



June 28, 2021

Peter Hood
Southeast Regional Office
National Marine Fisheries Service
263 13th Avenue South
St. Petersburg, FL 33701

Re: Amendment 53 Draft EIS: ID NOAA-NMFS-2021-0049-0002

Dear Mr. Hood:

The Gulf of Mexico Reef Fish Shareholders' Alliance (Shareholders' Alliance) submits this letter regarding the Draft Environmental Impact Statement (EIS) for Amendment 53 to the Reef Fish FMP (Red Grouper Allocations and Annual Catch Levels and Targets).

As a threshold matter, we question the utility of a comment period on a Draft EIS that closed three days after the Gulf of Mexico Fishery Management Council ("Council") took Final Action and voted to submit the Action to the Secretary of Commerce for approval. Under the Magnuson-Stevens Fishery Conservation and Management Act (MSA), at this point the National Marine Fisheries Service (NMFS) lacks authority to modify the Action the Council selected; it has authority only to approve, partially approve, or deny the Council's Action. 16 U.S.C. § 1854(a)(3). The purpose of the National Environmental Policy Act (NEPA) is to provide decisionmakers with necessary information to make an informed choice. *See* 40 C.F.R. § 1500.1(b) (2020) ("NEPA procedures must insure that environmental information is available to public officials and citizens before decisions are made and before actions are taken.") (emphasis added). In this case, the Council was not afforded the opportunity to review any comments/concerns that were submitted to NMFS on the Draft EIS after the Council took its vote nor was the Council afforded the opportunity for those comments, and any subsequent changes to the EIS, to inform its vote.

The Council made its choice based on the version of the Draft EIS presented to them at the June 2021 meeting. That is the operative version of the EIS. Whatever changes NMFS makes to the EIS when finalizing it can have no effect on the selection of management actions from among the alternatives, and so is largely a moot exercise. To the extent NMFS modifies the EIS, it should send it back to the Council for review and re-selection of management actions based on any new or revised information in the EIS.

A major concern is how NMFS's Southeast Fisheries Science Center "calibrated" 30 years of historical recreational landings estimates for red grouper that are now being used as the basis for reallocation under Amendment 53. NMFS has not been forthcoming about how it performed that calibration with respect to red grouper landings estimates for the recreational sector. Council members asked for but were denied a detailed explanation for this calibration. This data is extremely difficult to come across and understand, whether intentionally or unintentionally, and neither the Council, the public, nor the Council's Scientific and Statistical Committee has been afforded the opportunity to review or critique the agency's methods for calibrating these historical landings estimates for red grouper. *See Conn. Light & Power Co. v. Nuclear Regulatory Comm'n*, 673 F.2d 525, 530 (D.C. Cir. 1982) ("In order to allow for useful criticism, it is especially important for the agency to identify and make available technical studies and data that it has employed in reaching the decisions to propose particular rules. To allow an agency to play hunt the peanut with technical information, hiding or disguising the information that it employs, is to condone a practice in which the agency treats what should be a genuine interchange as mere bureaucratic sport. An agency commits serious procedural error when it fails to reveal portions of the technical basis for a proposed rule in time to allow for meaningful commentary.").

This is particularly concerning because, during the base period used for allocation under Amendment 53 (1986-2005), recreational landings were initially estimated using the Marine Recreational Fishing Statistics Survey (MRFSS), the reliability of which has been widely panned, including by recreational anglers and the National Research Council.¹ We are concerned that, whatever calibration model the agency determined to use based on a comparison of its Fishing Effort Survey (FES) versus its Coastal Household Telephone Survey (CHTS) landings observed during 2015-2017, cannot reliably calibrate MRFSS recreational landings estimates for red grouper over the base period of 1986-2005. Calibrating uncertain data with an inapplicable calibration model only increases the unreliability of such data.

NMFS is evidently relying on deference for determining that these revised historical landings estimates are the "best scientific information available." But this information has not been made available to the public or to the Council, and so NMFS deserves no deference for its secret methods. As such, and for the concerns we have raised consistently since the initiation of this effort, reallocation under Amendment 53 lacks a rational basis, and whatever NMFS may add to the EIS about this calibration at this point is too late because the decisionmaker for selecting management actions from among the alternatives, the Council, has already acted. We are not blind to the implications of this exercise. It appears that the underlying motivation of

¹ See National Research Council, *Review of Recreational Fisheries Survey Methods* (2006), Washington, DC: The National Academies Press, available at: <https://doi.org/10.17226/11616>, at 1 ("Although the National Marine Fisheries Service (NMFS) of the National Oceanic and Atmospheric Administration implemented the Marine Recreational Fisheries Statistics Survey (MRFSS) in 1979 to obtain statistics about marine recreational fisheries, management goals and objectives have changed since then, as has the complexity of the recreational fishing sector. The need for and use of marine recreational fishery statistics in science and management have changed as well. This committee has identified several areas in which designers of sampling programs, data collectors, and users of recreational fisheries data appear to have incomplete communication, mismatched criteria, or other obstacles.").

Amendment 53 is to adjust allocations using historical landings calibrated with FES, which tends to show much higher recreational landings, and then in the future account for such allocations by using the Gulf States' own nascent surveys, which generally show much lower rates of recreational landings (see Table 2.2.5 in Amendment 53). The recreational sector may enjoy temporarily longer fishing seasons, but the commercial sector and the resource will be deliberately harmed by this double standard. Our distrust of the process stems from past actions, including NMFS's decision in 2017 to reopen the private recreational angler sector's fishing season for red snapper after its quota was exhausted, despite conceding in the Federal Register that doing so "will necessarily mean that the private recreational sector will substantially exceed its annual catch limit, which was designed to prevent overfishing the stock" and that "this approach may delay the ultimate rebuilding of the stock by as many as 6 years,"² and NMFS's decision to approve a reallocation of red snapper that a federal judge ruled was not "fair and equitable" to the commercial sector.³

The Draft EIS is deeply flawed for these and other reasons. We incorporate by reference a letter we submitted to the Council detailing some of our concerns. That letter is attached.

Thank you for considering our comments.

Sincerely,



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² 82 Fed. Reg. 27777, 27779 (June 19, 2017).

³ *Guindon v. Pritzker*, 240 F. Supp. 3d 181 (D.D.C. 2017).