



March 25, 2014

Mr. Doug Boyd, Chairman
Gulf of Mexico Fishery Management Council
2205 North Lois Avenue
Suite 1100
Tampa, Florida 33607

RE: Amendment 28 to the Reef Fish Fishery Management Plan [Red Snapper Allocation]

Dear Chairman Boyd,

On behalf of The Pew Charitable Trusts (Pew), please accept the following comments on red snapper allocation for consideration by the Gulf of Mexico Fishery Management Council (Gulf Council) regarding Amendment 28 (Am28) to the Reef Fish Fishery Management Plan. In general, Pew supports periodic and systematic review of all allocations, though we typically do not get involved in specific allocation decisions. However, for red snapper in Am28, there are conservation issues that merit serious consideration as part of the reallocation deliberations. Specifically, any shifts in allocation of red snapper to the recreational fishery should be accompanied with accountability measures (AMs) to more effectively constrain the recreational sector to the prescribed annual catch limit (ACL). A new action with an appropriate suite of alternatives should be added to Am28, with specific measures selected as preferred alternatives to address in-season and post-season AMs. Adding measures to constrain the recreational catch can build in conservation benefits to reallocation, satisfying the amendment's purpose and need to prevent overfishing, in addition to meeting legal requirements.

Another important consideration is that, broadly speaking, if the Gulf Council wishes to stabilize and expand recreational fishing opportunities, it should consider all proposed management actions that would affect the red snapper fishery. Specifically, the Gulf Council should consider the effects of removing the "30B permit provision", sector separation and other management strategies, as well as changes to the management goal for red snapper in conjunction with this amendment to ensure that any one specific action does not limit overall benefits to the fishery or jeopardize rebuilding.

While overfishing for red snapper ended, the population is still overfished and remains under a rebuilding plan currently projected to culminate in 2032. Any action taken by the Gulf Council should be designed to rebuild by or before the scheduled timeline. Without the proper management controls in place, shifting allocation to the recreational fishery could jeopardize the rebuilding plan, which has been ongoing since 1990 because of persistent quota overages. If the Gulf Council continues to pursue reallocation in Am28, specific measures, as outlined below, should be included to improve red snapper management and ensure that the rebuilding plan stays on track. Adding AMs to Am28 also provides better justification for increasing allocation to the

recreational fishery by promoting conservation in the reallocation decision, as is required under National Standard 4.

As it now stands, this amendment:

- Does not specifically meet or fully address the stated purpose and need for this action because simply increasing allocation does not stabilize the fishery nor prevent overfishing on its own.
- Does not comply with several provisions of the Magnuson-Stevens Fishery Conservation and Management Act (MSA) because the recreational regulations for red snapper do not include AMs to help prevent overfishing and promote conservation.
- Is not consistent with National Standard guidelines to comply with the MSA because management plans for species in rebuilding plans should have AMs.
- Does not adequately minimize the risk of overfishing and ensure rebuilding stays on course.

To remedy these deficiencies, a new action with alternatives for in-season and post-season accountability measures should be added to Am28 such as:

- Adopting an annual catch target (ACT) which would be used to set management measures such as season length and bag limits, and reduce the likelihood of the recreational sector exceeding its portion of the ACL.
- Applying quota paybacks to account for overages of the ACL.

The council has considered AMs for the recreational red snapper fishery in prior actions, and it remains an action in Amendment 39 (although it is unclear at this point if Am39 will be enacted). Consequently, much of the supporting documentation and analysis should be available and may readily be included in Am28. We recognize that adding an action in Am28 would likely prompt the need for the preparation of a supplemental Draft Environmental Impact Statement, causing a slight delay in the timing of the final public hearing. However, final action could be taken in June and the May special meeting can be used to take public comments from stakeholders in the northern Gulf on reallocation and AMs. Therefore, we recommend including AMs for red snapper as a new action in Am28, just as the Gulf Council has done for the region's other overfished species (greater amberjack, gag and gray triggerfish) to enhance the conservation benefits of reallocation, to reduce the risk of overfishing, and to maintain adequate progress towards achieving the goals of the rebuilding plan.

Purpose and Need Not Satisfied

Adding in a new action considering AMs and selecting preferred alternatives designed to constrain the recreational catch and prevent overfishing can also help satisfy the stated purpose and need in Am28:

“The purpose of this action is to reallocate red snapper resources between the commercial and recreational sectors to increase the net benefits from red snapper fishing and increase the stability of the red snapper component of the reef fish fishery,

particularly for the recreational sector that has experienced shorter and shorter seasons. The need for the proposed actions is to prevent overfishing while achieving the optimum yield, particularly with respect to food production and recreational opportunities, while rebuilding the red snapper stock” [emphasis added].¹

Without this additional action, reallocation on its own offers no new measures to increase stability or prevent overfishing. Under Am28, the same recreational management strategy using the same method to project the length of the recreational red snapper season would still be utilized. This approach has resulted in large overruns of the recreational sector’s allocation nearly every year since 2007 by a million pounds or more. Managers’ ability to accurately project the season length does not improve simply by increasing the recreational quota. No discussion or analysis is provided in the document to show how this amendment would result in a different outcome and bring about the desired stability for the recreational sector in this fishery. Nor is there any analysis or discussion to demonstrate how overfishing would be prevented through increased allocation to the recreational sector. Furthermore, no specific management changes to stabilize the fishery or to prevent overfishing are proposed in Am28 as it is currently drafted.

However, discussion in Am28 does point to the need for additional measures to prevent the recreational quota from being exceeded and suggests management changes should be considered. Specifically:

“Even with additional quota, continuing to rely on existing management measures to slow harvest may allow [two] problems to continue.”²

In other words:

“Alongside the short seasons and lag time to calculate landings from MRIP, quota overages are likely to continue under the system of predicting season length based on past fishing effort”.

Amendment 28 provides suggestions for additional measures to reduce quota overages:

“Examples of management changes....include the adoption of accountability measures or implementation of real time quota monitoring” [emphasis added].³

It is presumed that increases in allocation to the recreational fishery under the proposed preferred alternative will allow additional fishing opportunities and longer seasons. However, as the discussion in Am28 points out, the proposed increase in allocation is roughly equivalent to what the recreational sector has actually been catching.⁴ Therefore, it is likely that the increase in allocation will not allow for substantially longer seasons, at least in the short-term, without resulting in significant overages.

¹ Reef Fish Amendment 28, Red Snapper Allocation, Draft Public Hearing Draft, January 28, 2014, pg 5.

² Ibid., pg 36.

³ Ibid, pg 37.

⁴ Ibid.

Additionally, previous council action conflicts with the stated intent of Am28 to stabilize the recreational red snapper fishery and to allow for a longer recreational fishing season. Specifically, council approval in February 2014 of a Framework Action to rescind permit conditions in the for-hire reef fish sector destabilizes the recreational fishery and will likely result in shorter federal seasons. This in turn will likely make it even harder for managers to keep the recreational fishery within its portion of the ACL and prevent overfishing.⁵ It is unclear how destabilizing the fishery in another action combined with simply reallocating quota in this action stabilizes the recreational fishery, extends seasons, and prevents overfishing. Therefore, as currently drafted, Am28 does not satisfy its own stated purpose and need, and additional measures are warranted. The potential conflict in outcomes from these two actions further points to the need to consider management measures that affect the red snapper fishery in concert with each other rather than as discrete, separate actions.

Compliance with the Magnuson Stevens Act and National Standards

According to the MSA, any fishery management plan or regulation to implement a plan *shall be consistent* with the 10 national standards.⁶ National Standard 1 (NS1), which is a central driving policy of NOAA for implementation of the MSA, states:

“Conservation and management measures shall prevent overfishing while achieving, on a continuing basis, the optimum yield from each fishery for the United States fishing industry.”⁷

To prevent overfishing, the MSA requires councils to set catch limits that do *not exceed the fishing level recommendations of its scientific and statistical committee*⁸ (SSC) and requires fishery management plans to:

“establish a mechanism for specifying annual catch limits in the plan (including a multiyear plan), implementing regulations, or annual specifications, at a level such that overfishing does not occur in the fishery, including measures to ensure accountability” [emphasis added].⁹

As outlined above, for councils to implement regulations to prevent overfishing and comply with the MSA, ACLs should be designed so catch won't exceed scientific limits established by the council's SSC, and regulations should include accountability measures. However, high recreational overages in the red snapper recreational fishery have occurred frequently in recent years. Since 2007, landings over the recreational ACL have occurred in every year except for 2010 (when the Deepwater Horizon disaster occurred) ranging from 19% to 89% over the

⁵ Modifications to the Reef Fish Permit Condition for For-Hire Vessels, Draft Framework Action to the Reef Fish FMP, February 2014.

⁶ 16 U.S.C. 1851, MSA § 301(a)

⁷ 16 U.S.C. 1851, MSA § 301(a)(1)

⁸ 16 U.S.C. 1852, MSA § 302 (h)(6)

⁹ 16 U.S.C. 1853, MSA § 303(a)(15)

quota.¹⁰ In contrast, the commercial fishery has not exceeded its ACL in the past seven years. These overages, along with the lack of accountability measures, are the primary subject of a lawsuit against NOAA brought by red snapper commercial fishermen.¹¹ Although Pew is in no way engaged in this litigation, we offer the observation that if the court finds in favor of the plaintiffs in this matter, accountability measures such as those suggested in this letter will likely be required for this fishery. Thus, it would be prudent for the Council to utilize the opportunity presented by consideration of Am28 to proactively address this issue now.

National Standard 1 guidelines offer technical assistance from NOAA for councils to prevent overfishing while maintaining optimum yield. Presently, regulations for red snapper are not consistent with NS1 because there are no specific AMs to prevent or recover overages. Adding AMs to red snapper recreational regulations has been discussed in past Gulf Council documents and most recently in Amendment 39 looking at regional management of the recreational fishery. As discussed in Am39¹², not having AMs for red snapper is inconsistent with the NS1 guidelines.¹³ In particular, overage adjustments should be included in regulations because red snapper are still overfished. Per the NS1 guidelines:

“For stocks and stock complexes in rebuilding plans, the AMs should include overage adjustments that reduce the ACLs in the next fishing year by the full amount of the overages, unless the best scientific information available shows that a reduced overage adjustment, or no adjustment, is needed to mitigate the effects of the overages” [emphasis added].¹⁴

Additionally, further guidance for NS1 is provided for fisheries with repeated overages:

“If catch exceeds the ACL for a given stock or stock complex more than once in the last four years, the system of ACLs and AMs should be re-evaluated, and modified if necessary, to improve its performance and effectiveness” [emphasis added].¹⁵

To prevent ACL overages, the NS1 guidelines recommend the use of an ACT when in-season controls are ineffective:

“For fisheries without in-season management control to prevent the ACL from being exceeded, AMs should utilize ACTs that are set below ACLs so that catches do not exceed the ACL” [emphasis added].¹⁶

In-season and post-season AMs are intended to be part of the conservation and management measures for species within federal FMPs in order to prevent overfishing and maintain rebuilding. Fortunately, the red snapper recreational ACL overages have not exceeded the levels

¹⁰ Public Hearing Draft for Amendment 28 to the Reef Fish FMP, February 2014, Table 3.1.3, pg 28. The range if overages does not include the high overage of 2013.

¹¹ *Guindon v. Pritzker*, Case 1:13-cv-00988-RWR, filed 06/28/13.

¹² Final Draft for Amendment 39 to the Reef Fish FMP, pg 33, discussion for Action 6, Alternative 1.

¹³ 50 CFR 600.310(g)

¹⁴ 50 CFR 600.310(g)(3)

¹⁵ *Ibid.*

¹⁶ 50 CFR 600.310(g)(2)

that would trigger an overfishing classification (*i.e.*, the “overfishing level” or OFL) despite overages near 90% in some years. However, that has mostly been happenstance rather than by design given the high management uncertainty in the recreational fishery. In particular, it is difficult to project the season length due to unpredictable and inconsistent regulations for red snapper in state waters across several Gulf States. Clearly, in order to fully comply with the MSA and follow the guidance of NS1, accountability measures should be included in the recreational red snapper management measures to maintain catch within the scientifically determined limits and to prevent overfishing.

National Standard 4 (NS4) of the MSA requires that allocations should be “*reasonably calculated to promote conservation.*”¹⁷ The agency guidelines for complying with NS4 state that an “*allocation scheme may promote conservation by encouraging a rational, more easily managed use of the resource*” [emphasis added].¹⁸ Yet, Am28 offers no description or analysis of how reallocating the total red snapper ACL encourages a more easily managed use of the resource considering the continuous high recreational overages and the commercial sector’s adherence to its limits. Without mechanisms in Am28 to promote conservation, such as accountability measures, the sole reallocation action of Am28 is inconsistent with NS4.

To conclude, as drafted with a single action to reallocate a greater proportion of the red snapper ACL to the recreational fishery, Am28 does not meet the document’s own purpose and need. It also does not comply with several MSA provisions and is not consistent with NS1 and NS4. Simply reallocating red snapper quota may lead to overfishing and jeopardize the rebuilding plan. To remedy these deficiencies, AMs designed to maintain catch at or below the total ACL should be added to the regulations for the red snapper recreational fishery. This would entail adding a new action in the document with a suite of AM alternatives, including in-season and post season AMs, and selecting preferred alternatives within that new action. Final action may have to be delayed until June 2014, but Am28 would then have the necessary conservation elements before final approval.

Thank you for the opportunity to provide comments on the Public Hearing Draft for Amendment 28. We look forward to continuing to work with the Council, staff, and stakeholders to improve the conservation and management of fisheries while enhancing fishing opportunities.

Sincerely,



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The Pew Charitable Trusts

¹⁷ 16 U.S.C. 1851, MSA § 301(a)(4)

¹⁸ 50 CFR 600.325(c)(3)(ii)