October 23, 2022

Mr. Dale Diaz, Chairman
Gulf of Mexico Fishery Management Council
4107 West Spruce Street, Suite 200
Tampa, FL 33607

Dear Chairman Diaz,

On behalf of the Gulf of Mexico Reef Fish Shareholders' Alliance (Shareholders' Alliance), please accept these comments for the October 2022 meeting of the Gulf of Mexico Fishery Management Council (Gulf Council) this week in Biloxi, Mississippi.

The Shareholders' Alliance is cautiously optimistic about the recent discussions on recreational discards and improving accountability and data collection for the private angler sector. These are concerns we raised in the comment letters we submitted to the Gulf Council in June 2022 and August 2022. Examples of progress on these points include:

- The Gulf Council's Individual Fishing Quota (IFQ) Focus Group *unanimously* agreed that the magnitude of recreational discards is a clear threat to the Gulf's Individual Fishing Quota (IFQ) programs and the health of the Gulf's fish stocks.[1]

- The Modernizing Recreational Fisheries Management Act of 2018 (Modern Fish Act) "Section 102 Working Group" *unanimously* recommended that the Gulf Council explore a federal offshore fishing permit.[2]

- The Gulf Council's Reef Fish Advisory Panel (AP) passed a motion recommending the Gulf Council "consider a full retention commercial and recreational greater amberjack fishery" in part in response to concerns with greater amberjack discards.[3]

Collectively, these actions are good first steps toward addressing some of the chronic problems in our region that are likely contributing to a number of recent and ongoing stock concerns (e.g., red snapper, red grouper, gag grouper, and greater amberjack). <u>We strongly encourage the Gulf Council to listen to its advisory bodies and follow through on these actions.</u> Further, <u>we strongly</u>

[1] Gulf Council. October 2022. IFQ Focus Group Meeting Summary.
[2] Gulf Council. October 2022. Joint Council Workgroup on Section 102 of the Modernizing Recreational Fisheries Management Act of 2018 Meeting Summary.
[3] Gulf Council. October 2022. Reef Fish Advisory Panel Meeting Summary.

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encourage National Oceanic and Atmospheric Administration (NOAA) Fisheries and the Southeast Fisheries Science Center (SEFSC) to prioritize data and analyses necessary for the Gulf Council to advance management solutions quickly and efficiently. This is a team effort, and we strongly encourage communication early and often between all stakeholder and management bodies.

In addition to these priorities, we offer the following comments on the agenda items for next week.

1. **Amendment 54 - Greater Amberjack**

The Shareholders' Alliance supports the Reef Fish AP's motion: "*In Action 1, to make a new Alternative 6, that would retain the current 73% recreational and 27% commercial allocation. The ACLs would correspond to the 2023 recommendations in Alternative 2, for the years 2023 through 2027. Make this alternative the preferred.*"[4]

This fishery is in real trouble - the greater amberjack stock has been overfished and subject to overfishing nearly continuously since 1980, and the status quo management strategy does not appear to be working. Reallocating quota from the commercial sector to the recreational sector in Amendment 54 - in violation of a number of legal and procedural laws and policies - is not the solution.

➢ **Reallocation in Amendment 54 does not promote conservation.**

Reallocating fish from the commercial sector to the recreational sector will not promote conservation for this stock because doing so increases recreational dead discards[5], reduces yields for the fishery ("*Overall, alternatives with a greater percentage of allocation to the recreational sectors results in a modest reduction of total harvest*."[6] and "*All alternatives, except Alternative 1, would result in a decrease in the sector ACLs*."[7]), and increases risk of overfishing ("*Further, alternatives that result in larger allocations to the recreational sector could increase the likelihood of overfishing due to the time lag in receiving recreational landings.*"[8]), among other harms.

➢ **Reallocation in Amendment 54 is not "fair and equitable."**

The commercial sector is forced to fish under a catch limit that is reduced to account for increased dead discards resulting from reallocation of quota to the recreational sector. In effect, Amendment 54 forces the commercial sector to subsidize dead discards in the recreational sector. The allocation under Amendment 54 is thus not "fair and equitable" in violation of National Standard Four.

➢ **Reallocation in Amendment 54 fails to follow the Gulf Council's own Allocation Policy.**

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[4] Gulf Council. October 2022. Reef Fish Advisory Panel Meeting Summary.

[5] Gulf Council. September 2022. Amendment 54 to the Reef Fish Fishery Management Plan. Modifications to Greater Amberjack Sector Allocations and Catch Limits. See tables on page 16: the difference between the commercial ACL in Action 2 and Action 3 is -61,150 pounds; however, the difference between the recreational ACL in Action 2 and Action 3 is 37,150 pounds; the difference (24,000 pounds) appears to go to the recreational sector as dead discards.

[6] *Ibid.* page 82.

[7] *Ibid.* page 93.

[8] *Ibid.* page 82.

This policy states that the Gulf Council will undertake a comprehensive allocation review upon receipt of "relevant new information, e.g., data recalibration." The shift from the Coastal Household Telephone Survey (CHTS) to the Fishing Effort survey (FES) prompted NOAA Fisheries to undertake a recalibration of historical recreational landings data. This should have triggered a comprehensive allocation review pursuant to the Gulf Council's Allocation Review Policy.[9] An allocation review would have assessed the extent to which the initial allocation meets management objectives set forth in the Reef Fish Fishery Management Plan (FMP), and whether a reallocation was warranted to better achieve those objectives. No such allocation review was performed.

Unfortunately, NOAA Fisheries has already unlawfully reallocated between the commercial and recreational sectors without following existing Allocation Policies.

In the 2020/2021 fishing year, the recreational sector landed 1,596,296 pounds of greater amberjack.[10] The recreational sector therefore landed 509,311 pounds (47%) more than its annual catch target (ACT) codified at 50 C.F.R. § 622.39(a)(2)(ii)(C), and 286,676 pounds (22%) more than its ACL of 1,309,620 pounds codified at 50 C.F.R. § 622.41(a)(2)(iii).

But because NOAA Fisheries somehow converted landings into "CHTS units," NOAA Fisheries determined that there were no overages at all. After converting these landings into "CHTS units," NOAA Fisheries determined that the recreational sector only landed 865,105 pounds of amberjack, or just 66.1% of its ACL. In effect, for each pound of amberjack landed by the recreational sector, NOAA Fisheries counts that as only 0.54 pounds for purposes of tracking usage of the recreational sector ACL.

There are numerous problems with NOAA Fisheries' process to convert FES landings estimates into "CHTS units" for tracking recreational quota usage. By allowing the recreational sector to exceed its codified ACL but holding the commercial sector to its codified ACL, NMFS modifies the allocation between the sectors in violation of the allocation set by the Reef Fish FMP, and effectively gives the recreational sector a larger allocation than the 73% dictated by the FMP.

In light of the provisions above, New Alternative 6 is the only viable alternative in Amendment 54. Furthermore, New Alternative 6 goes one proactive step further and takes an additional precautionary approach by maintaining a constant catch scenario for five years. The Reef Fish AP unanimously supported this measure given the historical challenges with rebuilding this fishery and the economic and social harm that would be imposed on all sectors by decreasing, then increasing, then subsequently decreasing quotas if these measures do not support sufficient rebuilding progress (which is what happened with red grouper in recent years). The AP's motion is a clear example of industry members from all sectors stepping up and advising precautionary measures - not reallocation - in the name of conservation and socio-economic stability.

Even if the Gulf Council proceeds with recommending New Alternative 6 for approval by the

[9] Gulf Council. Allocation Review Policy.

[10] Gulf Council. Emergency Action to Modify the Greater Amberjack Recreational Fixed Closed Season. Table 1.1.2, page 4.

Secretary of Commerce, there still exists a fundamental problem with adequately accounting for bycatch and dead discards in a reasonable and timely manner:

- **Amendment 54 Violates Section 303(a)(15) of the Magnuson-Stevens Fishery Conservation and Management Act (MSA).**

The overfishing limit (OFL) and annual catch limit (ACL) established by Amendment 54 do not comport with MSA Section 303(a)(15), 16 U.S.C. § 1853(a)(15), because they exclude dead discards and apply only to fish landed.

Catch includes fish that "are retained for any purpose, as well as mortality of fish that are discarded." 50 C.F.R. § 600.310(f)(1)(i). Thus, the term "catch" includes dead discards, and the ACL must therefore include dead discards. Similarly, NOAA Fisheries defines the OFL as "the annual amount of catch that corresponds to the estimate of [the maximum fishing mortality threshold] applied to a stock or stock complex's abundance and is expressed in terms of numbers or weight of fish." 50 C.F.R. § 600.310(e)(2)(i)(D). Dead discards must therefore be included in the specification of OFL.

The number of fish caught and discarded by recreational anglers is significant - it is *more than 29 times greater than the entire commercial sector* discarded in 2018 (265,951 fish as compared to 9,160 fish[11]). But NOAA Fisheries does not monitor or track discards - dead or otherwise - against a predetermined annual mortality limit. This violates § 1853(a)(15) and undermines MSA objectives.

We recommend that the Gulf Council proceed with Action 1, New Alternative 6 and to immediately initiate a process by which dead discards are monitored and tracked against a predetermined annual mortality limit.

The Shareholders' Alliance also supports the Reef Fish AP's motion: "*The Reef Fish AP recommends Alternative 3 as the preferred alternative in Action 2. Preferred Alternative 3: Apply the ACL/ACT Control Rule (years 2016-2019) to revise the buffer between the ACL and ACT for each sector. The recreational buffer is 17%, and the commercial buffer is 7%."*

Management uncertainty is higher in the recreational sector, necessitating a larger buffer than a sector with lower levels of management uncertainty. It is our hope that the Gulf Council and NOAA Fisheries will work towards solutions that reduce the need for these buffers.

The Shareholders' Alliance also supports the Reef Fish AP's motion: "*The Reef Fish AP recommends that the Council consider a full-retention fishery for greater amberjack for both fishing sectors.*"

We commend the Reef Fish AP for creatively thinking "outside of the box" and recommending this tool be evaluated. We believe that all fishery management tools should be explored and that this concept deserves to be evaluated against existing management tools (e.g., seasons, trip limits,

[11] Southeast Data Assessment and Review (SEDAR) 70, pages 42 and 44

minimum size limits, etc.). Such an analysis would allow the Gulf Council to make an informed decision as to whether a full retention fishery meets FMP objectives and increases the chances of successfully rebuilding this stock. Dismissing this idea outright could be a missed opportunity to evaluate a tool that could put a stop 40 years of this stock experiencing overfishing and/or being overfished.

## 2. Amendment 56 - Gag Grouper

The Shareholders' Alliance supports the Reef Fish AP's motion: "*The Reef Fish AP recommends that the Council adopt Alternative 2 in Action 1 as its preferred alternative - Revise the catch limits for gag. The OFL, ABC, ACLs, and ACTs will use the MSY proxy of the fishing mortality at a 40% spawning potential ratio (F40%SPR). The ABC equals the combined total ACLs from both sectors. The sector allocation is 61% recreational, 39% commercial, using the average landings from 1986 – 2005, as specified in Reef Fish Amendment 30B. This allocation was set using MRIP-CHTS data currency. The catch limits will be set using, and monitored in, the State of Florida's State Reef Fish Survey (SRFS) data currency units for recreational private angling and state charter vessel landings. Establish a rebuilding timeline for rebuilding the gag stock from an overfished condition.*"

For the reasons stated above with regard to greater amberjack, and for the reasons we submitted to the Gulf Council and NOAA Fisheries with regard to red grouper Amendment 53[12,13,14], Alternative 2 is the only viable and legal alternative that can be selected in this document. The Reef Fish AP unanimously supported this alternative.

Additionally, for the reasons stated above, Amendment 56 violates Section 303(a)(15) of the MSA because the OFL and ACL established by Amendment 56 do not comport with MSA Section 303(a)(15), 16 U.S.C. § 1853(a)(15), because they exclude dead discards and apply only to fish landed. We recommend that the Gulf Council immediately initiate a process by which dead discards are monitored and tracked against a predetermined annual mortality limit.

We would also like to take this opportunity to reiterate the problem that exists when the time lag between stock assessments and management actions result in fishing quotas that do not reflect what is happening on the water today. In 2021, the commercial sector caught 59.9% of its gag grouper quota; to-date in 2022, the commercial sector has already caught 61.1% of its quota[15,16] and there are still two months left in the fishing year. Simply put - landings are up while the commercial sector faces an unprecedented quota reduction next year. We predict that this will wreak havoc on the IFQ marketplace in the coming years, driving up IFQ share and allocation prices – as we saw with red grouper in the last few years – and creating economic challenges for commercial fishermen in all stages of their career. This disconnect between management actions and on-the-water experience isn't unique to gag grouper; we've seen it time and time again - with red grouper in 2017 and 2021, and red snapper in 2022. We urge the SEFSC, SERO, and Gulf

[12] Shareholders' Alliance. June 2021. Comment Letter to the Gulf Council for its June 2021 Meeting.
[13] Shareholders' Alliance. June 2021. Comment Letter on Draft EIS for Amendment 53.
[14] Shareholders' Alliance. February 2022. Comment Letter on Amendment 53 Proposed Rule.
[15] NOAA Fisheries. Southeast Regional Office Catch Share Programs.
[16] SERO Catch Share Programs. Quotas and Catch Allowances Report.

Council to work together to close this gap.

The Shareholders' Alliance supports the Reef Fish AP's motion "*The Reef Fish AP recommends that the Council request annual interim analyses for gag, to be reviewed by the SSC, and be considered for revisions to catch advice.*"

Doing so will alleviate some of the concerns from commercial, and charter/for-hire fishermen, and will allow for more real time and adaptive management strategies that support business stability and the rebuilding of this stock. We urge the SEFSC to prioritize these analyses.

3. **Commercial Electronic Logbooks (ELBs)**

The Shareholders' Alliance supports the Reef Fish AP's Motion "*to recommend to the Council that the Coastal Commercial Electronic Reporting Logbook Program be implemented as soon as possible.*"

We are encouraged by the commercial ELB presentation given at the Reef Fish AP meeting. The review of this system put some fishermen's operational concerns at ease and garnered support from the commercial industry members in the room. The Shareholders' Alliance continues to strongly support the implementation of ELBs that will reduce redundant reporting and continue to advance data collection and accountability in the commercial sector.

That being said, we still have questions about the implementation and use of ELBs in the Gulf of Mexico, including but not limited to:

- **Roles and Responsibilities:**
  - What are the specific roles and responsibilities of everyone involved (e.g., Gulf Council, SEFSC, SERO, Atlantic Coastal Cooperative Statistics Program (ACCSP), commercial fishing industry) in developing and implementing this program?
  - What additional information do these groups need to develop and implement commercial ELBs?
- **Timeline:**
  - What is the timeline for development and implementation of this Joint Amendment?
  - What opportunities will commercial fishermen have to voluntarily beta-test this program before it becomes mandatory and how would they go about doing this?
- **Outreach:**
  - To what extent will there be other public hearings or stakeholder meetings to gather additional industry input on the conversion/modification of paper logbooks questions into the ACCSP database?
  - What is NOAA Fisheries' plan to train commercial fishermen on the initial use of this program and any subsequent program updates?
- **Software Development:**

- To what extent have other software developers, including those that participated in the commercial ELB pilot program, been kept informed on the progress of this effort?
- What is the process for "approving" additional commercial ELB software?

➢ **Monitoring and Compliance:**

- If the "Need" of the Joint Amendment is to "improve the timeliness and efficiency of the commercial logbook data collection and management program, which will improve monitoring and compliance of federally permitted commercial vessels participating in the Southeast Coastal Logbook program," how will monitoring and compliance be measured?

It is vital that NOAA Fisheries give the industry a clear picture of the implementation timeline and provide us the opportunity to voluntarily test commercial ELBs on vessels before this reporting program becomes mandatory. This will increase compliance and industry buy-in necessary for this program to be a success. Commercial fishing industry groups like the Shareholders' Alliance are ready to assist; we just need the information to do so.

### 4. Recreational Management Reform

The Shareholders' Alliance supports the Modern Fish Act "Section 102 Working Group" Motion
*"The Jt. Section 102 Workgroup recommends that the Gulf Council consider a federal recreational permit concurrently with ongoing efforts with the Gulf states, to define the universe of recreational anglers. Consider whether this permit should be for all offshore species or focus on reef fish species."*

Private recreational anglers deserve a management system that has minimal management uncertainty and supports their social and economic vision for a sustainable future. While a federal recreational offshore fishing permit is no "silver bullet," it will go a long way towards reducing that management uncertainty and increasing fishing opportunity. We recognize that some Gulf states have implemented permit/endorsement systems, and we recommend that these be taken into consideration when building an efficient federal private angler permitting and catch/effort reporting and data collection program.

### 5. IFQ Focus Group

The Shareholders' Alliance has thus far been generally supportive of this process by which a diverse group of IFQ stakeholders has been brought together in a facilitated format to discuss the IFQ programs. However, we're concerned that reconvening this group a second time without sufficient guidance may result in another "stalemate" that will create additional unnecessary tension in this group and across the fishery, and will further distract the Gulf Council from making some difficult decisions with regards to management of the recreational sector and rebuilding critical Gulf fish stocks. To that end, it should not be lost on the Gulf Council that while this group could not come to consensus on IFQ changes, it *did* agree that two of the primary threats to the program and to IFQ fishermen are 1) the lack of comparable accountability in the private angler sector and its resulting discard problem and 2) the currently-unbalanced Gulf Council weighted heavily towards the recreational sector.

6. **Gray Triggerfish**

The Shareholders' Alliance supports increasing the commercial trip limit for gray triggerfish.

The Gulf Council increased the gray triggerfish catch limit but has not updated the commercial management program to facilitate harvesting that catch limit. Increasing the commercial trip limit would support that effort. At this time, we believe that increasing the limit to at least 25 fish will better optimize the use of the fishery without causing damage to the gray triggerfish stock.

7. **SEDAR 68 - Scamp**

The Shareholders' Alliance urges caution in considering removing scamp from the shallow water grouper (SWG) complex.

The Gulf Council's Scientific and Statistical Committee (SSC) and Reef Fish AP received a presentation from NOAA Fisheries and Gulf Council staff on SEDAR 68 earlier this month. It is encouraging to see that we now have more information on scamp that can better inform management. However, we advise extensive deliberation on Gulf Council Staff's proposal to remove scamp from the shallow water grouper (SWG) complex as such a fundamental change in IFQ management could have unintended consequences.

If the Gulf Council is going to consider managing scamp as a single stock, there are many questions that need to be answered, including but not limited to:

1. What percentage of commercial SWG landings over time are scamp and what factors influence that percentage?
2. What are the IFQ market implications for such a management change?
3. Does managing scamp as a single stock create a new IFQ program? If yes, what would that process look like? If no, how would this stock be allocated to existing IFQ shareholders?
4. What does removing scamp from SWG mean for the flexibility measures that allow scamp to be landed under deep water grouper (DWG) allocation?

The Shareholders' Alliance does not yet have a formal position on whether or not to maintain status quo for scamp management, but we look forward to working with NOAA Fisheries and the Gulf Council to thoroughly evaluate and assess the implications of this proposal.

Thank you for the opportunity to comment.

Sincerely,

Eric O Brazer Jr.

Eric Brazer, Deputy Director
Gulf of Mexico Reef Fish Shareholders' Alliance