery is provided in Section 3.1.

5.4 Impacts of Management Measures

5.4.1 Action 1 – Authority Structure for State Management

A detailed analysis of the economic effects expected to result from this action is provided in Section 4.1.3. The following discussion summarizes the expected economic effects of the preferred alternatives.

Preferred Alternative 2 only establishes the authority structure for implementing state management in Texas and would therefore not be expected to result in direct economic effects. Preferred options would allow Texas to set bag limits (**Preferred Option 2a**), minimum size limits between 14 to 18 inches total length (**Preferred Option 2c**), and the maximum size limit (**Preferred Option 2d**). However, because the devolution of some management responsibilities to Texas could result in management measures better suited to its anglers, **Preferred Alternative 2** would be expected to result in indirect economic benefits that would stem from the management measures implemented following delegation.

5.4.2 Individual State Amendment Action 2 – Post-season Quota Adjustment

A detailed analysis of the economic effects expected to result from this action is provided in Section 4.2.3. The following discussion summarizes the expected economic effects of the preferred alternatives.

Under **Preferred Alternative 2**, if Texas's private recreational landings exceed (or are below) its share of the private angling red snapper annual catch limit (ACL), then in the following year Texas's ACL will be reduced (or increased) by the amount of the ACL overage (or underage) (and consequently reduce/increase the Gulf-wide ACL), unless the best scientific information available determines otherwise.

Preferred Alternative 2, would not be expected to result in direct economic effects. Texas's private angling component of the recreational sector is more likely to be subject to quota adjustments (payback or carryover) under **Preferred Alternative 2**. Therefore, relative to the no-action alternative, **Preferred Alternative 2** would be expected to result in indirect economic effects due to the increased likelihood of overage paybacks and underage carryovers for Texas. For paybacks and carryovers, **Preferred Alternative 2** would be expected to result in indirect economic losses and benefits to Texas, respectively. The expected economic effects would be determined by the expected value of the paybacks (carryover), i.e., the likelihood of overage paybacks (underage carryover) times the value of excess harvest (under harvest) to be paid back (carried over).

5.5 Public and Private Costs of Regulations

Because the Texas state management amendment is part of the suite of amendments developed to establish state management of red snapper for private anglers in the Gulf, estimated costs associated with this action are included in the aggregate costs provided in the state management program amendment.

5.6 Determination of Significant Regulatory Action

Pursuant to E.O. 12866, a regulation is considered a "significant regulatory action" if it is likely to result in: 1) an annual effect of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or state, local, or tribal governments or communities; 2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; 3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights or obligations of recipients thereof; or 4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this executive order (E.O). Based on the information provided above, this action has been determined to not be economically significant for the purposes of E.O. 12866.

CHAPTER 6. REGULATORY FLEXIBILITY ACT ANALYSIS

The purpose of the Regulatory Flexibility Act (RFA) is to establish a principle of regulatory issuance that agencies shall endeavor, consistent with the objectives of the rule and applicable statutes, to fit regulatory and informational requirements to the scale of businesses, organizations, and governmental jurisdictions subject to regulation. To achieve this principle, agencies are required to solicit and consider flexible regulatory proposals and to explain the rationale for their actions to assure that such proposals are given serious consideration. The RFA does not contain any decision criteria; instead, the purpose of the RFA is to inform the agency, as well as the public, of the expected economic impacts of the alternatives contained in the fishery management plan or amendment (including framework management measures and other regulatory actions) and to ensure that the agency considers alternatives that minimize the expected impacts while meeting the goals and objectives of the fishery management plan and applicable statutes.

With certain exceptions, the RFA requires agencies to conduct a regulatory flexibility analysis for each proposed rule. The regulatory flexibility analysis is designed to assess the impacts various regulatory alternatives would have on small entities, including small businesses, and to determine ways to minimize those impacts. The following regulatory flexibility analysis was conducted to determine if the proposed rule would have a significant economic impact on a substantial number of small entities or not.

The primary purpose and need, issues, problems, and objectives of the proposed action are presented in Section 1.2 and are incorporated herein by reference. No federal rules have been identified that duplicate, overlap or conflict with the proposed rule.

The rule concerns state management of recreational fishing for red snapper from private/leased and for-hire fishing vessels in the Gulf of Mexico exclusive economic zone off Texas. The only entity that could be directly affected by the rule is the state of Texas. States are not small entities. Hence, it is concluded that the rule would not have a significant economic impact on a substantial number of small entities.

CHAPTER 7. LIST OF PREPARERS

PREPARERS

Name	Expertise	Responsibility	Agency
Ava Lasseter	Anthropologist	Co-Team Lead – Amendment development, social analyses	GMFMC
Lauren Waters	Fishery biologist	Co-Team Lead – Amendment development, biological analyses, cumulative effects analysis	SERO
Assane Diagne	Economist	Economic analyses	GMFMC
Denise Johnson	Economist	Economic environment and analyses	SERO
Christina Package-Ward	Anthropologist	Social environment	SERO
Mike Larkin	Fishery biologist	Data analyses	SERO

REVIEWERS

Name	Expertise	Responsibility	Agency
Noah Silverman	Environmental Protection Specialist	National Environmental Policy Act review	SERO
Mara Levy	Attorney	Legal review	NOAA GC
Scott Sandorf	Technical writer and editor	Regulatory writer	SERO
Carrie Simmons	Fishery biologist	Review	GMFMC
Sue Gerhart	Fishery biologist	Review	SERO
Stephania Bolden	Biologist	Protected Resources review	SERO
David Dale	Biologist	Essential Fish Habitat review	SERO
Jessica Stephen	Fishery biologist	Data analyses	SERO
David Carter	Economist	Review	SEFSC
Matt Smith	Biologist	Review	SEFSC
Peter Hood	Fishery biologist	Review	SERO

GMFMC = Gulf of Mexico Fishery Management Council; NOAA GC = National Oceanic and Atmospheric Administration General Counsel; SEFSC = Southeast Fisheries Science Center; SERO = Southeast Regional Office of the National Marine Fisheries Service

CHAPTER 8. LIST OF AGENCIES CONSULTED

AGENCIES and ORGANIZATIONS CONSULTED

National Marine Fisheries Service
- Southeast Fisheries Science Center
- Southeast Regional Office
- Office for Law Enforcement
- Endangered Species Division
- Domestic Fisheries Division

NOAA General Counsel

Environmental Protection Agency (Region 4 and 6)
United States Coast Guard
United States Fish and Wildlife Services
Department of Interior. Office of Environmental Policy and Compliance
Department of State, Office of Marine Conservation,
Marine Mammal Commission

Texas Parks and Wildlife Department
Alabama Department of Conservation and Natural Resources/Marine Resources Division
Louisiana Department of Wildlife and Fisheries
Mississippi Department of Marine Resources
Florida Fish and Wildlife Conservation Commission

CHAPTER 9. REFERENCES

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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
Phone: 813.348.1630 • Toll free: 888.833.1844 • Fax: 813.348.1711
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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

Florida Fish and Wildlife Conservation Commission

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Panama City

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January 12, 2018

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 MONTOUCET
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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AN EQUAL OPPORTUNITY EMPLOYER

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,

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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APPENDIX D. 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 fishery management in federal waters of the exclusive economic zone. However, fishery management decision-making is also affected by a number of other federal statutes designed to protect the biological and human components of U.S. fisheries, as well as the ecosystems that support those fisheries. Major laws affecting federal fishery management decision-making include the Endangered Species Act (Section 3.3), E.O. 12866 (Regulatory Planning and Review, Chapter 5) and E.O. 12898 (Environmental Justice, Section 3.5). Other applicable laws are summarized below.

Administrative Procedures Act

All federal rulemaking is governed under the provisions of the Administrative Procedure Act (APA) (5 U.S.C. Subchapter II), which establishes a "notice and comment" procedure to enable public participation in the rulemaking process. Under the APA, 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 APA also establishes a 30-day waiting period from the time a final rule is published until it takes effect. Proposed and final rules will be published before implementing the actions in this amendment.

Coastal Zone Management Act

Section 307(c)(1) of the federal Coastal Zone Management Act of 1972 (CZMA), as amended, requires federal activities that affect any land or water use or natural resource of a state's coastal zone be conducted in a manner consistent, to the maximum extent practicable, with approved state coastal management programs. The requirements for such a consistency determination are set forth in NMFS regulations at 15 C.F.R. 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, 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 (DQA) (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 DQA directs the Office of Management and Budget (OMB) 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.

Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501 et seq.) regulates the collection of public information by federal agencies to ensure the public is not overburdened with information requests, the federal government's information collection procedures are efficient, and federal agencies adhere to appropriate rules governing the confidentiality of such information. The PRA requires NMFS to obtain approval from the Office of Management and Budget before requesting most types of fishery information from the public. Action 1.2 to create a state-specific endorsement to the federal for-hire reef fish permit would require PRA approval.

National Historic Preservation Act

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

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

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

Executive Orders

E.O. 12630: Takings

The Executive Order 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 National Oceanic and Atmospheric Administration Office of General Counsel will determine whether a Taking Implication Assessment is necessary for this amendment.

E.O. 12866: Regulatory Planning and Review

Executive Order 12866: Regulatory Planning and Review, signed in 1993, requires federal agencies to assess the costs and benefits of their proposed regulations, including distributional impacts, and to select alternatives that maximize net benefits to society. To comply with E.O. 12866, NMFS prepares a Regulatory Impact Review (RIR) for all fishery regulatory actions that either implement a new fishery management plan or significantly amend an existing plan (See Chapter 5). RIRs provide a comprehensive analysis of the costs and benefits to society of proposed regulatory actions, the problems and policy objectives prompting the regulatory proposals, and the major alternatives that could be used to solve the problems. The reviews also serve as the basis for the agency's determinations as to whether proposed regulations are a "significant regulatory action" under the criteria provided in E.O. 12866 and whether proposed regulations will have a significant economic impact on a substantial number of small entities in compliance with the Regulatory Flexibility Analysis. A regulation is significant if it a) has an annual effect on the economy of $100 million or more or adversely affects in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments and communities; b) creates a serious inconsistency or otherwise interferes with an action taken or planned by another agency; c) materially alters the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or d) raises novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

E.O. 12962: Recreational Fisheries

This Executive Order 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 (Council) 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 Council 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 Order requires NMFS and the U.S. Fish and Wildlife Service to develop a joint agency policy for administering the ESA.

E.O. 13132: Federalism

The Executive Order on Federalism requires agencies in formulating and implementing policies, to be guided by the fundamental Federalism principles. The Order 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 Order 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).

APPENDIX E. ALTERNATIVES CONSIDERED BUT REJECTED

The following alternatives were removed from further consideration.

- At its October 2018 meeting, in Action 1 – Authority Structure for State Management, the Council removed the following options from the list of management measures that may be delegated (Action 1, Preferred Alternative 2). Options 2e and 2f do not need to be delegated, as delegation would require that their used be enforced in federal waters, requiring a more complex management and enforcement regime. Further, the devices and gear represented by these options could be required by the states, the possession of which could be enforced dockside. Option 2g is not appropriate for delegation, as it is not possible to delegate closure of federal waters to the states. An action was added to the document to address federal water closures (Action 3):

Alternative 2: Establish a management program that **delegates** management authority for recreational red snapper fishing in federal waters to Texas. If Texas' 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 Texas would be subject to the default federal regulations for red snapper. Texas 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:

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.

- At its October 2018 meeting, in Action 2 – Post-Season Quota Adjustment, the Council removed Option 2b from Alternative 2. With only one option remaining, Option 2a will be incorporated into Alternative 2.

Alternative 2: Add a **Texas-specific** overage and underage adjustment to the existing post-season AM for the recreational sector red snapper ACL. If the combined Texas recreational landings exceed or are less than the Texas combined recreational ACLs (if applicable), then in the following year reduce or increase the total recreational quota and Texas' component ACL(s) as outlined in Option a or b, 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 Texas component ACTs will be adjusted to reflect the established percent buffer.

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