



SEAFOOD HARVESTERS

— OF AMERICA —

February 7, 2022

Peter Hood
Branch Chief
NMFS Southeast Regional Office
263 13th Avenue South
St. Petersburg, FL 33701

Re: [Notice of Availability](#), Reef Fish Fishery of the Gulf of Mexico, Amendment 53; 86 Fed. Reg. 70078 (Dec. 9, 2021)

Dear Mr. Hood:

We appreciate the opportunity to comment on NOAA Fisheries' above referenced notice regarding Amendment 53 to the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico: Red Grouper Allocations and Annual Catch Levels and Targets (Amendment 53).

Seafood Harvesters of America is a national commercial fishing organization with 22 member groups representing thousands of fishermen from Alaska to Hawaii to Florida to Maine. We are proud stewards and harvesters of America's seafood, our nation's strategic protein reserve and a critical component of our country's food security. We have, and will continue to push for greater accountability in all fishing sectors in an effort to reduce uncertainty and improve access for commercial fishermen and recreational anglers alike.

Amendment 53 would modify the allocation of Gulf red grouper catch between the commercial and recreational sectors, specify a new overfishing limit (OFL) and acceptable biological catch (ABC), and revise sector annual catch limits (ACLs) and annual catch targets (ACTs). We are very concerned about the impacts of Amendment 53, particularly the Gulf of Mexico Fishery Management Council's (Gulf Council) selection of Alternative 3 in Action 1, which would reallocate approximately 32% of the commercial sector's red grouper quota to the recreational

sector. 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, including reviews of economic and other analyses by the Gulf Council's Scientific and Statistical Committee (SSC) and relevant Advisory Panels.

Conservation of our fishery resources

The quota reallocation in Amendment 53 will reduce the commercial sector's allocation from 76% to 59.3% and would increase the recreational sector's allocation from 24% to 40.7%. Effectively, this will result in a reduction of nearly one-third (32%) of the commercial sector's quota in order to benefit the recreational sector.¹

This reallocation violates the Magnuson-Stevens Fishery Conservation and Management Act (the MSA) National Standard 4's requirement that "allocation be [...] (b) reasonably calculated to promote conservation [...]"² because it would result in 640,000 pounds of additional dead discards by the recreational sector. To make matters worse, according to the recent red grouper stock assessment (SEDAR 61), NOAA Fisheries estimates that the stock biomass for red grouper is at an all-time low. It is important to note here that Amendment 53 *admittedly* is "more likely to result in overfishing/overfished status for Gulf red grouper [...]"³ NOAA cannot reasonably claim that this amendment's reallocation promotes conservation of our fishery resources. Instead, Amendment 53 will serve only to increase both fishing pressure and uncertainty for the red group stock at precisely the moment precaution should be taken to ensure the sustainability and viability of the stock.

Furthermore, Amendment 53 violates National Standard 9, which states: "Conservation and management measures shall, to the extent practicable, (a) minimize bycatch and (b) to the extent bycatch cannot be avoided, minimize the mortality of such bycatch."⁴ According to Amendment 53, "Commercial vertical line fleets discards of red grouper averaged about 134,000 fish from 1993-2017, with a low of about 49,000 fish in 1995 and a peak over 290,000 fish in 2011."⁵ In contrast, Amendment 53 states that the recreational sector red grouper discards "averaged 4.25 million fish from 1993-2017, with a low of 1.53 million fish in 1996 and a peak of 8.10 million fish in 2004."⁶ The guidelines for National Standard 9 states that bycatch can "increase [...] the uncertainty concerning total fishing-related mortality;" and that bycatch "may also preclude other more productive uses of fishery resources."⁷ Accordingly, by shifting a greater portion of the quota to the recreational sector with its significantly greater discards, Amendment 53 will increase bycatch and not fulfill the requirements of National Standard 9.

Approving Amendment 53 would be the antithesis to the conservation charge of NOAA and violate conservation measures in National Standards 4 and 9.

Fairness across sectors

Amendment 53 also poses significant problems with respect to the fairness and equity requirements in our fisheries management system.

¹ Under Action 1, Alternative 2 (allocations remain status quo, 76:24), the commercial sector's ACL would be 3.72 million pounds. Under Preferred Alternative 3, the commercial sector's ACL is 2.53 million pounds. The difference between these ACLs is 1.19 million pounds, a 32% decrease for the commercial sector.

² 16 U.S. Code § 1852(a)(4).

³ Amendment 53, p. xxii.

⁴ 16 U.S. Code § 1852(a)(9).

⁵ Amendment 53, Table 3.1.3, p. 34.

⁶ Amendment 53, Table 3.1.6, p. 37.

⁷ 50 C.F.R. § 600.350(b).

Specifically, National Standard 4 requires that “allocation be (a) fair and equitable to all such fishermen; [...]”⁸ The guidelines for this standard state that in order to be fair and equitable, an allocation “should be rationally connected to the achievement of [optimum yield (OY)]” and that “the motive for making a particular allocation should be justified in terms of the objectives of the FMP.”⁹ However, Amendment 53 does not explain how it helps achieve OY and would instead, decrease total commercial landings by 640,000 pounds to account for recreational sector’s dead discards. Furthermore, the amendment does not explain how Preferred Alternative 3 for Action 1 would advance any of the objectives of the FMPs. Instead, it would significantly hinder progress on several FMP objectives including FMP Objective 5: “To minimize and reduce dead discards.”

Additionally, Amendment 53 relies on revised landings estimates derived from the new Fishing Effort Survey (FES), however, it only incorporates this new data for recreational catch and ignores how that data would have benefitted commercial catch. Clearly stated, both the commercial and sector and recreational sector landings would have been higher during the time period in question based on increased biomass estimates. The result of this one-sided historical catch revision is a biased reallocation favoring the recreational sector. Specifically, had FES landings data been available for management purposes historically, the fishery would have seen greater acceptable biological catch (ABC) limits and thus, greater annual catch limits (ACLs) for both sectors. The Gulf Council has calculated what historical ACLs would have been for other species in light of FES calibrations, like king mackerel, but failed to do so for red grouper.

Amendment 53 is inconsistent with the fair and equitable requirements of National Standard 4 and unfairly rewrites the catch history for one sector in a multi-use fishery.

Precedence concerns

Should Amendment 53 be approved, we have serious concerns about its ability to set a national precedent for the use of FES data to rewrite recreational catch history around the country and automatically reallocate quotas, harming the commercial fishing sector’s ability to maintain sustainable, profitable businesses, and reducing supply to consumers.

NMFS, in conjunction with the Council Coordination Committee (CCC), issued a Procedural Directive on July 27, 2016 that established a Fisheries Allocation Review Policy,¹⁰ and two subsequent procedural directives that addressed criteria for initiating allocation reviews (NMFS Procedural Directive 01-119-01) and recommended practices and factors to consider when reviewing and making allocation decisions (NMFS Procedural Directive 01-119-02). These directives require regional fisheries management to develop allocation review triggers that initiate an allocation review. The Gulf Council finalized their allocation review policy during their April 2019 meeting.

The Gulf Council established time-based criteria that would trigger allocation review for several popular mixed-use fisheries. Additionally, the Gulf Council stated that “In addition to the allocation reviews scheduled based on the review triggers selected above, the Council may initiate supplementary allocation reviews at any time. For example, the council could initiate an allocation review should relevant information, e.g. data recalibration, be made available.”¹¹

⁸ 16 U.S. Code § 1852(a)(4).

⁹ 50 C.F.R. § 600.325(c)(3)(i).

¹⁰ NOAA Fisheries Policy Directive 01-119, Fisheries Allocation Review Policy.

¹¹ Gulf of Mexico Fishery Management Council, Allocation Review Guidelines, Draft, October 2021, p. 8.

While the language above uses suggestive language, it is important to note that the premise of an allocation review is to examine whether the existing allocation meets the FMP's goals and objectives and if it does not, management alternatives are developed to adjust the allocation in such a manner that better achieves the FMP's goals and objectives. This is expressly in pursuit of adaptive management: "Because fisheries management and the conditions surrounding fisheries are not static, allocation decisions need to be considered in the context of adaptive management."¹²

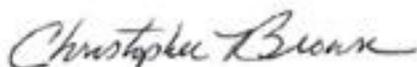
Given the expressed purpose of allocation review, the recalibration of red grouper historical catch landings for the recreational sector *should* have triggered a comprehensive allocation review. Unfortunately, the Gulf Council failed to initiate a formal allocation review and follow the established process. Indeed, in this case, the Gulf Council's SSC never even reviewed the economic analyses purported to justify reallocation.¹³ Critical steps of a comprehensive allocation review were skipped. By allowing the Gulf Council to circumvent a public, transparent, stakeholder-driven allocation review process, NOAA Fisheries is effectively giving the green light to other Fishery Management Councils to do the same. This is an unacceptable precedent for a federal agency to set and warrants the rejection of Amendment 53.

Conclusion

We appreciate the opportunity to provide our perspective and feedback on Amendment 53 and the impacts this management action could have on the sustainability of the red grouper stock and long-standing fishing businesses in the Gulf of Mexico.

Reallocating quota from a highly accountable sector with low levels of discards to a highly unaccountable sector with very high levels of discards does not further the conservation of our nation's fishery resources. Furthermore, Amendment 53 violates multiple National Standards and the Gulf Council's allocation review policy. We urge you to disapprove Amendment 53 and instruct the Gulf Council to consider its legal mandate under the MSA and the requirements of National Standard guidelines and to undertake a formal allocation review in advance of any reallocation action.

Respectfully,



Christopher Brown
President



Leigh Habegger
Executive Director

¹² NMFS Policy Directive 01-119-02, p. 1.

¹³ Gulf Council Meeting Minutes, June 25, 2021 (NMFS Regional Administrator stating: "at least with regard to the economic analyses in this document, yes, they haven't gone before the SSC").