April 12, 2021

Dr. Tom Frazer, Chairman
Gulf of Mexico Fishery Management Council
4107 West Spruce Street, Suite 200
Tampa, FL 33607

Dear Chairman Frazer,

On behalf of the Gulf of Mexico Reef Fish Shareholders' Alliance (Shareholders' Alliance), please accept the following comments regarding topics to be discussed at the Gulf of Mexico Fishery Management Council (Gulf Council) webinar meeting this week.

1. Amendment 53

We urge the Gulf Council to revise its preferred alternative in Action 1 from Alternative 3 to Alternative 2*:*

> *Maintain the sector allocations of the total ACL as 76% commercial and 24% recreational. Revise the OFL and ABC as recommended by the Scientific and Statistical Committee (SSC) based on Southeast Data Assessment and Review (SEDAR) 61 (2019). Set the stock ACL equal to the stock ABC.*[1]

Please see our previous Gulf Council letters for the details of our opposition; here are just some of the points we want to reiterate this week:

- Florida's commercial fishing industry does not support this reallocation of red grouper. We proudly joined six other commercial fishing and seafood industry groups in signing a letter (submitted to the Gulf Council on April 11 and included below as Appendix 1) showcasing our united opposition to using recalibration to reallocate red grouper in Amendment 53.
- Alternative 2 is a scientifically-viable alternative that follows the recommendations of the Gulf Council's Scientific and Statistical Committee (SSC). At the September 2019 meeting, the SSC approved and recommended the overfishing limit (OFL) and acceptable biological catch (ABC) in Alternative 2.[2]
- Reallocating commercial red grouper to the recreational sector will not guarantee a longer recreational season. Every alternative in Action 1 has a good chance of delivering a 12-month season, as is evidenced in the 95th percentile data provided. Why choose an alternative that definitively penalizes commercial fishermen when every other alternative

[1] Gulf Council. Amendment 53.
[2] Gulf Council. April 2020. Amendment 53 Presentation.

could get the recreational sector to 12 months?[3] Concerns with recreational season lengths are not a valid reason to reallocate because reallocation does not solve the fundamental problems causing short recreational seasons.

- Reallocation penalizes accountable commercial fishermen for staying within their quotas while rewarding a less accountable recreational sector for exceeding theirs. That flies in the face of National Standard 4, which requires an allocation to be "fair and equitable" among other requirements. Rewarding the recreational sector for overharvesting in a period where the commercial sector stayed within its quotas is not fair and equitable.
- Reallocation is a separate process from recalibration, with separate goals, separate objectives, and separate guidelines[4,5,6] that must be followed. Recalibration can, and should, be accomplished without reallocation.

The only fair and equitable alternative in Action 1 is Alternative 2. Please select this as your preferred alternative prior to sending this document out for public hearings.

Additionally, we hope that the Gulf Council will be able to safely conduct at least some public hearings in-person prior to Final Action, especially in Madeira Beach, Florida. This will help maximize fishermen participation in this public process and will better help inform the Gulf Council's Final Action.

2. Great Red Snapper Count (GRSC)

The Shareholders' Alliance appreciates the unprecedented scope of this study and the dedication with which the large team of scientists tackled the task of calculating the absolute abundance of red snapper in the Gulf of Mexico.

We also want to express our strong support and admiration for the SSC and the independent reviewers who spent four days – and countless hours in advance and since - analyzing the research and preliminary results of the GRSC. Peer review is a critical component of this process, thereby ensuring that the final product is valid, credible, replicable, and usable. Our world-class fisheries management system is built on a foundation of science, and we hold this sacred above all.

Ultimately, the SSC determined that a precautionary approach to setting the ABC was necessary to account for substantial (much more than anticipated) uncertainty in the GRSC and the troubling resource signals coming from the NOAA Fisheries bottom longline survey. Localized depletion and upticks in catch per unit effort (CPUE) in the northern Gulf have been observed by commercial fishermen for a number of years and must be taken seriously.

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[3] Gulf Council. Amendment 53. Table 2.2.4

[4] National Standard 4—Allocations.

[5] Gulf Council. 2019. Fishery Allocation Review Policy.

[6] NOAA. 2017. National Marine Fisheries Service Policy Directive 01-119. Fisheries Allocation Review Policy.

Fishermen and managers have made great sacrifices so that this fishery would rebuild at a pace and to a level that ensures that long-term sustainability and business stability. We must take care not to roll back these efforts.

To that end, we strongly support the Gulf Council's SSC. We support the revised/updated GRSC being incorporated into the full stock assessment process for the proper analysis it deserves. We support a precautionary approach to ABC-setting so that this resource continues to grow and provide long-term access for *all* fishermen. We support science-based fisheries management. We urge the Gulf Council to support its SSC.

3. Red Snapper Common Currency

The Shareholders' Alliance strongly recommends the Gulf Council to take Final Action at this meeting to define recreational red snapper data calibrations and set catch limits and approve a common currency once-and-for-all. There is no legitimate reason to continue to delay.

4. Commercial Electronic Logbooks

The Shareholders' Alliance is generally supportive of moving away from archaic paper reporting towards a one-stop, one-touch electronic reporting. However, we're concerned that there has not been nearly enough outreach to (and input from) commercial fishermen on the rollout of the commercial electronic logbook (ELB) program. This program risks severe implementation challenges without meaningful input from and collaboration with the commercial fishermen that will be using these programs. Here are some of the questions that still remain unresolved:

- How is a "set" defined by gear type?
- What does an ELB report look like for a typical longline, bandit, rod-and-reel, and spear trip?
- How would this system interface with commercial vessel monitoring systems (VMS), the state trip ticket systems, and the existing Southeast Regional Office (SERO) Individual Fishing Quota (IFQ) Portal?
- How does the ELB program address confidentiality issues between captains and owners?
- How are the data being collected going to be used for management purposes vs. stock assessment vs. calculations of CPUE?
- How will fishermen be able to access their data for use in their businesses?
- How accessible will staff and tech support be?
- What approved options for software are currently available for this program and how much will they cost?
- When will the Final Report from the Pilot Program, including recommendations for implementation, be available to the public? How will it inform the rollout of the ELB program?

We ask the Gulf Council to recommend extensive outreach and communication with the commercial fishing industry on ELBs and the rollout of this program. These should include, but not be limited to, multiple webinars and in-person meetings (to the extent possible) at the community level, and a “Frequently Asked Questions” document that’s readily available and regularly updated. We look forward to helping with this communication however we can.

5. Executive Order (EO) 14008

Section 216(c) of President Biden’s EO 14008, “Tackling the Climate Crisis at Home and Abroad,” tasks the Secretary of Commerce with working through NOAA to collect input from “fishermen, regional ocean councils, fishery management councils, scientists, and other stakeholders on how to make fisheries and protected resources more resilient to climate change, including changes in management and conservation measures, and improvements in science, monitoring, and cooperative research.”[7] We strongly encourage the Gulf Council to provide meaningful input in this process and make sure that the Gulf of Mexico regional and stakeholder perspective is included in this federal review. <u>To that end, the Shareholders’ Alliance asks that you consider supporting:</u>

- Increased opportunities for cooperative research, including clear standards and guidelines to ensure that new projects have minimal uncertainty and maximum chance of timely incorporation into the stock assessment and management process.
- More accurate, precise, and timely data on how many fish are being caught and by how many fishermen.
- Improved understanding of the land and sea interface and the relative impacts of commercial fishing vs. impacts of watershed activities (e.g., agriculture runoff) and non-fishing ocean uses (e.g., shipping, and oil and gas exploration) on coastal and offshore fisheries and habitat.
- Consideration of expanding the scope and authority of Regional Fishery Management Councils to include other non-fishing ocean uses.
- Increased opportunities to support the existing and next generation of seafood industry workforce, including vocational training and additional outreach/education.
- Increased promotion of wild-caught US seafood as heart-healthy source of protein with a low carbon footprint.

We urge the Gulf Council to continue to point out the Gulf’s successes as NOAA evaluates climate change resilience and considers the Gulf Council and its stakeholders as partners in this process.

Thank you for the opportunity to comment.

Sincerely,

Eric Brazer
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[7] Executive Order 14008. Tackling the Climate Crisis at Home and Abroad.

APPENDIX 1

Gulf of Mexico Fishery Management Council
4107 Spruce Street
Tampa, FL 33607

April 7, 2021

Dear Dr. Frazer,

We write to you today as seven commercial fishermen's organizations from the state of Florida – representing hundreds of fishermen from Pensacola to the Florida Keys – to express our concern about Amendment 53 to the Reef Fish Fishery Management Plan (FMP). **We cannot support the use of the National Oceanic and Atmospheric Administration (NOAA) Fisheries' Fishing Effort Survey (FES) recalibration as a tool to reallocate commercial red grouper quota.** <u>We therefore urge the Gulf of Mexico Fishery Management Council (Gulf Council) to support Action 1, Alternative 2:</u>

> *Alternative 2: Maintain the sector allocations of the total ACL as 76% commercial and 24% recreational. Revise the OFL and ABC as recommended by the Scientific and Statistical Committee (SSC) based on Southeast Data Assessment and Review (SEDAR) 61 (2019). Set the stock ACL equal to the stock ABC.*[8]

Our organizations are united on this issue – the Gulf Council should not couple reallocation with recalibration – for the following reasons:

1. **Legal viability.**
   Action 1, Alternative 2 is the only legally viable alternative that does not change the allocation percentages between sectors. It adheres to the FMP Objectives (especially Objectives 5 and 12) and to the National Standards in the Magnuson-Stevens Fishery Conservation and Management Act (MSA).

2. **Reallocation based on recalibration is unfair.**
   Reallocation penalizes accountable commercial fishermen for staying within their quotas while rewarding a less accountable recreational sector for exceeding theirs. That flies in the face of National Standard 4 of MSA, which requires an allocation to be "fair and equitable" among other requirements. Rewarding the recreational sector for overharvesting in a period where the commercial sector stayed within its quotas is not fair and equitable.[9] [10]

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[8] Gulf Council. Amendment 53.
[9] 16 U.S.C. § 1851(a)(4); 50 C.F.R. §600.325. National Standard 4—Allocations.
[10] *See Guindon v. Pritzker*, 240 F. Supp. 3d 181, 195 (D.D.C. 2017) (striking down a reallocation as not "fair and equitable" as required by National Standard 4 because it rewarded the recreational sector for overharvesting when the commercial sector had eliminated management uncertainty and complied with its quotas, thus putting the commercial sector at a "permanent disadvantage" in the reallocation scheme).

Reallocation is also unfair because Amendment 53 would penalize the commercial sector for recreational discards. Under all of the reallocation scenarios, the ABC drops from approximately 4.9 mp to 4.3 mp, a loss of roughly 600,000 pounds. This is because "where more fish are allocated to the recreational sector, total
landings have to be constrained more to account for the greater dead discards from recreational red grouper fishing."[11] Why should the commercial sector have to pay for recreational anglers to discard dead fish? This is a recreational sector problem and it's only fair to make the recreational sector address it. If the Gulf Council ultimately decides to reallocate, it should deduct the entire ABC decrease attributable to increased recreational discards from the recreational sector's quota.

Amendment 53 therefore unfairly punishes the commercial sector *twice*: first by basing the reallocation on a period when only the recreational sector exceeded its quotas, and second by reducing the overall ABC to account for greater recreational discards after reallocation.

3. **Reallocation will hurt the red grouper stock at a time when we need to grow it.**
The most recent stock assessment (SEDAR 61), using data through 2016,[12] reported that red grouper biomass was "the lowest on record."[13] We are now finally starting to see more small fish than we have in years – a sign of stock recovery. The recreational sector discards almost *ten times more fish* than the commercial sector (2.6 million fish compared to 288,000 fish in 2017).[14,15] Giving a larger percentage of the quota to the recreational sector means that overall discards and discard mortality increases. National Standard 4 requires that allocations must promote conservation,[16] but reallocating quota to a sector that discards more fish does exactly the opposite.

4. **Reallocation will hurt commercial fishermen and a commercial fishing industry recovering from the COVID-19 pandemic.**
2020 was a devastating year and one of the most challenging we have ever dealt with. Reducing commercial quotas at this time will stifle our economic recovery. We are cautiously optimistic about this year as restaurants reopen and return to fuller capacities. Demand is returning. So far, in 2021, we are landing more fish than we have in recent years – as of March 25, commercial fishermen have landed approximately 27%[17] of the 2021 commercial red grouper quota up from about 20%[18] of the commercial quota at that time in 2019 and 2020. Reducing the commercial quota will only stifle our potential recovery and perpetrate the damages done in 2020.

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[11] See Amendment 53 (April 2021), at p. xv
[12] SEDAR 61 Gulf of Mexico Red Grouper Assessment Terms of Reference.
[13] SEDAR 61. Figure 4.41
[14] SEDAR 61. Table 2.19
[15] SEDAR 61. Table 2.36
[16] §600.325. National Standard 4—Allocations.
[17] NOAA Fisheries. Southeast Regional Office Catch Share Programs.
[18] Stephen, J., Gray, A. November 30, 2020. Presentation to the Gulf of Mexico Fishery Management Council. 2020 IFQ Fishery Pandemic Impacts. Slide 5.

5. **The Gulf Council has been *de facto* reallocating to the benefit of the recreational sector for years.**
   Supporters of recalibration say that "if recreational landings were historically higher, then the stock was historically larger, so the current allocations are inaccurate and not changing them is a de facto reallocation to the commercial sector." This logic is flawed. First, we have seen no data confirming what a historically larger stock and quotas may have looked like. Unless that information is available, the argument is simply speculation and lacks any scientific foundation. Second, if we assume the stock was, in fact, larger, and quotas could have been raised to the new level of estimated landings during historical periods, commercial fishermen were prevented from catching that extra fish. Had commercial fishermen been given the opportunity to catch those fish, we would have caught them. But we stayed within our quotas set by management.

6. **Reallocation through recalibration will set a dangerous precedent.**
   Recreational landings estimates are uncertain and variable. The progression from MRFSS to MRIP to FES generally suggested that NOAA Fisheries was historically underestimating recreational landings. Now the data collection systems implemented by the Gulf States are suggesting that NOAA Fisheries historically overestimated recreational landings. Which is it? Triggering a reallocation any time historical landings estimates are refined could overwhelm the Gulf Council, create instability and uncertainty, and reallocate into perpetuity. This is a bad precedent, and one that could be applied to any mixed-use fishery with separate commercial and recreational quotas – including red snapper, amberjack, yellowtail snapper, gag grouper, gray triggerfish and more.

7. **Reallocation will not guarantee a longer recreational season.**
   In every alternative under Action 1, there is a possibility that the recreational season will not close.[19] Concerns with recreational season lengths are not a valid reason to reallocate because reallocation does not solve the fundamental problems causing short recreational seasons.

Recalibration and reallocation are two separate, distinct management actions with different purposes and needs. The purpose of recalibration is to set yield projections and future catch limits using the best scientific information available. Allocations are subject to different requirements (e.g., fairness and equity) and policy guidance. Linking them together is arbitrary and wrong.

Reallocation through recalibration hurts commercial fishermen and seafood suppliers. It is unfair, precedent-setting, and reduces quotas for all fishermen. It will increase discards and could hurt the stock we've spent years trying to recover. It's not the right thing to do. <u>We urge the Gulf Council not to reallocate the red grouper quota based on recalibrated recreational landings estimates, by supporting and ultimately implementing Action 1, Alternative 2.</u>

Thank you for your consideration,

[19] Gulf Council. Amendment 53. Table 2.1.4.

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