



February 16, 2022

The Honorable Janet Coit
Assistant Administrator, NOAA Fisheries
National Oceanic and Atmospheric Administration
1401 Connecticut Avenue NW, Room 5128
Washington, DC 20230

Re: Red Grouper and Gulf of Mexico Reef Fish Amendment 53 (NOAA-NMFS-2021-0098)

Dear Ms. Coit:

Thank you for the opportunity to comment on the Gulf of Mexico Fishery Management Council's (Gulf Council) Final Amendment 53 to the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico. Environmental Defense Fund (EDF) is a global organization with over 2.5 million members, and we are focused on finding ways that work to protect the world's ecosystems and the people dependent upon them. Much of our U.S. work supports the development and implementation of fishery management best practices and climate resilience. Key to progress in these areas is ensuring that fishery management policies are rooted in sound public process, are consistent with governing laws, and use the best available science. It is through this lens that we respectfully request that you reject Amendment 53 in its current form and send it back to the Gulf Council for further consideration, following the Gulf Council's designated allocation review process.

While we appreciate the challenges and complexities associated with quota allocation decisions in the Gulf of Mexico, Amendment 53 is the troubling result of avoiding these conversations and circumventing the public process, allocation review policies, and other relevant procedures established by the Gulf Council and the Magnuson-Stevens Fishery Conservation and Management Act (MSA). Red grouper is the first stock in the country to utilize NOAA Fisheries' Federal Effort Survey (FES) data in allocation decisions and the process will set precedent across the Gulf and Atlantic councils. Following the proper processes and decision-making frameworks is paramount always, but especially as the first regulation to reflect this new data source. These concerns warrant NMFS asking the Gulf Council to reconsider the amendment.

Key deficiencies in the development of the amendment and in its substance include:

Sound public process was not followed, and Amendment 53 risks setting the wrong precedent around the country.

- **The Gulf Council did not follow its own allocation review policy.** Based on the Gulf Council’s Allocation Review Policy, there are numerous “primary” and “secondary” triggers that necessitate allocation review and associated procedural directives, including the Council’s public interest-based review triggers.¹ Therefore, when NMFS used the data derived from the Federal Effort Survey (FES) to recalibrate the historical red grouper recreational landings estimates, such actions should have triggered a full allocation review. Core components of a full allocation review were not conducted.
- **Prior to advancing any new changes to allocation, NMFS and the Gulf Council should follow the guidance from the U.S. Government Accountability Office (GAO) contained in its March 2020 report concerning allocations in mixed-use fisheries.**² The GAO recommended NMFS develop documented processes for allocation decisions that specify how the Councils will conduct allocation reviews and expectations for the basis of such decisions to be documented. We encourage NMFS to establish such a process and ensure that deliberations concerning grouper allocation follow that process. Following this path would compel meaningful discussion and consideration of what problems the fishery is facing, and whether reallocation among sectors is truly responsive to these problems.

Amendment 53 is not consistent with the MSA, undermines climate resilience of the red grouper stock, and increases risk to the stock.

- **Amendment 53 reduces the allocation from a sector with high accountability, extensive data collection, and low levels of discards and moves them to a sector with high levels of discards which violates MSA National Standard 9.** National Standard 9 requires that “[c]onservation and management measures shall, to the extent practicable: (1) minimize bycatch; and (2) to the extent bycatch cannot be avoided, minimize the mortality of such bycatch.” Bycatch, by definition, includes both economic and regulatory discards. According to Amendment 53, “[c]ommercial vertical line fleet discards of red

¹ “Consistent with the adaptive management process suggested in the Allocation Review Policy (referenced above), the incorporation of the Council’s public input process as secondary public interest-based review triggers will include the consideration of relevant social, economic, and ecological indicators as an intermediate step before determining whether an allocation review is triggered.” See Gulf of Mexico Fishery Management Council Allocation Review Policy, page 1, available at <https://gulfcouncil.org/wp-content/uploads/Allocation-Review-Policy.pdf>

² MIXED-USE FISHERIES: South Atlantic and Gulf of Mexico Councils Would Benefit from Documented Processes for Allocation Reviews, U.S. Government Accountability Office, March 2020, available at <https://www.gao.gov/assets/710/705598.pdf>

grouper averaged about 134,000 fish from 1993-2017, with a low of about 49,000 fish in 1995 and a peak of over 290,000 fish in 2011.”³ This is in stark contrast to the recreational sector, for which red grouper discards “averaged 4.25 million fish from 1993 to 2017, with a low of 1.53 million fish in 1996 and a peak of 8.10 million fish in 2004.”⁴

- **According to the recent red grouper stock assessment (SEDAR 61), NMFS estimates that the stock biomass for red grouper is at an all-time low.** The 2018 red tide event⁵ was exceptionally severe in its range, duration, and biological impact – the gravity of which may not have been fully understood in the most recent red grouper stock assessment. Furthermore, red tide events are predicted to become more frequent and severe in the face of climate change. Yet, despite the condition of the stock, Amendment 53 does not promote conservation and thus violates National Standard 9. The Gulf Council’s 2018 decision to reduce the red grouper quota due to observed reductions in biomass, recruitment, and landings highlights the need to carefully manage fishing mortality of this depleted stock. Amendment 53 undermines this responsible approach. Reallocating fish from a sector that is fully accountable due to pound-by-pound, third-party verified electronic reporting to a sector that lacks precision in landings data increases uncertainty and management risks. As NOAA Fisheries looks to create more climate resilient fisheries, greater scrutiny should be given to decisions that increase risk for stocks that are already at-risk.

In summation, the Gulf Council’s decision to advance Amendment 53 is a step backwards from the goals of sustainable fishery management and sets a national precedent for poor public process. NOAA Fisheries has an opportunity with this decision to build climate resilience into fisheries management by making determinations based on the future health of the stock and not solely looking at historic landings.

As NOAA’s guidance⁶ on allocation acknowledges, factors other than landings history should be taken into consideration when embarking upon a reallocation among sectors. Furthermore, in the context of climate change and the upheaval faced globally due to the COVID-19 pandemic, continuing to rely solely on past patterns as predictive of the needs of the future is insufficient. Accordingly, we ask that NMFS return Amendment 53 to the Gulf Council such that the Council 1) can follow the proper public procedures,

³ Amendment 53, Table 3.1.3 at p. 34. https://gulfcouncil.org/wp-content/uploads/RF-AM-53-Red-Grouper_9_24_2021_Final.pdf

⁴ Amendment 53, Table 3.1.6 at p. 37. https://gulfcouncil.org/wp-content/uploads/RF-AM-53-Red-Grouper_9_24_2021_Final.pdf

⁵ NOAA. Fall 2018 Red Tide Event That Affected Florida and the Gulf Coast National Ocean Service website. <https://oceanservice.noaa.gov/hazards/hab/florida-2018.html>

⁶ “While historical use may (or in some instances, shall) be taken into consideration when reviewing and making an allocation decision, the MSA requires achieving on a continuing basis the optimum yield (OY) from each fishery, which encompasses a broader range of considerations.” See Fisheries Management Policy Directive 01-119-02, page 5, available at <https://www.fisheries.noaa.gov/national/laws-and-policies/fisheries-management-policy-directives>

including its own allocation review process and 2) that it also consider the current health, sustainability, and distribution of red grouper, including consideration for the possible changes to the stock resulting from climate change and other environmental stressors (e.g., warming waters and harmful algal blooms).

Thank you for considering these comments. Please feel free to contact me with any questions.

Sincerely,

A handwritten signature in black ink, appearing to read 'Katie Westfall', with a large, stylized flourish at the end.

Katie Westfall
Acting Senior Director, Climate Resilient Fisheries