FINDING OF NO SIGNIFICANT IMPACTS

National Oceanic and Atmospheric Administration (NOAA) Administrative Order 216-6 (NAO 216-6) (May 20, 1999) contains criteria for determining the significance of the impacts of a proposed action. On July 22, 2005, NOAA's National Marine Fisheries Service (NOAA Fisheries Service published Instructions 30-124-1 with guidelines for the preparation of a Finding of No Significant Impact. In addition, the Council on Environmental Quality (CEQ) regulations at 40 C.F.R. Section 1508.27 state that the significance of an action should be analyzed both in terms of "context" and "intensity." Each Criterion listed below is relevant to making a finding of no significant impact and has been considered individually, as well as in combination with the others. The significance of this action is analyzed based on the NAO 216-6 criteria, the recent Policy Directive from NOAA Fisheries Service (#30-124), and CEQ's context and intensity criteria. These include:

1) *Can the proposed action reasonably be expected to jeopardize the sustainability of any target species that may be affected by the action?*

Response: No. Harvests of target species are primarily controlled by hard quotas, minimum size limits, bag limits, and trip limits. The quota is established based on an allowable biological catch level determined from the results of a peer-reviewed and vetted stock assessment, which is based on the best scientific information available. The proposed action does not alter the manner in which the fishery is conducted, nor does it change the allowable harvest. The proposed action providing the authority to allow harvest of any available quota during a different portion of the fishing year is an administrative action. Subsequent action to actually re-open the recreational fishing season would lead to direct effects on the target resource. To that end, the proposed action to re-open the recreational fishing season for red snapper would have a negative biological impact compared to "no action" whereby the recreational fishing season remains closed, which would reduce overall fishing mortality. However, the proposed action is biologically neutral compared to the norm, whereby the full quota is normally harvested during the established summer fishing season. Re-opening the recreational red snapper fishing season during an adjusted fishing season may indirectly lessen fishing pressure and fishing mortality on other reef fish stocks, some of which are undergoing overfishing, thus providing some benefit to these other target species as well.

2) *Can the proposed action reasonably be expected to jeopardize the sustainability of any non-target species?*

Response: No. The proposed action does not alter the manner (except the timing) in which the fishery is conducted, nor does it change the allowable harvest; the proposed action would only provide the authority to adjust the time of year that the allowable harvest of red snapper can be taken, and subsequently re-open the fishing season during an altered time frame. Incidental catch would consist of alternative target species that are managed (e.g., vermilion snapper, greater amberjack) or non-managed species that are not known to be in jeopardy from fishing, e.g., grunts and porgies. Fishing regulations exist for several of these species to constrain harvest and those regulations are unaffected by this action. As elaborated in Criterion 5, the proposed actions are not expected to adversely affect endangered and threatened species.

3) *Can the proposed action reasonably be expected to cause substantial damage to the ocean and coastal habitats and/or essential fish habitat (EFH) as defined under the Magnuson Stevens Fisheries Conservation and Management Act (Magnuson Stevens Act) and identified in Fishery Management Plans (FMPs)?*

Response: No. The proposed actions to provide authority to allow possible harvest of red snapper in areas open to fishing during an altered time frame, and to subsequently authorize the harvest to occur, is not reasonably expected to cause substantial damage to the ocean and coastal habitats or EFH. Reef fish fishing occurs in areas that have been identified as EFH for several managed species, and is conducted primarily with hook-and-line gear. Vertical line gear could damage coral or other hard bottom habitat if it becomes entangled within these structures, but these effects are expected to be minimal. In addition, NOAA Fisheries Service has concluded the proposed action is consistent with the enforceable policies of the Coastal Zone Management programs of affected states.

4) *Can the proposed action reasonably be expected to have a substantial adverse impact on public health or safety?*

Response: No. The proposed action is not reasonably expected to have a substantial adverse impact on public safety or health. The proposed action does not alter the manner (except the timing) in which the fishery is conducted. The proposed actions would provide the authority to allow harvest of the resource in areas where fishing is allowed under an altered time frame, and subsequently authorize that harvest to occur. The federal and State governments have strong systems in place to test and monitor seafood safety and to prohibit harvesting from affected areas, keeping oiled products from being harvested. NOAA Fisheries Service is working closely with the U.S. Food and Drug Administration (FDA) and the States to ensure seafood safety. The first and most important preventive step in protecting the public from potentially contaminated seafood is from NOAA Fisheries Service's actions to close fishing and shellfish harvesting areas in federal waters of the Gulf that have been or are likely to be exposed to oil from the spill. In addition, NOAA and FDA are monitoring fish caught just outside of closed areas, and testing them for petroleum compounds, to ensure that the closed areas are sufficiently large so as to prevent the harvest of contaminated fish. NOAA conducts a combination of both sensory analysis (of tissue) and chemical analysis (of water, sediment, and tissue) to determine if seafood is safe. If managers determine that seafood may be affected, the next step is to assess whether seafood is tainted or contaminated to levels that could pose a risk to human health through consumption. So far, fish flesh tested from outside the closure areas have tested well below any level of concern for oil-based contamination.

5) *Can the proposed action reasonably be expected to adversely affect endangered or threatened species, their critical habitat, marine mammals, or other non-target species?*

Response: No. The proposed action to give NOAA Fisheries Service the authority to re-open the recreational red snapper season after September 30, 2010, and the second temporary rule authorizes the harvest to occur under an altered time frame. These actions do not alter the overall manner in which the fishery is conducted, only the timing of the fishing season; thus they would not affect endangered or threatened species or marine mammals in a manner not already

considered in previous biological opinions conducted for the fishery under the Endangered Species Act. In addition, recent regulations require for-hire reef fish permitted vessels to comply with sea turtle and smalltooth sawfish release protocols, possess a specific set of release gear, and adopt guidelines for the proper care for incidentally caught sawfish. These regulations are designed to benefit sea turtle and smalltooth sawfish populations by reducing discard mortality. Other listed species and designated critical habitat in the Gulf are not likely to be adversely affected, according to the most recent (2009) biological opinion for the reef fishery. The Gulf reef fish fishery is classified in the 2009 Marine Mammal Protection Act List of Fisheries as Category III fishery (73 FR 73032, December 1, 2008). This classification indicates the annual mortality and serious injury of a marine mammal stock resulting from the fishery is less than or equal to 1% of the potential biological removal.

6) *Can the proposed action be expected to have a substantial impact on biodiversity and/or ecosystem function within the affected area (e.g., benthic productivity, predator-prey relationships, etc.)?*

Response: No. Harvests of target species are primarily controlled by hard quotas, minimum size limits, bag limits, and trip limits. Harvest levels are established based on results of a peer-reviewed and vetted stock assessment, which is based on the best scientific information available. The proposed action does not alter the manner in which the fishery is conducted, nor does it change the allowable harvest; the proposed action would only provide the authority to adjust the time of year that the allowable harvest can be taken, and subsequently re-open the fishing season during an altered time frame. Given the short-term nature of the proposed regulations, the action is not expected to be sufficiently substantial to influence biodiversity or ecosystem function within the Gulf, in terms of altering marine productivity, predator-prey relationships, or other ecological relationships.

7) *Are significant social or economic impacts interrelated with natural or physical environmental effects?*

Response: No. The proposed action to give NOAA Fisheries Service the authority to re-open the recreational red snapper season after September 30, 2010, and the second temporary rule authorizes the harvest under an altered time frame. These actions do not alter the manner in which the fishery is conducted, nor does it change the allowable harvest; the proposed actions would only provide the authority to re-open the season, and subsequently adjust the time of year that the allowable harvest can be taken. No information is available that indicates that the 2010 recreational red snapper quota should not be harvested. No information is available that indicates reduced harvests are necessary to maintain the current rebuilding schedule, i.e., mitigate biological harm resulting from the oil spill. The current rebuilding schedule and associated recreational and commercial quotas are based on the assumption, given assessed biological conditions and legal obligations, that they will achieve maximum economic and social benefits, while allowing the stock to rebuild to its maximum yield potential. Thus, the action, which ultimately would allow the opportunity to harvest the quota and meet the Gulf of Mexico Fishery Management Council's (Council) designated optimum yield (OY) from the red snapper resource, is biologically neutral compared to the norm, whereby the full quota is normally harvested. However, stock rebuilding would not be expected to occur substantially quicker if the

quota were not allowed to be harvested. The proposed action provides social and economic benefits compared to "no action", which would not allow further harvest of the remaining quota. However, these social and economic benefits are not related to the natural or physical environment. These impacts are described in Sections 4.3 and 4.4 of the Environmental Assessment (EA).

8) *Are the effects on the quality of the human environment likely to be highly controversial?*

Response: No. The effects on the quality of the human environment are not likely to be highly controversial. The fishing industry questions the validity of the science involved in the estimates of harvest. However, the proposed action would ultimately provide greater flexibility to the recreational sector to harvest red snapper at the Council designated OY level is expected to be perceived as an appropriate and favorable action. Conversely, the proposed action could indirectly lead to negative consequences to the human environment. Allowing additional fishing pressure on the stock, which may or may not have been biologically impacted by the Deepwater Horizon MC252 oil spill, could result in a reduced stock size. At this time, no information is available to make such a determination regarding the impacts of the Deepwater Horizon MC252 oil spill on any fish stock. As discussed in the EA, impacts to red snapper may be limited to eggs and larvae in the oil-affected areas; benthic habitats of juvenile and adult red snapper are not currently believed to have been significantly impacted.

As discussed in Section 3.3.11, NOAA, the Food and Drug Administration, the Environmental Protection Agency, and the Gulf States have implemented a comprehensive, coordinated, multi-agency program to ensure that seafood from the Gulf of Mexico is safe to eat. This is important not only for consumers who need to know their food is safe to eat, but also for fishermen who need to be able to sell their products with confidence. All sampling in areas that have subsequently been re-opened to fishing has shown no signs of contamination.

9) *Can the proposed action reasonably be expected to result in substantial impacts to unique areas, such as historic or cultural resources, park land, prime farmlands, wetlands, wild and scenic rivers, EFH, or ecologically critical areas?*

Response: No. The proposed action is not reasonably expected to result in substantial impacts to unique areas, park land, prime farmlands, wetlands, wild and scenic rivers, EFH, or ecologically critical areas. Park land, prime farmlands, wetlands, wild and scenic rivers are inland and are not affected by this action in federal waters of the Gulf. Possible beneficial impacts to EFH are discussed in the response to Question 3. Reef fish fishing occurs in or adjacent to ecologically sensitive areas, such as habitat areas of particular concern, marine sanctuaries, and marine reserves. Although vertical gear used within these areas could adversely impact habitat if it became entangled within coral or other living bottom structures (see Section 2.1), the proposed actions are expected to have minor effects. In regard to ecologically critical areas in the Gulf, areas such as the Flower Gardens and the Tortugas Marine Sanctuaries are closed to fishing, Madison Swanson and Steamboat Lumps ecologically-critical areas are closed to bottom fishing. Fishing activity already occurs in the vicinity of the *U.S.S. Hatteras*, located in federal waters off Texas, which is listed in the National Register of Historic Places; but this would not increase

fishing activity over that exhibited in other years. Therefore, there would be no additional impacts on these components of the environment from the proposed action.

10) *Are the effects on the human environment likely to be highly uncertain or involve unique or unknown risks?*

Response: No. The proposed action provides the authority to modify, temporarily, an existing established management measure, and thus does not involve unique or unknown risk. NOAA Fisheries Service regularly re-opens fisheries when it has been determined quotas are not met (e.g. the commercial harvest of deep-water grouper and tilefish was re-opened in 2008 after it was subsequently determined landings had not met the quota). In addition, NOAA Fisheries Service regularly opens and closes specific areas to fishing in accordance with regulations established from various fishery management plans; these include actions such as the seasonal Texas Shrimp Closure in the Gulf and the season closure to bottom fishing in Madison Swanson and Steamboat Lumps ecologically-critical areas.

NOAA, FDA, the Environmental Protection Agency, and the Gulf States have implemented a comprehensive, coordinated, multi-agency program to ensure that seafood from the Gulf of Mexico is safe to eat. This is important not only for consumers who need to know their food is safe to eat, but also for fishermen who need to be able to sell their products with confidence. Fishing can only occur in areas re-opened under this program, and only after fish samples in these areas have been tested to ensure they are not contaminated.

Impacts of the oil spill may be uncertain, but the impacts of the spill on the red snapper stock may be limited to reduced recruitment, which is highly variable and uncertain across years, regardless of the spill and its effects. The outcome will only become apparent in following years as assessments are completed. Although there is some uncertainty as to the impacts of the spill on the stock and its recruitment, it is not considered significant in light of standard uncertainty associated with such factors.

11) *Is the proposed action related to other actions with individually insignificant, but cumulatively significant impacts?*

Response: No. The Deepwater Horizon MC252 oil spill is expected to have long-term significant impacts to major portions of the Gulf, and these actions are being taken in response to those impacts. However, there are no past and reasonably foreseeable future actions to manage red snapper that, if combined with this proposed action, would have a significant cumulative effect. This temporary action is intended to lessen social and economic impacts from forced effort shifting because of large area closures arising from the Deepwater Horizon MC252 oil spill. The proposed action is not related to other actions with individually insignificant but cumulatively significant impacts.

12) *Is the proposed action likely to adversely affect districts, sites, highways, structures, or objects listed in or eligible for listing in the National Register of Historic Places or may cause loss or destruction of significant scientific, cultural, or historical resources?*

Response: No. The proposed action does not adversely affect districts, sites, highways, structures, or objects listed in or eligible for listing in the National Register of Historic Places nor is it expected to cause loss or destruction of significant scientific, cultural, or historical resources. Fishing activity already occurs in the vicinity of the *U.S.S. Hatteras*, located in federal waters off Texas, which is listed in the National Register of Historic Places; but this would not increase fishing activity over that exhibited in other years.

13) *Can the proposed action reasonably be expected to result in the introduction or spread of a non-indigenous species?*

Response: No. The proposed action involves only the harvest of existing native species in the Gulf of Mexico, and is not reasonably expected to result in the introduction or spread of a non-indigenous species. The proposed action is not expected to change the fishery in a way that would affect non-indigenous species or to result in habitat or ecosystem alterations in such a way that would promote the spread of non-indigenous species.

14) *Is the proposed action likely to establish a precedent for future actions with significant effects or represents a decision in principle about a future consideration?*

Response: No. The proposed action does not establish a precedent for future action with significant effects, and it does not represent a decision in principle about future considerations. NOAA Fisheries Service regularly re-opens fisheries when it has been determined quotas are not met (e.g., the commercial harvest of deep-water grouper and tilefish was re-opened in 2008 after it was subsequently determined landings had not met the quota). In addition, NOAA Fisheries Service regularly opens and closes specific areas to fishing in accordance with regulations established from various fishery management plans; these include actions such as the seasonal Texas Shrimp Closure in the Gulf and the season closure to bottom fishing in Madison Swanson and Steamboat Lumps ecologically-critical areas. The Council and NOAA Fisheries Service have established a management strategy for red snapper whereby overfishing has been projected to have ended, and the stock should be rebuilt by 2032 (see section 2.2.2). The allowable harvest now and in the future will be in accordance with that rebuilding plan. The proposed action, conducted in accordance with regulations established under the FMP, as amended to date, in no way constitutes a decision in principle about a future consideration. FMPs and their implementing regulations are always subject to future changes. The Council and NOAA Fisheries Service have discretion to amend the FMP and accompanying regulations and may do so at any time, subject to the Administrative Procedures Act, National Environmental policy Act, and other applicable laws.

15) *Can the proposed action reasonably be expected to threaten a violation of Federal, State, or local law or requirements imposed for the protection of the environment?*

Response: No. The proposed action is being taken to ensure compliance with federal laws such as the Magnuson-Stevens Act, and is not reasonably expected to threaten a violation of other Federal, State, local law, or requirements imposed for the protection of the environment.

16) *Can the proposed action reasonably be expected to result in cumulative adverse effects that could have a substantial effect on the target species or non-target species?*

Response: No. The recreational red snapper quota is established based on an allowable biological catch level determined from the results of a peer-reviewed and vetted stock assessment, which is based on the best scientific information available. The proposed actions do not alter the manner in which the fishery is conducted, nor does it change the allowable harvest; the proposed actions would only provide the authority to re-open the fishing season in 2010, and subsequently adjust the time of year that the allowable harvest can be taken. Subsequent action to actually re-open the recreational fishing season would lead to direct effects on the target resource. To that end, the proposed action to re-open could have a negative biological impact compared to "no action" whereby the recreational fishing season remains closed, which would reduce overall fishing mortality. However, the proposed action is biologically neutral compared to the status quo of previous years, whereby the quota is normally harvested during the regular recreational fishing season. Although it is currently unknown if the red snapper stock has been biologically impacted by the Deepwater Horizon MC252 oil spill, if that is the case, then allowing additional fishing pressure on the stock could result in a reduced stock size. Nevertheless, at this time, no information is available to make such a determination regarding the impacts of the Deepwater Horizon MC252 oil spill on any fish stock. As discussed in the EA, impacts to red snapper may be limited to eggs and larvae of that portion of the stock found in the oil-affected areas. Substantial portions of the stock reside and spawn in other areas of the Gulf that have not been impacted by the oil spill. Benthic habitats within the oil-impacted area, where juvenile and adult red snapper are found, may not have been impacted. By re-opening and adjusting the fishing season for red snapper, the proposed action may lessen fishing pressure and fishing mortality on other reef fish stocks, some of which are undergoing overfishing, thus providing some benefit to these other target species as well.

DETERMINATION:
In view of the information presented in this document and the analysis contained in the supporting EA prepared for the temporary rules for the Gulf of Mexico reef fish fishery, it is hereby determined that these temporary rules will not significantly impact the quality of the human environment as described above and in the supporting EA. In addition, all beneficial and adverse impacts of the proposed action have been addressed to reach the conclusion of no significant impacts. Accordingly, preparation of an Environmental Impact Statement for this action is not necessary.

for Roy E. Crabtree, Ph.D.
Regional Administrator
Southeast Regional Office
National Marine Fisheries Service

9/15/2010
Date