FINAL

May 16, 2011

DRAFT ENVIRONMENTAL ASSESSMENT, REGULATORY IMPACT REVIEW, AND REGULATORY FLEXIBILITY ACT ANALYSIS FOR A TEMPORARY RULE TO SET THE 2011 GULF OF MEXICO GAG RECREATIONAL AND COMMERCIAL MANAGEMENT MEASURES

MAY 2011

NATIONAL MARINE FISHERIES SERVICE, SOUTHEAST REGIONAL OFFICE
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FINDING OF NO SIGNIFICANT IMPACT

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, the National Marine Fisheries Service (NMFS) published a Policy Instruction 30-124-1 with guidelines for the preparation of a Finding of No Significant Impact (FONSI). In addition, the 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 NMFS, 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, the proposed action would not jeopardize the sustainability of the target species, but would protect the Gulf of Mexico stock from overharvest. The most recent stock assessment, as described in detail in Section 2.2.1 of this environmental assessment (EA), indicates the gag stock is overfished and undergoing overfishing. The decline in stock status was attributed in part to a 2005 episodic mortality event (likely due to an unprecedented red tide event). As discussed in Sections 3.1-3.2 of this EA, the proposed action is intended to ensure the catch for 2011 will remain below the overfishing threshold, so that overfishing does not occur and the stock can increase to the stock biomass needed to harvest the equilibrium optimum yield. The Gulf of Mexico Fishery Management Council's (Council) Scientific and Statistical Committee (SSC) recommended an acceptable biological catch (ABC) at 1.58 million pounds gutted weight (MP GW) which is the yield at the fishing mortality (F) associated with allowing the stock to recover within 10 years or less. This value would be less than the yield associated with the F associated with harvesting the maximum sustainable yield (MSY) and allows for scientific uncertainty in the assessment. To account for management uncertainty, the Council uses the yield associated with the F needed to fish at optimum yield (F_{OY}). The total allowable catch (TAC) upon which the proposed actions are based (1.28 MP GW), are consistent with harvesting the stock at F_{OY} and was requested by the Council.

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

Response: No, the proposed action will not jeopardize the sustainability of any non-target species, and is not expected to substantially alter standard fishing practices during the 2011 fishing season. The action is intended to allow a decrease in the harvest of gag in U.S. waters of the Gulf of Mexico (Gulf), based on recent scientific advice indicating a reduction in the stock's condition. Decreasing the commercial and recreational harvests should reduce or end gag overfishing, but could result in a shift in effort to other species as highlighted in Section 3.3.2 of this EA. However, this shift will likely not affect other species because the most desirable commercial species are closely regulated through either an individual fishing quota program or through quotas. For the recreational sector, trips targeting gag (2.4%) are a minor portion of the recreational fishery as a whole and so effort shifting is expected to be minimal (see Section

2.3.2.1 of this EA). Therefore, the sustainability of non-target species is not expected to be jeopardized by this action.

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 Fishery Conservation and Management Act (Magnuson-Stevens Act) and identified in fishery management plans (FMPs)?

Response: No, the proposed action is not reasonably expected to cause substantial damage to the ocean and coastal habitats and/or EFH in the U.S. waters of the Gulf as described in Section 3.3.1 of this EA. This action should lessen overall impacts to EFH because effort needed to catch the allowable harvest will be less than 2010 levels, reducing the interactions between reef fish fishing gear and habitat. Nevertheless, longline and vertical line gear has the potential to snag and entangle bottom structures. Although individual gear has a very small footprint, the cumulative impact of the commercial and recreational fishing sectors result in a large amount of gear being placed in the water, increasing the potential for impact. Additionally, anchoring can add to the potential damage of the bottom at fishing locations. Outside this proposed action, oil contamination to coastal and ocean habitats from the Deepwater Horizon MC252 incident could have negative impacts to major portions of the Gulf. However, environmental impacts to gag habitat have not been documented to date.

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 commercial sector in the Gulf operates under an individual fishing quota (see Sections 2.3.1.1 and 2.3.1.2 of this EA), which removes the need to "race for the fish", thus allowing fishermen to better choose when and how they want to fish. This increases safety at sea by eliminating derby conditions for this sector. The two month season for harvesting gag by the recreational sector is not expected to substantially alter the manner in which this sector in the Gulf is prosecuted. Gag-targeted trips represent a small proportion of the total number of trips in the Gulf. There is the potential gag contaminated with oil from the Deepwater Horizon MC252 incident could be caught. However, 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 out of the market (See Section 2.1 of NMFS (2010a) and incorporated in this EA by reference).

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 is not expected to adversely affect endangered or threatened species, marine mammals, or critical habitat of these species as the proposed action is not expected to substantially alter the manner in which the reef fish fishery is conducted in the Gulf. As discussed in Section 2.2.2 of this EA, a 2009 biological opinion for the Gulf reef fish fishery determined the fishery is not likely to jeopardize the continued existence of any endangered or threatened species under the jurisdiction of the National Marine Fisheries Service (NMFS) or result in the destruction or adverse modification of critical habitat. In addition, the Gulf reef fish fishery is classified in the 2011 Marine Mammal Protection Act List of Fisheries as Category III

fishery (75 FR 68468, November 8, 2010). 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. Dolphins are the only species documented as interacting with this fishery. Bottlenose dolphins may feed on the bait, catch, and/or released discards of the reef fish fishery.

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, the proposed action is not expected to have a substantial impact on biodiversity and/or ecosystem function within the Gulf. The proposed action to decrease the allowable harvest of gag is not expected to substantially alter the manner in which the fishery is conducted in the Gulf as described in Section 3.3.1 and 3.3.2 of this EA, which in turn should not alter impacts on biodiversity and ecosystem function.

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

Response: No, the proposed action would not create any significant social or economic impacts in the Gulf region interrelated with natural or physical environmental effects. As discussed in Sections 3.3.3 and 3.3.4, allowing decreased harvest of gag by both the commercial and recreational fishing sectors relative to previous years will have direct and indirect social and economic impacts to their respective sectors and to the shoreside operations that support them, however, these impacts are small. As listed in Section 2.3.1 of this EA, gag is a small component of the value of the Gulf commercial reef fish fishery (~6%). This species is also a minor component of the overall Gulf recreational fishery (see question 2), however, gag are disproportionally harvested in different areas as described in Section 2.3.2 of this EA, so the effects will be greater in some areas than others.

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 analyses and data used in the decision-making process were based on standard techniques used to evaluate Gulf fish stocks and fisheries. The proposed action may be considered politically controversial in that the fishing industry often questions the validity of the science involved in the estimates of annual harvest and the status of the various targeted fish stocks. Many Gulf recreational and commercial fishermen in public testimony to the Council have indicated the proposed reductions in gag are too great. Many have acknowledged they have seen reduced catches in recent years and agree the fishery needs additional restrictions; they just disagree with the extent proposed in the interim rule. This is particularly true for the recreational sector where they see low release mortality rates and are facing a considerably reduced season for harvesting this species.

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, or EFH. This action affects federal waters of the Gulf. In regard to ecologically critical areas in the Gulf, areas such as the Flower Gardens and the Tortugas Marine Sanctuaries are closed to fishing, as are the Madison Swanson and Steamboat Lumps marine reserves as described in Section 2.1 of this EA. The action should have no impact on the *U.S.S. Hatteras*, located in federal waters off Texas, which is listed in the National Register of Historic Places; fishing occurs over this wreck, and the action would not increase overall fishing effort compared to previous 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 effects on the human environment are not likely to be highly uncertain or involve unique or unknown risks. As described in Section 1.2 of this EA, this action proposes to adjust the harvest of gag in the Gulf, in accordance with procedures outlined in the Magnuson-Stevens Act. Adjustments to quotas, target catch levels, and fishing seasons are made regularly in many U.S. fisheries, based on updated information regarding the status of a specific stock or stocks, and the regulations are well known.

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

Response: No, there are no past or reasonably foreseeable future actions related to the proposed Gulf gag management actions with individually insignificant but cumulatively significant impacts. The proposed action to limit the harvest levels of Gulf gag is not expected to substantially alter the manner in which the fishery is conducted as described in Sections 3.3.1 and 3.3.2 of this EA. It should be noted that this action for a temporary rule provides short-term management measures for gag and that long-term measures needed for stock recovery are being developed in Amendment 32 to the Reef Fish FMP. The previous gag quota was established in Amendment 30B.

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. The action should have no impact on the *U.S.S. Hatteras*, located in federal waters off Texas, which is listed in the National Register of Historic Places; fishing occurs over this wreck, and the action does not increase overall fishing effort. Additionally, gag are not targeted in the western Gulf as gag are more commonly found in eastern Gulf waters. The proposed action is not expected to cause loss or destruction of significant scientific, cultural, or historical resources because there are none located in the affected area.

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 is not reasonably expected to result in the introduction or spread of a non-indigenous species in the Gulf because it involves only naturally occurring domestic species with the exception of the non-native lionfish (*Pterois miles* and *P. volitans*), which are not targeted. The proposed action to decrease the allowable harvest of the Gulf gag stock is not expected to substantially alter the manner in which the fishery is conducted. The fishery is prosecuted within the boundaries of the Gulf exclusive economic zone and Gulf state waters as described in Section 2.3 of this EA reducing the likelihood of introducing non-indigenous species. If the non-native lionfish should be caught by reef fish fishermen, these species would be either released at the point of capture or killed consistent with the manner the fishery is prosecuted, thus not adding to the spread of this 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 consideration. Fishing effort for gag in the Gulf is regulated through individual fishing quotas, size limits, and other fishing restrictions as described in Section 1.1 of this EA. The Council has based its decision on updated scientific information summarized in Section 2.2.1 regarding the status of the stock. The assessment indicates the Gulf stock has been depressed by an episodic mortality event and has become overfished and undergoing overfishing. Action is needed to allow the stock to recover to target levels. The proposed action, conducted in accordance with regulations established under the Reef Fish 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 NMFS have discretion to amend the FMP and accompanying regulations and may do so at any time, subject to the Magnuson-Stevens Act, Administrative Procedures Act, National Environmental Policy Act, and other applicable laws described in Section 6.0.

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 pursuant to federal legal mandates for the management of Gulf fishery resources and does not implicate state or local requirements. It is not reasonably expected to threaten a violation of federal, state, local law, or requirements imposed for the protection of the environment. However, this action depends on the Florida Fish and Wildlife Conservation Commission adopting compatible regulations for the management goals to be achieved. If not, present temporary regulations would need to be continued.

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 proposed action is not reasonably expected to result in cumulative adverse effects that could have a substantial effect on the Gulf target species or non-target species as indicated in Section 3.3.6 of this EA. In general, the proposed action to allow a recreational fishing season, increase the commercial quota by 330,000 pounds GW, and continue the suspension of the use of red grouper multi-use allocation is not expected to substantially alter the

manner in which the Gulf reef fish fishery is conducted. The proposed harvest levels are adjusted to reduce or end overfishing to ensure overfishing does not continue and the stock can recover.

DETERMINATION:

In view of the information presented in this document and the analysis contained in the supporting Environmental Assessment prepared for this interim rule, it is hereby determined that this interim rule will not significantly impact the quality of the human environment as described above and in the supporting Environmental Assessment. 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.

_____ _____

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

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 proposed action is not reasonably expected to result in cumulative adverse effects that could have a substantial effect on the Gulf target species or non-target species as indicated in Section 3.3.6 of this EA. In general, the proposed action to allow a recreational fishing season, increase the commercial quota by 330,000 pounds GW, and continue the suspension of the use of red grouper multi-use allocation is not expected to substantially alter the manner in which the Gulf reef fish fishery is conducted. The proposed harvest levels are adjusted to reduce or end overfishing to ensure overfishing does not continue and the stock can recover.

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James E. Weaver

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

5/16/2011
Date