



JUL 25 2011

To All Interested Government Agencies and Public Groups:

Under the National Environmental Policy Act, an environmental review has been performed on the following action.

TITLE: Environmental Assessment for a Temporary Rule for an Emergency Action to Increase the 2011 Red Snapper Total Allowable Catch and Authorize the Re-opening of the Recreational Red Snapper Season after the Fishing Season Closure in the Gulf of Mexico - RIN 0648-BB12

LOCATION: Gulf of Mexico

SUMMARY: The recreational red snapper fishing season opened on June 1, 2011, and the fishing season officially ends on September 30, 2011. On April 29, 2011, NOAA Fisheries Service published a rule establishing a closure date for the recreational sector of 12:01 a.m., July 19, 2011. This was the date the quota was projected to be met. In April 2011, the Gulf of Mexico Fishery Management Council requested a rerun of the red snapper projections that included the 2009 and 2010 actual landings data. Based on the results of the rerun, the Council's Scientific and Statistical Committee determined the 2011 total allowable catch could be increased from 7.185 to 7.53 million pounds. As a result, the Council requested that NOAA Fisheries Service develop an emergency rule to assign the entire 345,000 pounds of increased allowable catch to the recreational sector for the 2011 season. In addition, if NOAA Fisheries Service determines that the recreational red snapper quota was not reached by the July 19, 2011, closure date, the rule suspends the October 1 season closure, which would allow NOAA Fisheries Service to re-open the recreational red snapper season for a limited time period through subsequent rulemaking.

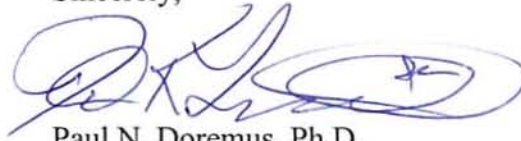
The environmental assessment analyzes the impacts of the two proposed actions. The proposed actions are intended to provide flexibility in achieving the Council's designated optimum yield for the fishery, thus enhancing social and economic benefits to the fishery.

RESPONSIBLE OFFICIAL: Roy E. Crabtree, Ph.D., Regional Administrator, Southeast Regional Office, National Oceanic and Atmospheric Administration, 263 13th Avenue South, St. Petersburg, Florida 33701, phone: (727) 824-5305, fax: (727) 824-5308.



The environmental review process led us to conclude that this action will not have a significant impact on the environment. Therefore, an environmental impact statement was not prepared. A copy of the finding of no significant impact, including the environmental assessment, is enclosed for your information.

Sincerely,

A handwritten signature in blue ink, appearing to read 'P. Doremus', with a stylized flourish at the end.

Paul N. Doremus, Ph.D.
NOAA NEPA Coordinator

Enclosure

**EMERGENCY ACTION TO INCREASE THE 2011 RED SNAPPER TOTAL
ALLOWABLE CATCH AND AUTHORIZE NOAA FISHERIES SERVICE TO RE-
OPEN THE RECREATIONAL RED SNAPPER SEASON AFTER THE FISHING
SEASON CLOSURE**

**Including an Environmental Assessment, Finding of No Significant Impacts,
and Regulatory Impact Review**



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ABBREVIATIONS USED IN THIS DOCUMENT

ABC	Allowable Biological Catch
APA	Administrative Procedures Act
CEQ	Council on Environmental Quality
CFR	Code of Federal Regulations
Council	Gulf of Mexico Fishery Management Council
CS	Consumer Surplus
CZMA	Coastal Zone Management Act
DQA	Data Quality Act
EA	Environmental Assessment
EEZ	Exclusive Economic Zone
EFH	Essential Fish Habitat
EIS	Environmental Impact Statement
EJ	Environmental Justice
EO	Executive Order
ESA	Endangered Species Act
FMP	Fishery Management Plan
FONSI	Finding of No Significant Impact
FR	Federal Register
GMFMC	Gulf of Mexico Fishery Management Council
Gulf	Gulf of Mexico
HAPC	Habitat Areas of Particular Concern
IFQ	Individual Fishing Quota
LOF	List of Fisheries
Magnuson-Stevens Act	Magnuson-Stevens Fishery Conservation and Management Act
MP	Million Pounds
MPA	Marine Protected Area
MRFSS	Marine Recreational Fishery Statistics Survey
MRIP	Marine Recreational Information Program
MSY	Maximum Sustainable Yield
NMFS	NOAA's National Marine Fisheries Service
NOAA	National Oceanic and Atmospheric Administration
NOR	Net Operating Revenue
OFL	Over Fishing Limit
OMB	Office of Management and Budget
OY	Optimum Yield
PRA	Paperwork Reduction Act
RFA	Regulatory Flexibility Act
RIR	Regulatory impact review
SEDAR	Southeast Data, Assessment, Review
SSC	Science Statistical Committee
USC	United States Code

ENVIRONMENTAL ASSESSMENT COVER SHEET

Responsible Agency and Contact Person

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Name of Actions

An Emergency Action to Increase the 2011 Red Snapper Total Allowable Catch and to Authorize NOAA Fisheries Service to Re-Open the Recreational Red Snapper Season during 2011 After the Fishing Season Closure

Type of Action

☐ Administrative
☐ Draft

☐ Legislative
☒ Final

Summary

The purpose of this proposed regulation is to increase the red snapper recreational quota and to suspend the October 1 closure date so that there is sufficient time in 2011 to harvest the allowable increase, which will provide social and economic benefits to the recreational sector. In April 2011, NOAA Fisheries Service projected the 2011 recreational quota would be met in 48 days after the June 1 opening of the fishing season, and established a closure date for the recreational sector of July 19, 2011. Subsequently, the Council requested the most recent red snapper stock assessment be rerun using actual landings for 2009 and 2010. Based on the results of that rerun, the Council's Scientific and Statistical Committee determined that the 2011 total allowable catch could be increased from 7.185 to 7.53 million pounds (mp). During 2010, the recreational sector harvested only 66 percent of its quota, whereas the commercial sector harvested 96 percent of its quota. Because of the greater economic impacts incurred to the recreational sector in 2010, the Council requested the entire 345,000 pounds of increased quota be assigned to the recreational sector for the 2011 season. If NOAA Fisheries Service determines that the recreational 3.52 mp red snapper quota was not reached by the July 19, 2011, closure date, the recreational season would re-open to red snapper harvest for a limited time period through subsequent rulemaking, thus enhancing social and economic benefits to the fishery. By contrast, if the recreational sector harvests its current quota, and this proposed increase from 3.52 mp to 3.86 mp during the existing 48-day season, then no additional benefits will be accrued.

The physical and biological environment consequences and cumulative effects for this action would be minimal. For the recreational sector, the social and economic effects of the proposed TAC increase would be expected to increase angler consumer surplus by approximately \$697,000 and net operating revenue to for-hire vessels by approximately \$326,000. However, as noted above, these results assume that the recreational allocation associated with the proposed TAC increase represents real gains in harvest relative to the status quo. For any of these benefits to be received, the recreational sector would have to be restrained to its current 3.52 mp quota during the June 1 through July 18 fishing season and the season then re-opened subsequent to July 18 to harvest the proposed increase. Only then would this accommodate more trips, expenditures, and harvests consistent with the proposed increase in TAC.

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 to increase the recreational quota does not alter the manner in which the fishery is conducted. 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, should the quota not be met, 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 in that the increased quota allows harvest at the designated optimum yield level for the stock.

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 possible timing) in which the fishery is conducted. 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. 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. 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 increase the harvest of red snapper during a potentially altered time frame are 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 allow harvest at the designated optimum yield level during a potentially altered time frame.

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 gives NOAA Fisheries Service the authority to re-open the recreational red snapper season after September 30, 2011, and adjusts the 2011 total allowable catch for red snapper. These actions do not alter the overall manner in which the fishery is conducted, only the level of harvest and 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 of Mexico (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. The proposed actions would allow harvest at the optimum yield level and potentially allow such harvest 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 actions would give NOAA Fisheries Service the authority to re-open the recreational red snapper season after September 30, 2011, and increase the 2011 total allowable catch for red snapper harvest. These actions do not alter the manner in which the fishery is conducted. 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 is biologically neutral. Stock rebuilding would not be expected to occur substantially quicker if the quota were not allowed to be harvested. The proposed actions provide 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 expected to have significant impacts on 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 commercial sector has expressed concern that this temporary re-allocation of allowable catches sets a precedent for future re-allocation considerations, but they also recognize this is a limited increase in harvest. The proposed actions would ultimately provide greater flexibility to the recreational sector to harvest red snapper at the designated optimum yield level, and is expected to be perceived as an appropriate and favorable action. Conversely, the proposed actions 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. 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.

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 actions are 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 these actions 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, 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 actions allow a slightly increased harvest in accord with the established rebuilding plan, and would allow such harvest during a modified time frame. These do not constitute unique or unknown risks. NOAA Fisheries Service regularly adjusts quotas and re-opens fisheries when it has been determined such quotas are not met. 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.

Impacts of the Deepwater Horizon MC252 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, yet at this time, there is no specific information regarding these potential 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. 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. 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 seasonal closure to bottom fishing in Madison Swanson and Steamboat Lumps ecologically-critical areas. The Gulf of Mexico Fishery Management Council (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. 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 Fishery Conservation and Management 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. The proposed actions would provide the

authority to re-open the fishing season in 2011, and increase the total allowable catch for the red snapper reef fish fishery in accordance with the established rebuilding plan. 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. 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.

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.

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

7/21/11
Date

1 INTRODUCTION

1.1 Background

In 2010, the NOAA Fisheries Service opened the red snapper recreational season on June 1 and projections indicated the quota would be met by July 23. The majority of the recreational red snapper fishing effort and landings come from the north-central Gulf of Mexico (Gulf). However, the recreational quota was not met by that date, likely due to the effects of the Deepwater Horizon MC252 oil spill, including the subsequent closure of extensive portions of the north-central Gulf to all fishing. An emergency action re-opened the fishing season for eight weekends during October and November to allow the quota to be met. Even with the addition of the fall fishing season, approximately 1.32 million pounds (MP) of the recreational red snapper quota was not harvested.

Because the quota was not met, The Gulf of Mexico Fishery Management Council (Council) requested that the Southeast Fisheries Science Center rerun the 2009 update stock assessment using real landings data for 2009 and 2010. Based on this rerun, on May 19, 2011, the Council's Scientific Statistical Committee (SSC) recommended increasing the red snapper acceptable biological catch (ABC) for 2011 to 7.530 MP (3.416 million kg) from 7.185 MP (3.259 million kg). The SSC identified a new overfishing limit (OFL) for red snapper based on the updated landings data. The corresponding ABC for red snapper, calculated as 75 % of the OFL, is 7.530 MP (3.416 million kg). This ABC was also recommended as the new total allowable catch (TAC), an increase of 345,000 lb (156,489 kg). At its June 2011 meeting, the Council requested that NOAA Fisheries Service develop an emergency rule that would assign the entire 345,000 lb (156,489 kg) of increased TAC to the recreational sector for the 2011 fishing season and suspend the October 1 closure date.

As noted above, during 2010, the recreational sector harvested only 66 percent of its quota, whereas the commercial sector harvested 96 percent of its quota. Because of the greater economic impacts that incurred to the directed for-hire fleet and shoreside support facilities for the private anglers in 2010, the Council requested the entire 345,000 pounds of increased quota be assigned to the recreational sector for the 2011 season. If NOAA Fisheries Service determines that the 3.52 MP recreational red snapper quota was not reached by the July 19, 2011, closure date, the recreational season would re-open to red snapper harvest for a limited time period through subsequent rulemaking, thus enhancing social and economic benefits to the fishery. By contrast, if the recreational sector harvests its current quota, including this proposed increase from 3.52 MP to 3.86 MP, during the existing 48-day season, then no additional benefits will be accrued.

1.2 Purpose and Need

The purpose of this proposed regulation is to increase the recreational quota and to suspend the October 1 closure date so that there is sufficient time in 2011 to harvest the allowable increase, which will provide social and economic benefits to the recreational sector. The increase in the recreational quota is in accordance with the Council's designated optimum yield (OY) level. The Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) requires NOAA Fisheries Service and regional fishery management councils to prevent

overfishing, and achieve, on a continuing basis, the OY from federally managed fish stocks. These mandates are intended to ensure fishery resources are managed for the greatest overall benefit to the nation, particularly with respect to providing food production and recreational opportunities, and protecting marine ecosystems.

The Council's rationale for using an emergency rule focuses on recently discovered new information (e.g., new calculations for TAC), whereby the recreational sector will receive social and economic benefits. The more deliberative process of adjusting the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico (Reef Fish FMP) through the established framework procedure could not be implemented in a time frame that would allow the recreational sector to harvest the adjusted quota before the established September 30 end of the recreational fishing season.

1.3 History of Management

Management measures implemented prior to 2010 are detailed in the February 2010 regulatory amendment (GMFMC 2010) and are incorporated herein by reference. This section presents recent management actions implemented in 2010 and 2011.

A February 2010 Regulatory Amendment, implemented June 2, 2010, increased the red snapper total allowable catch to 6.945 mp, allocated 3.542 MP commercial and 2.949 MP recreational. NOAA Fisheries Service set the recreational season to be June 1 through July 23 based on analyses of catch rates from previous years. However, on April 20, 2010, the Deepwater Horizon MC252 oil rig exploded and sank approximately 36 nautical miles (41 statute miles) off the Louisiana coast, resulting in a massive uncontrolled oil spill. Consequently, NOAA Fisheries Service issued an emergency rule to temporarily close a portion of the Gulf exclusive economic zone (EEZ) to all fishing [75 FR 24822]. The initial closed area extended from approximately the mouth of the Mississippi River to south of Pensacola, Florida and covered an area of 6,817 square statute miles. The coordinates of the closed area were subsequently modified periodically in response to changes in the size and location of the area affected by the spill. At its largest size on June 2, 2010, the closed area covered 88,522 square statute miles, or approximately 37% of the Gulf exclusive economic zone (Figure 2.1.1). This closure was implemented for public safety.

As a result of reduced effort due to the oil spill area closure, red snapper harvest was reduced dramatically. At the August 2010 Council meeting, NOAA Fisheries Service informed the Council that an estimated that 2.3 MP of the 3.4 MP recreational quota remained unharvested (NMFS 2010a, 2010b). Consequently, the Council requested an emergency rule to provide the Regional Administrator the authority to reopen the recreational red snapper season. After considering various reopening scenarios, the Council requested that the season be reopened for eight consecutive weekends (Friday, Saturday and Sunday) from October 1 through November 21 (24 fishing days). This rulemaking was effective September 24, 2010. Even with the extended season, the recreational quota for 2010 was not met.

A 2011 regulatory amendment for red snapper (GMFMC 2011), published April 29, 2011, increased the red snapper total allowable catch from 6.945 MP to 7.185 MP. This increase is

consistent with goals and objectives of the Council's red snapper rebuilding plan, and provided a substantial safety buffer by keeping the TAC 25% below the overfishing limit (which is also the maximum rebuilding yield). Based on the current 51% commercial and 49% recreational allocation of red snapper, the increase in TAC adjusted the commercial and recreational quotas from 3.542 MP and 3.403 MP to 3.66 MP and 3.525 MP in 2011. The commercial sector is under an individual fishing quota (IFQ) program and has maintained landings within their quota in recent years. Subsequently, NOAA Fisheries Service announced the dates for the 2011 recreational red snapper season opening June 1, 2011 and closing July 19, 2011, at 12:01 am.

2 MANAGEMENT ALTERNATIVES

This section provides the scientific and analytical basis for comparing the alternatives. In accordance with the Council's requests to address the issue through temporary action, two actions are being considered in this Environmental Assessment (EA) and are listed below. Descriptions of the direct and indirect environmental consequences associated with each alternative can be found in Section 4.0. Section 3.0 describes the physical, biological, economic, social, and administrative environments affected by this action. Sections 4.3 and 5.0 provide a discussion of the economic impacts of this action.

Section 1502.14 of the Council on Environmental Quality (CEQ) regulations requires agencies to explore and objectively evaluate all reasonable alternatives for an action, including the no action alternative. The analysis of alternatives shall describe the environment to be affected by the action and the environmental consequences of each of the alternatives (Part 1502.14, CEQ). Alternatives shall be presented in comparative form to provide a clear basis for why decision makers selected the preferred alternative(s). CEQ regulations (40 CFR 1508.8) define direct effects as those "which are caused by the action and occur at the same time and place." Indirect effects are defined as those "which are caused by the action and are later in time or farther removed in distance, but are still reasonably foreseeable." Cumulative effects are defined as "impacts on the environment that result from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency or person undertakes such actions."

These temporary actions would be effective through the end of the 2011 calendar year. Because of the short duration of these actions, all effects of the actions on the environment are expected to be short-term. The following describes direct and indirect effects on the environment during the time period these temporary actions would potentially be effective.

Action 1. Increase the total allowable catch for red snapper in the Gulf of Mexico for the 2011 fishing year.

Alternative 1- No Action. Do not increase the TAC for red snapper for the 2011 fishing season.

Alternative 2. Increase the red snapper TAC by 345,000 lbs ww (from 7.185 mp to 7.53 mp) for the 2011 fishing year and distribute the increase based on the Reef Fish FMP 51% commercial 49% recreational allocation.

Preferred Alternative 3. Increase the red snapper TAC by 345,000 lbs ww (from 7.185 mp to 7.53 mp) for the 2011 fishing year and distribute the entire increase to the recreational sector.

Alternative 4. Increase the red snapper TAC by 345,000 lbs ww (from 7.185 mp to 7.53 mp) for the 2011 fishing year and distribute the entire increase to the commercial sector.

Alternative 5. Increase the red snapper TAC by 345,000 lbs ww (from 7.185 mp to 7.53 mp) for the 2011 fishing year and distribute the increase based on percentage of sector quotas unharvested in 2010 (11% commercial and 89 % recreational).

This action proposes an increase of TAC (stock annual catch limit) of red snapper and makes the resulting quota consistent with the goals and objectives of the Red Snapper Rebuilding Plan, while achieving the mandates of the Magnuson-Stevens Act. In Amendment 27/14 the Council set total allowable catch for red snapper at 5.0 MP until the 2009 red snapper update assessment was complete. Under this harvest restriction and revised rebuilding plan, there was greater than a 50% probability of ending overfishing and rebuilding the stock to biomass at maximum sustainable yield by 2032. Based on the 2009 red snapper update assessment, the management goals have been achieved. Even though the fishery is still overfished, the stock is rebuilding, and all five alternatives would result in a fishing rate below fishing mortality at maximum sustainable yield (i.e., not overfishing). These alternatives are also within the Red Snapper Rebuilding Plan outlined in Amendment 27/14 (GMFMC 2007).

Alternative 1, no action, would maintain total allowable catch at 7.185 MP as defined in the April 2011 regulatory amendment and incorporated here by reference (GMFMC 2011). **Alternatives 2-5** all increase the red snapper TAC by 345,000 lbs ww (from 7.185 MP to 7.53 MP) for the 2011 fishing year based on the recommendations from the Council's SSC. However, **Alternatives 2-5** consider different distributions of the TAC increase to the red snapper reef fish fishery sectors. **Alternative 2** would distribute the TAC increase to the based on the Reef Fish FMP 51% commercial and 49% recreational allocations. **Preferred Alternative 3** would distribute the entire TAC increase for 2011 to the recreational sector. Due to fishery closures associated with the Deepwater Horizon MC252 oil spill during the 2010 red snapper fishing season, the recreational sector did not harvest the quota even with the addition of the 2010 fall season. Meanwhile, the commercial sector harvested 96% of the quota during 2010. **Alternative 4** would distribute the entire TAC increase for 2011 to the commercial sector. **Alternative 5** would distribute the TAC increase for 2011 based on the proportion of the 2010 landings unharvested by each sector. **Alternatives 3-5** would temporarily alter the allocation of the red snapper quota between the sectors. The economic and social effects are further discussed in Section 4.3.

Table 1. Red snapper 2010 landings data and derivation of TAC distribution percentages for **Alternative 5**.

Sector	Landings (lbs ww)	Quota (lbs ww)	Unharvested	% Unharvested	ACL increase for 2011 based on proportional underharvest of
					quotas
Commercial	3392209	3542000	149791	11%	39111
Recreational	2231482	3403000	1171518	89%	305889
Total	5623691	6945000	1321309	100%	345000

Action 2: Authority to suspend the October 1, 2011, end of the established recreational season for red snapper in the Gulf of Mexico.

Alternative 1 – No Action. Do not give NOAA Fisheries Service authority to suspend the October 1, 2011, closure date for the established recreational red snapper season.

Preferred Alternative 2 – Give NOAA Fisheries Service the authority to suspend the October 1, 2011, closure date for the established recreational red snapper season.

Alternative 1 (No Action) would result in the recreational red snapper fishing season remaining closed until June 1, 2012, the start of the 2012 recreational fishing season. Should the recreational quota not be harvested by the current July 19 closure date, this alternative potentially would not allow the recreational sector to harvest the red snapper resource at the Council's designated OY level. Currently, through the framework procedures of the Reef Fish FMP, NOAA Fisheries Service has the authority to re-open the recreational red snapper fishing season through September 30, 2011, should it be determined the recreational quota was not harvested during the initial open fishing season. Given the administrative issues associated with developing a rulemaking to re-open prior to September 30, it is likely that such rulemaking could not be implemented until late September. This would leave limited time to harvest any remaining recreational quota.

Preferred Alternative 2 would provide authority to NOAA Fisheries Service to re-open the recreational red snapper fishing seasons before and after the October 1 closure date for the 2011 fishing season. The regulations at 50 CFR 622.43(c) state the Assistant Administrator for NOAA Fisheries Service *may* announce a re-opening, if the quota has not been met. There is no requirement for a re-opening if it is subsequently determined the quota was not met. If the recreational sector exceeds the 2011 quota, then re-opening of the fishing season would not be necessary. However, NOAA Fisheries Service currently only has authority to re-open the recreational red snapper fishing season through September 30. Given the administrative issues associated with developing a rulemaking to re-open prior to September 30, it is likely that such rulemaking could not be implemented until late September. This would leave limited time to harvest any remaining recreational quota. **Preferred Alternative 2** would provide additional flexibility to reopen the recreational fishing season later in the calendar year, similar to the October-November reopening in 2010.

3 AFFECTED ENVIRONMENT

The physical, biological, economic, social, and administrative environments affected by actions in this emergency rulemaking have been described in the February 2010 Final Regulatory Amendment to the Reef Fish Fishery Management Plan to Set Total Allowable Catch for Red Snapper (GMFMC 2010) and are incorporated here by reference. Additional impacts to the affected environment from the Deepwater horizon MC252 oil spill were described in the September 2010 (NMFS 2010a) Environmental Assessment and the April 2011 Regulatory Amendment (GMFMC 2011), and are incorporated here by reference.

4 ENVIRONMENTAL CONSEQUENCES

4.1 Direct and Indirect Effects on the Physical Environment

Direct and indirect effects on the physical environment resulting from the harvest of red snapper by the reef fish fishery have been discussed in detail in Amendments 22 and 27/14 (GMFMC 2004a and 2007) and in the February 2010 red snapper regulatory amendment (GMFMC 2010) and are incorporated here by reference.

Action 1 may increase the 2011 TAC for the red snapper reef fish fishery. **Alternative 1** would not cause additional effects on the physical environment. **Alternatives 2-5** may slightly increase the effects on the physical environment considering additional fishing effort of the commercial and recreational sectors. **Alternatives 2, 3, and 5** would increase the TAC for the recreational sector and could result in additional fishing days. However, it is likely that the recreational sector would exceed the quota during the currently established season and not receive additional harvesting days. The increase TAC for the commercial sector (**Alternatives 2, 4, and 5**) would be unlikely to alter the physical environment relative to current regulations.

Action 2 would allow NOAA Fisheries Service to suspend the October 1, 2011, closure date for the recreational red snapper fishing season. **Alternative 1** could be slightly beneficial to the physical environment by constraining the recreational fishing season to June 1 through September 30. However, even **Preferred Alternative 2** would have very slight effects of the physical environment as the increase in TAC would only add an estimated zero to ten days to the recreational fishing season. The re-opening would only occur if NOAA Fisheries Service determines that the recreational quota was not met during the established June 1, 2011, through July 18, 2011 season.

4.2 Direct and Indirect Effects on Biological/Ecological Environment

Direct and indirect effects on the biological/ecological environment from the harvest of red snapper by the reef fish fishery have been discussed in detail in Amendments 22 and 27/14 (GMFMC 2004a and 2007), the February 2010 red snapper regulatory amendment (GMFMC 2010) and the April 2011 regulatory amendment (GMFC 2011) and are incorporated here by reference. Potential impacts of the Deepwater Horizon oil spill on the biological/ecological environment are discussed in the April 2011 regulatory amendment (GMFMC 2011) and are incorporated here by reference.

Action 1 may increase the 2011 TAC for the red snapper reef fish fishery. **Alternative 1** would benefit the red snapper stock and possibly aid the rebuilding of the stock by restricting harvest to the existing TAC. In addition, because of to the unknown impacts on the stock due to the Deepwater Horizon MC252 oil spill, maintaining the TAC at the 7.185 MP level may account for those impacts. **Alternatives 2-5** may negatively affect the biological environment by increasing the red snapper TAC by 345,000 lbs. The TAC increase would only apply to 2011 and would not influence subsequent TAC for red snapper and is consistent with the rebuilding plan. The direct effects of the additional harvest would be related to the increase in fishing mortality of red snapper and incidental bycatch. If **Alternatives 2, 3, or 5** are implemented and the recreational sector exceeds the quota, then the 2012 red snapper TAC would not increase to

the planned 7.703 MP and would actually revert to the 2011 TAC (7.185 MP) which may have beneficial effects on the biological environment.

Action 2 would allow NOAA Fisheries Service to suspend the September 30, 2011, end date for the recreational red snapper fishing season. **Alternative 1** could be slightly beneficial to the biological environment by constraining the recreational fishing season to June 1 through September 30. However, even **Preferred Alternative 2** would have very slight effects of the biological environment as the increase in TAC would only add an estimated zero to ten days to the recreational fishing season. The subsequent effects would be relative to those discussed in **Action 1**. The re-opening would only occur if NOAA Fisheries Service determines that the recreational quota was not met during the established June 1, 2011, through July 18, 2011 season.

At present, there is no evidence that the adult stock of red snapper has been adversely impacted by the Deepwater Horizon MC252 oil spill, and the fishing mortality rate remains below the overfishing threshold. Furthermore, the acceptable biological catch levels set by the SSC is 25% below the overfishing limit, which is also the rebuilding yield. Thus, there is a substantial safety margin to absorb any eventual impacts without adversely impacting the ability of the rebuilding program to meet its 2032 target. For these reasons, actions to reduce the TAC are not warranted or included as alternatives.

Indirect effects of these alternatives on the biological and ecological environment are not well understood. Changes in the population size structure as a result of shifting the fishing activities and increases in stock abundance could lead to changes in the abundance of other reef fish species that compete with red snapper for shelter and food. Predators of red snapper could increase if red snapper abundance is increased, while species competing for similar resources as red snapper could potentially decrease in abundance if less food and/or shelter are available. Another effect of an expanding red snapper population could be a continuation of the reestablishment of red snapper populations in historical areas of occurrence in the eastern Gulf. Species likely to be affected by changes in red snapper abundance the most include: vermilion snapper, gray triggerfish, and gag, which all co-occur with red snapper. These effects are explored in more detail in Amendment 27/14.

The proposed action relates to the harvest of an indigenous species in the Gulf of Mexico, and proposes only to increase that harvest, consistent with the most recent stock assessment for the species. Changing allowable harvest may pose the potential to shift fishing effort from other species in the Gulf, some of which may not be indigenous. However, the activity being altered does not itself introduce non indigenous species, and is not reasonably expected to facilitate the spread of such species through depressing the populations of native species. There may be some reduction of non-indigenous species, if they are caught during fishing efforts and either retained for consumption or killed. The non-indigenous lionfish species could be reduced by the increase in fishing effort. In turn, it is possible that lionfish are negatively affecting the population dynamics on the native species. Additionally, the rulemaking does not propose any activity, such as increased ballast water discharge from foreign vessels, which is associated with the introduction or spread on non indigenous species.

4.3 Direct and Indirect Effects on the Economic Environment

Action 1 – TAC Increase

The following discussion, and expectation of any economic effects, must be couched within the context of how harvests are controlled in the recreational and commercial red snapper sectors. This influences the likelihood that benefits would be expected to increase, in the case of a TAC or quota increase, or benefits would be expected to be foregone should the TAC or quota not be increased.

The commercial red snapper sector is quota-managed through an individual fishing quota (IFQ) program in which all landings require quota allocation and must be reported when landed. Under this program, the quota is carefully monitored and has not been exceeded since the program was started in 2007. In fact, a small portion of the commercial quota has not been harvested in each of the first four years of the IFQ program. Approximately 150,000 lbs of the commercial quota was not harvested in 2010.

Although the recreational sector is also quota managed, recreational harvests are circumstantial to the length of the season, effort applied, and harvest success (number of fish per trip and weight per fish). The recreational red snapper season begins on June 1 and may remain open no longer than through September 30. Based on data from prior fishing seasons, closure of the season each year is announced prior to the opening to facilitate planning by the industry. The season length is based on expectations of the average number of fish harvested per trip, the average weight per fish, and number of trips harvesting red snapper. After the season is announced, it remains open for that period of time regardless of actual harvest performance or other factors that may result in deviations from expectations. As a result, the overriding control on the recreational sector is the number of days the season is open and not the quota per se. Total harvest is then circumstantial to changes in performance or other fishing conditions. For the 2007-2010 fishing seasons, the recreational red snapper quota was exceeded in 2007, 2008, and 2009. Only in 2010 was the recreational quota not exceeded. For 2011, the red snapper recreational fishing season is June 1 through July 18.

In summary, although both the commercial and recreational red snapper sectors are quota managed, success in managing the separate sector quotas varies. As a result, expectations of conditions under the status quo or the potential impacts of proposed actions must be tempered by considerations of these different circumstances. These considerations will be noted in the following discussion.

Alternative 1 (No Action) would not result in an increase in the red snapper TAC. As a result, no changes in the economic performance of any sectors of the red snapper component of the reef fish fishery, or associated shore-side businesses, would be expected to occur. However, as discussed above, this status quo has different implications for the two harvest sectors. For the commercial sector, **Alternative 1 (No Action)** would not result in any change in the commercial quota, and associated economic benefits, and the commercial sector would be expected to harvest their allocation, and possibly not harvest the full amount consistent with previous years of the IFQ program. For the recreational sector, however, under **Alternative 1 (No Action)**, the specified red snapper season may result in harvests in excess of the sector allocation, based on

historical performance and the assumption that the 2010 quota underage was a direct result of the extensive oil-related closures, conditions not expected to repeat in 2011. As a result, the recreational sector may take increased red snapper harvests during the open season that would meet or exceed the proposed TAC increase. From the long-term perspective, to date, the recent recreational sector overages have not proven to be detrimental to recovery of the resource. If this continues to be the case, any overage would not be expected to result in any long-term jeopardy to recovery plans. As a result, long-term economic benefits would not be expected to be diminished. Further, because overages are not subtracted from the next year's quota (payback) as an accountability measure for the recreational sector, any quota overages under the status quo would not be expected to result in reduced economic benefits to the recreational sector in the subsequent fishing year.

The following discussion is developed from the perspective that the proposed TAC increases from the various alternatives represent real gains in harvests. Specifically, for the commercial sector, this means that any proposed TAC increase results in increased harvests and sales. For the recreational sector, real gains mean that harvest opportunities, i.e., trips taken, expenditures made, and fish harvested, increase relative to the status quo. Caveats to these assumptions, consistent with the discussion above, will be noted. All monetary totals in the following discussion are in 2010 dollars.

Under **Alternative 2**, the proposed TAC increase would be expected to result in an increase in ex-vessel revenue of as much as approximately \$604,000 to the commercial sector, and an increase of approximately \$2.22 million and \$485,000 in quota share and allocation value, respectively. These results are based on averages of \$3.81, \$13.83, and \$3.06 for ex-vessel, share, and allocation prices, respectively. The sale of a share permanently (until re-sold, revoked, or otherwise negated by possible future management action) transfers the ownership of the share and associated allocation to the buyer, whereas the sale of allocation bestows harvest rights to the buyer for only the year in which the allocation is purchased. Further explanation of share and allocation values is provided in GMFMC (2011) and is incorporated herein by reference. These results assume that commercial harvests increase by the full amount of the resultant quota increase (approximately 158,500 lbs gutted weight). Because the commercial sector has not harvested its full quota since implementation of the IFQ program, there should be no expected certainty that the full amount of the quota increase provided under **Alternative 2** would be harvested. As a result, the expected increase in ex-vessel and allocation values provided above should be considered upper bounds (share values would not be affected because they are not dependent on actual harvest; this could similarly be stated for allocation value, but this assessment assumes that the sale of allocation, because it only remains valid for only the current fishing year, only occurs if use of the allocation (harvest) is expected to occur).

For the recreational sector, the proposed TAC increase would be expected to increase angler consumer surplus (CS) by up to approximately \$697,000 and net operating revenue (NOR) to for-hire vessels by up to approximately \$326,000 (approximately \$299,000 for charter boats and \$27,000 for headboats). These results are based on averages of approximately \$54, \$150, and \$50 for CS, NOR (charter boats), and NOR (headboats), respectively. The estimates of CS and NOR are per angler trip. These results assume that the recreational allocation associated with the proposed TAC increase represents real gains in harvest relative to the status quo noting, again, that status quo harvests are the harvests that will occur during the June 1 through July 18 open

season and not necessarily the current recreational quota. For any of these benefits to be received, the recreational sector would have to be restrained to its current quota during the June 1 through July 18 fishing season and the season re-opened subsequent to July 18 to accommodate more trips, expenditures, and harvests consistent with the proposed increase in TAC.

If the current recreational quota is exceeded but harvest remains less than the sum of the current quota and new allocation occurring as a result of the proposed TAC increase, then the only benefits of **Alternative 2** that would occur would be those benefits associated with harvest that is allowed after the July 19 closure. Any economic benefits that occur as a result of increased harvests (i.e., harvests over the current recreational quota) prior to July 19 could not be attributed to the proposed TAC increase because any harvests and associated benefits prior to July 19 would occur as a result of the fixed-season management and not as a result of the proposed TAC increase. Given the history of recreational red snapper overages, with the exception of the 2010 fishing season, there may be a high likelihood that the current red snapper open season will not constrain recreational harvests to the increased quota and, as a result, the recreational fishing industry may not receive any increased economic benefits under **Alternative 2** relative to **Alternative 1 (No Action)**.

The difference between **Alternative 2** and **Preferred Alternative 3** is that the entire proposed TAC increase would be allocated to the recreational sector under **Preferred Alternative 3**. All of the caveats and assumptions appropriate to the recreational sector discussed under **Alternative 2** would apply under **Preferred Alternative 3**. If the proposed TAC increase and allocation under **Preferred Alternative 3** results in real gains in harvest opportunities, this alternative would be expected to increase angler CS by up to approximately \$1.42 million and NOR to for-hire vessels by up to approximately \$665,000. However, if the increased quota is taken prior to July 19, the recreational fishing industry would not receive any increased economic benefits under **Preferred Alternative 3** relative to either **Alternative 1 (No Action)** or **Alternative 2**. Because the total TAC increase would be allocated to the recreational sector under this alternative, no change in the economic performance of the commercial sector, or associated shore-side businesses, would be expected to occur. As a result, **Preferred Alternative 3** would be expected to result in lower economic benefits to the commercial sector than **Alternative 2**. Across both the commercial and recreational sectors, if **Preferred Alternative 3** does not result in increased harvest opportunities to the recreational sector, **Preferred Alternative 3** would be expected to result in lower economic benefits than **Alternative 2**.

If the proposed TAC increase is fully utilized, **Alternative 4** would be expected to result in an increase in ex-vessel revenue of approximately \$1.17 million to the commercial sector, and an increase of approximately \$4.24 million and \$939,000 in quota share and allocation value, respectively. Similar to the discussion for **Alternative 2**, however, the recent history of the commercial sector not harvesting their entire quota suggests that these estimates should be viewed as upper bounds. Because the total TAC increase would be allocated to the commercial sector under this alternative, no change in the economic performance of the recreational sector, or associated shore-side businesses, would be expected to occur.

The caveats discussed for **Alternative 2** apply to **Alternative 5**. The upper bound of economic benefits to the commercial sector under **Alternative 5**, if adopted, would be an increase in ex-vessel revenue of approximately \$130,000, and an increase of approximately \$473,000 and

\$105,000 in quota share and allocation value, respectively. For the recreational sector, the upper bounds on economic benefits would be an expected increase in angler CS of approximately \$1.266 million and NOR to for-hire vessels of approximately \$592,000 (approximately \$543,000 for charter boats and \$49,000 for headboats). For either sector, it is not expected that the full benefits would be realized because of a history of not harvesting the full quota in the commercial sector and a history of overages during the open season for the recreational sector. As a result, actual benefits of the proposed TAC increase, for either sector, may not be substantially different from those of the other alternatives which propose a TAC increase or **Alternative 1 (No Action)**.

Action 2 – Suspend October 1 Season End Date

Alternative 1 (No Action) would not suspend the October 1 closure date. As a result, if the recreational red snapper quota, with or without the proposed TAC increase, is not taken during the current open season (June 1 through July 18), insufficient time may be available prior to October 1 to allow re-opening of the recreational season and harvest of the remaining quota. Should such occur, **Alternative 1 (No Action)** would result in foregone economic benefits for the recreational sector. The likelihood of this occurring would increase if the TAC is increased, as proposed. However, as discussed with respect to the proposed TAC increase, the entire recreational quota could be harvested during the June 1 through July 18 season. If this occurs, **Alternative 1 (No Action)** would not result in any foregone economic benefits.

Preferred Alternative 2, if adopted, would eliminate the problems that could occur under **Alternative 1 (No Action)**. If appropriate, i.e., if quota is available, **Preferred Alternative 2** would allow re-opening of the recreational red snapper season and be expected to allow sufficient time to allow the remaining quota to be harvested and associated economic benefits received. As a result, if quota is available, **Preferred Alternative 2** would be expected to result in increased economic benefits to the recreational sector and associated shore-side industries relative to **Alternative 1 (No Action)**. If quota is not available, the effects of **Preferred Alternative 2** would be the same as those of **Alternative 1 (No Action)**.

4.4 Direct and Indirect Effects on the Social Environment

Action 1 – TAC Increase

The social effects of the proposed TAC increase and allocation alternatives would be expected to largely mirror the direction and magnitude of the expected economic effects. Social benefits, in total, or by sector, would be expected to be unchanged if the proposed measure would not be expected to increase harvests or harvest opportunities as in **Alternative 1 (No Action)** for both sectors. Similarly, social benefits would be unchanged under **Alternative 2**, **Preferred Alternative 3**, and **Alternative 5** for the recreational sector if re-opening of the recreational season does not occur. Benefits would be increased if harvests or harvest opportunities would be expected to increase (**Alternatives 2, 4, and 5** for the commercial sector, and possibly **Alternative 2**, **Preferred Alternative 3**, and **Alternative 5** for the recreational sector if re-opening of the recreational season occurs).

In addition to considerations of social benefits changing in tandem with changes in harvests or harvest opportunities, social benefits would be expected to change based on perceptions of whether fishery managers are making appropriate decisions and considerations of equity. Because the proposed TAC increase is expected to be biologically neutral and consistent with the red snapper rebuilding plan, therefore not jeopardizing any long-term social or economic benefits, a decision to not increase the TAC (**Alternative 1 (No Action)**) would be expected to result in dissatisfaction by the fishing industry with management decisions because the allowed harvest would not be consistent with the biological capacity of the resource and the red snapper rebuilding plan.

These concerns would be expected to be avoided with the adoption of one of the remaining alternatives. However, the issue of equity may be expected to arise and increase, though not necessarily proportionately, as the proposed allocation of the proposed TAC increase deviates from the status quo allocation. Despite sector differences in opinions on what the best allocation should be, **Alternative 2** may result in the least equity concerns because it would distribute the proposed TAC increase according to the status quo allocation ratio. Unfortunately, available data do not support quantitative determination of the allocation which would maximize social or economic benefits or justify a specific deviation from the status quo. Nevertheless, assuming equity concerns increase with the deviation from the status quo allocation ratio, **Alternative 5** would be expected to result in the next least amount of equity concern, followed by **Preferred Alternative 3** and **Alternative 4**. Differentiating whether **Preferred Alternative 3** or **Alternative 4** would be expected to result in greater equity concerns is not possible with available data. One point to consider, however, is the issue of increasing quota for a sector that has not harvested its quota. Because the commercial sector has not taken its quota since the implementation of the IFQ program, whereas the recreational sector has a history of exceeding its quota, it could be argued that this demonstrates a greater demand by the recreational sector. Thus, allocation of the proposed TAC increase to the recreational sector would be the more equitable decision. However, while it is not known why the commercial sector has not harvested its quota, the underage is unlikely to be related to an absence of market demand. Further, while it may be logical to assume that commercial fishermen who have not used their full allocation may not use new allocation they may receive, fishermen who have historically used their entire allocation would be expected to also use any increased allotments. Hence, the presence of quota underages in the commercial sector should not be interpreted to imply new allocation would not be used.

No environmental justice (EJ) issues would be expected to arise as a result of the proposed action. If recreational quota is available at the end of the scheduled open season (June 1 through July 18), the proposed action would provide increased opportunities for red snapper fishing and harvest, thereby increasing the social and economic benefits to affected entities, communities, or relevant EJ populations. At worst, if no quota is available at the end of the scheduled open season, no re-opening would occur and no change in the social or economic benefits would be received. Although some equity issues may arise as a result of the proposed allocation of the entire proposed TAC increase to the recreational sector, participants in the commercial IFQ program would not be expected to experience any loss of current social or economic benefits because their current allocations would remain unchanged.

Action 2 – Suspend October 1 Season Closure Date

Similar to the discussion of the expected economic effects, if the red snapper quota is not taken during the current open season (June 1 through July 18) and insufficient time is available prior to September 30 to allow re-opening and harvesting of the remaining quota, **Alternative 1 (No Action)** would result in foregone social benefits for the recreational sector. The likelihood of this occurring would increase if the TAC is increased, as proposed. Further, additional loss of social benefits could accrue due to industry perception of the failure of the management process to give itself the flexibility to respond to a quota underage in a timely manner, should such arise.

Preferred Alternative 2, if adopted, would eliminate the problems that could occur under **Alternative 1 (No Action)**. If quota is available, **Preferred Alternative 2** would allow re-opening of the recreational red snapper season and should allow sufficient time for the quota to be harvested and associated social benefits received. As a result, **Preferred Alternative 2** would be expected to result in increased social benefits to the recreational sector and associated shore-side industries relative to **Alternative 1 (No Action)**. If quota is not available to support a re-opening, **Preferred Alternative 2** could still result in increased social benefits relative to **Alternative 1 (No Action)** because of industry perception that, while a re-opening of the season was not possible due to unavailable quota, the management process operated appropriately by establishing the flexibility to re-open the season after September 30 without substantial delay.

Consistent with the discussion and rationale for the proposed TAC increase, no EJ issues would be expected to arise as a result of this proposed action. At best, this action would simply increase the flexibility to allow the recreational sector to harvest the quota, should quota be available at the end of the scheduled open season, resulting in increased social and economic benefits to all relevant populations. At worst, if no quota is available, no change in the social or economic benefits to the populations associated with the recreational sector would occur.

4.5 Direct and Indirect Effects on Administrative Environment

The direct and indirect effects on the administrative environment would vary for each action. The effects of **Action 1 Alternatives 2-5** would generally increase the burden on NOAA Fisheries Service. Further action would be necessary to re-open the recreational red snapper fishery and distribute the TAC increase. However, if the recreational quota is exceeded by more than the proposed TAC increase during the open season, no season re-opening would be necessary, resulting in no further burden to NOAA Fisheries Service. **Action 2 Preferred Alternative 2** would increase effects to the administrative environment and alter the current regulations to provide additional authority to NOAA Fisheries Service to allow harvest during a period of the calendar year otherwise outside the established recreational red snapper fishing season. This would require effort to subsequently monitor harvest levels during a later time period. The largest effect to the administrative environment would be in regard to law enforcement and compliance with the harvesting restrictions. The NOAA Fisheries Service law enforcement, in cooperation with state agencies, would continue to monitor regulatory

compliance with existing regulations and the NOAA Fisheries Service would continue to monitor both recreational and commercial landings to determine if landings are meeting or exceeding specified quota levels. The enforcement and administrative environments were recently enhanced with an individual fishing quota program for the commercial red snapper sector, requiring the NOAA Fisheries Service to monitor the sale of red snapper individual fishing quota shares, and a vessel monitoring system in the reef fish fishery. Recordkeeping requirements for individual fishing quota shares have improved commercial quota monitoring and prevent or limit overages from occurring. The individual fishing quota and vessel monitoring system requirements have reduced the burden of monitoring compliance with commercial fishing regulations.

4.6 Cumulative Effects

The cumulative effects from the red snapper rebuilding plan have been analyzed in Amendment 22 and 27/14, and cumulative effects to the reef fish fishery have been analyzed in Amendments 30A, 30B, and 31, and are incorporated here by reference. The effects of setting total allowable catch in this regulatory amendment are similar to those described in the February 2010 red snapper regulatory amendment (GMFMC 2010), and are most closely aligned with the effects from with the revisions to the red snapper rebuilding plan in Amendment 27/14. This analysis found the effects on the biophysical and socioeconomic environments are positive because they would ultimately restore/maintain the stock at a level that allows the maximum benefits in yield and commercial and recreational fishing opportunities to be achieved. However, short-term negative impacts on the fisheries' socioeconomic environment have occurred and are likely to continue due to the need to limit directed harvest and reduce bycatch mortality. These negative impacts can be minimized by selecting measures that would provide the least disruption to the fishery while maintaining total allowable catch consistent with the rebuilding plan. For the recreational sector, this would mean using combinations of bag limits, size limits and closed seasons to minimize disruptions, and for the commercial sector by using a combination of size limits with the individual fishing quota program.

The cumulative effects from the Deepwater Horizon MC252 oil spill may not be known for several years. If there has been a reduction in spawning success in 2010, the impacts may not begin to manifest themselves until several years later when the fish that would have spawned in 2010 would have become large enough to enter the fishery and the adult spawning population. For red snapper, this occurs at approximately 3 years of age, so a year class failure in 2010 may not be felt by the fishery until 2013. The impacts would be felt as reduced fishing success and reduced spawning potential, and would need to be taken into consideration in the next SEDAR assessment. An increase in the total allowable catch, combined with possible short-term increase in natural mortality to the stock from the oil spill, could negatively impact the stock. While there have been informal reports of lesions on red snapper in the oil affected areas, the information is preliminary and has not been correlated with impacts from the oil spill. Nevertheless, absent any firm information regarding the impacts to the red snapper stock from the Deepwater Horizon MC252 oil spill, the proposed action to increase the total allowable catch would minimize socioeconomic impacts and achieve the Council's designated OY for the fishery.

There is a large and growing body of literature on past, present, and future impacts of global climate change induced by human activities. Some of the likely effects commonly mentioned

are sea level rise, increased frequency of severe weather events, and change in air and water temperatures. The Environmental Protection Agency's climate change Web page provides basic background information on these and other measured or anticipated effects. In addition, Intergovernmental Panel on Climate Change has numerous reports addressing their assessments of climate change (http://www.ipcc.ch/publications_and_data/publications_and_data.shtml). Global climate changes could have significant effects on Gulf fisheries; however, the extent of these effects is not known at this time. Possible impacts include temperature changes in coastal and marine ecosystems that can influence organism metabolism and alter ecological processes such as productivity and species interactions; changes in precipitation patterns and a rise in sea level which could change the water balance of coastal ecosystems; altering patterns of wind and water circulation in the ocean environment; and influencing the productivity of critical coastal ecosystems such as wetlands, estuaries, and coral reefs (Kennedy et al. 2002). Modeling of climate change in relation to the northern Gulf hypoxic zone may exacerbate attempts to reduce the area affected by these events (Justic et al. 2003). It is unclear how climate change would affect reef fishes, and likely would affect species differently. Climate change can affect factors such as migration, range, larval and juvenile survival, prey availability, and susceptibility to predators. In addition, the distribution of native and exotic species may change with increased water temperature, as may the prevalence of disease in keystone animals such as corals and the occurrence and intensity of toxic algae blooms. Climate change may significantly impact Gulf reef fish species in the future, but the level of impacts cannot be quantified at this time, nor is the time frame known in which these impacts would occur. Actions from this amendment are not expected to significantly contribute to climate change through the increase or decrease the carbon footprint from fishing.

The effects of the proposed action are, and will continue to be, monitored through collection of landings data by the NOAA Fisheries Service, stock assessments and stock assessment updates, life history studies, economic and social analyses, and other scientific observations. Landings data for the recreational sector in the Gulf of Mexico are collected through the Marine Recreational Fishery Statistics Survey (MRFSS), National Marine Fisheries Service's Head Boat Survey, and the Texas Marine Recreational Fishing Survey. MRFSS is currently being replaced by the Marine Recreational Information Program (MRIP), a program designed to improve the accuracy of monitoring of recreational fishing. Commercial data are collected through trip ticket programs, port samplers, and logbook programs, as well as dealer reporting through the individual fishing quota program. Currently, an update SEDAR assessment of Gulf red snapper is scheduled for 2012.

5 REGULATORY IMPACT REVIEW

5.1 Introduction

The NOAA Fisheries Service requires a Regulatory Impact Review (RIR) for all regulatory actions that are of public interest. The RIR does three things: (1) it provides a comprehensive review of the level and incidence of impacts associated with a proposed or final regulatory action; (2) it provides a review of the problems and policy objectives prompting the regulatory proposals and an evaluation of the major alternatives that could be used to solve the problem; and, (3) it ensures that the regulatory agency systematically and comprehensively considers all available alternatives so that the public welfare can be enhanced in the most efficient and cost-effective way. The RIR also serves as the basis for determining whether the proposed regulations are a "significant regulatory action" under the criteria provided in Executive Order (E.O.) 12866 and provides some information that may be used in conducting an analysis of impacts on small business entities pursuant to the Regulatory Flexibility Act (RFA).

5.2 Problems and Objectives

The problems and objectives addressed by this proposed emergency rule are discussed in Section 1.2 of this document.

5.3 Description of the Fishery

A description of the red snapper component of the reef fish fishery is provided in GMFMC (2010) and is incorporated herein by reference.

5.4 Impacts of Management Measures

If the proposed TAC increase, allocation of the increase to the recreational sector, and suspension of the end of the season date results in real gains in harvest opportunities, the recreational red snapper fishing sector would be expected to receive an increase in angler consumer surplus of up to approximately \$1.42 million (2010 dollars) and net operating revenue to for-hire vessels of up to approximately \$665,000 (2010 dollars). However, the recreational sector is managed through an annually specified fixed season (June 1 through July 18 for the 2011 fishing year) and has demonstrated a capacity to exceed the recreational red snapper quota during the open season. Any harvest in excess of the current recreational quota (i.e., the quota before the proposed TAC increase) during the June 1 through July 18 open season would be attributable to the fixed season, thereby constituting the status quo, and not be attributable to the proposed TAC increase. As a result, any economic gains would only be received if quota is available after the end of the current open season and the season is re-opened to allow the remaining quota to be harvested. If this does not occur, the proposed TAC increase would not result in any gains in harvest opportunities or any associated increase in economic benefits.

5.5 Public and Private Costs of Regulations

The preparation, implementation, enforcement, and monitoring of this or any federal action involves the expenditure of public and private resources that can be expressed as costs associated with the regulations. Costs associated with this specific action would include:

Council costs of document preparation,
meetings, public hearings, and information
dissemination.....\$200

NOAA Fisheries Service administrative costs of document
preparation, meetings, and review\$10,000

TOTAL.....\$10,200

Beyond Council time spent discussing the allocation of the proposed TAC increase and preparing the request for this proposed emergency rule, no additional Council costs have been expended on the preparation or dissemination of this proposed emergency rule. This proposed emergency rule has been developed entirely by NOAA Fisheries Service. Council discussion occurred during a routine Council meeting. As a result, the Council costs are assumed to be limited to the administrative costs associated with preparation of the request for this proposed emergency rule. The federal costs of document preparation, meetings, and review are based on staff time, printing, and other relevant items where funds were expended directly for this proposed rule.

5.6 Determination of Significant Regulatory Action

Pursuant to Executive Order (E.O.) 12866, a regulation is considered a “significant regulatory action” if it is likely to result in: (1) An annual effect of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights or obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this executive order. Based on the information provided above, this action has been determined to not be economically significant for purposes of E.O. 12866.

6 OTHER APPLICABLE LAW

The Magnuson-Stevens Act (16 U.S.C. 1801 et seq.) provides the authority for fishery management in federal waters of the EEZ. However, fishery management decision-making is also affected by a number of other federal statutes designed to protect the biological and human components of U.S. fisheries, as well as the ecosystems that support those fisheries. Major laws affecting federal fishery management decision-making are summarized below. The proposed temporary actions would be effective through the end of the 2011 calendar year. Because of the short duration of these actions, all effects of the actions on the environment and other applicable laws are expected to be short-term.

Administrative Procedures Act (APA)

All federal rulemaking is governed under the provisions of the APA (5 U.S.C. Subchapter II), which establishes a “notice and comment” procedure to enable public participation in the rulemaking process. Under the APA, NOAA Fisheries Service is required to publish notification of proposed rules in the *Federal Register* and to solicit, consider, and respond to public comment on those rules before they are finalized. The APA also establishes a 30-day waiting period from the time a final rule is published until it takes effect.

Coastal Zone Management Act (CZMA)

Section 307(c)(1) of the federal CZMA of 1972, as amended, requires federal activities that affect any land or water use or natural resource of a state’s coastal zone be conducted in a manner consistent, to the maximum extent practicable, with approved state coastal management programs. The requirements for such a consistency determination are set forth in NOAA regulations at 15 C.F.R. part 930, subpart C. According to these regulations and CZMA Section 307(c)(1), when taking an action that affects any land or water use or natural resource of a state’s coastal zone, NOAA Fisheries Service is required to provide a consistency determination to the relevant state agency at least 90 days before taking final action.

Upon submission to the Secretary, NOAA Fisheries Service determined this proposed action is consistent with the Coastal Zone Management programs of the states of Alabama, Florida, Louisiana, Mississippi, and Texas to the maximum extent possible. The determination was submitted to the responsible state agencies under Section 307 of the CZMA administering approved Coastal Zone Management programs for these states, and approved by these programs.

Data Quality Act (DQA)

The DQA (Public Law 106-443) effective October 1, 2002, requires the government to set standards for the quality of scientific information and statistics used and disseminated by federal agencies. Information includes any communication or representation of knowledge such as facts or data, in any medium or form, including textual, numerical, cartographic, narrative, or audiovisual forms (includes web dissemination, but not hyperlinks to information that others disseminate; does not include clearly stated opinions).

Specifically, the Act directs the Office of Management and Budget (OMB) to issue government wide guidelines that “provide policy and procedural guidance to federal agencies for ensuring and maximizing the quality, objectivity, utility, and integrity of information disseminated by federal agencies.” Such guidelines have been issued, directing all federal agencies to create and

disseminate agency-specific standards to: (1) ensure information quality and develop a pre-dissemination review process; (2) establish administrative mechanisms allowing affected persons to seek and obtain correction of information; and (3) report periodically to OMB on the number and nature of complaints received.

Scientific information and data are key components of FMPs, FMP amendments, and proposed rulemaking and the use of best available information is the second national standard under the Magnuson-Stevens Act. To be consistent with the Act, actions must be based on the best information available. They should also properly reference all supporting materials and data, and be reviewed by technically competent individuals. With respect to original data generated for actions, it is important to ensure that the data are collected according to documented procedures or in a manner that reflects standard practices accepted by the relevant scientific and technical communities. Data will also undergo quality control prior to being used by the agency and a pre-dissemination review.

Endangered Species Act (ESA)

The ESA of 1973, as amended, (16 U.S.C. Section 1531 et seq.) requires federal agencies use their authorities to conserve endangered and threatened species. The ESA requires the NOAA Fisheries Service, when proposing a fishery action that “may affect” critical habitat or endangered or threatened species, to consult with the appropriate administrative agency (itself for most marine species, the U.S. Fish and Wildlife Service for all remaining species) to determine the potential impacts of the proposed action. Consultations are concluded informally when proposed actions may affect but are “not likely to adversely affect” endangered or threatened species or designated critical habitat. Formal consultations, including a Biological Opinion, are required when proposed actions may affect and are “likely to adversely affect” endangered or threatened species or adversely modify designated critical habitat. If jeopardy or adverse modification is found, the consulting agency is required to suggest reasonable and prudent alternatives.

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 NOAA Fisheries Service, as part of the Secretarial review process, will make a determination regarding the potential impacts of the proposed actions.

Marine Mammal Protection Act (MMPA)

The MMPA established a moratorium, with certain exceptions, on the taking of marine mammals in U.S. waters and by U.S. citizens on the high seas, and on the importing of marine mammals and marine mammal products into the United States. Under the MMPA, the Secretary of Commerce (authority delegated to NOAA Fisheries Service) is responsible for the conservation and management of cetaceans and pinnipeds (other than walruses). The Secretary of the Interior is responsible for walruses, sea and marine otters, polar bears, manatees, and dugongs.

Part of the responsibility that NOAA Fisheries Service has under the MMPA involves monitoring populations of marine mammals to make sure that they stay at optimum levels. If a population falls below its optimum level, it is designated as “depleted,” and a conservation plan is developed to guide research and management actions to restore the population to healthy levels.

In 1994, Congress amended the MMPA, to govern the taking of marine mammals incidental to commercial fishing operations. This amendment required the preparation of stock assessments for all marine mammal stocks in waters under U.S. jurisdiction, development and implementation of take-reduction plans for stocks that may be reduced or are being maintained below their optimum sustainable population levels due to interactions with commercial fishing efforts, and studies of pinniped-fishery interactions.

Under section 118 of the MMPA, NOAA Fisheries Service must publish, at least annually, a List of Fisheries (LOF) that places all U.S. commercial fisheries into one of three categories based on the level of incidental serious injury and mortality of marine mammals that occurs in each fishery. The categorization of a fishery in the LOF determines whether participants in that fishery may be required to comply with certain provisions of the MMPA, such as registration, observer coverage, and take reduction plan requirements. The reef fish fishery is classified as a Category III fishery indicating it has minimal impacts on marine mammals (GMFMC 2010).

Paperwork Reduction Act (PRA)

The PRA of 1995 (44 U.S.C. 3501 et seq.) regulates the collection of public information by federal agencies to ensure the public is not overburdened with information requests, the federal government’s information collection procedures are efficient, and federal agencies adhere to appropriate rules governing the confidentiality of such information. The PRA requires NOAA Fisheries Service to obtain approval from the OMB before requesting most types of fishery information from the public.

Executive Orders

E.O. 12630: Takings

The Executive Order on Government Actions and Interference with Constitutionally Protected Property Rights that became effective March 18, 1988, requires each federal agency prepare a Takings Implication Assessment for any of its administrative, regulatory, and legislative policies and actions that affect, or may affect, the use of any real or personal property. Clearance of a regulatory action must include a takings statement and, if appropriate, a Takings Implication Assessment. The NOAA Office of General Counsel will determine whether a Taking Implication Assessment is necessary for this amendment.

E.O. 12866: Regulatory Planning and Review

Executive Order 12866: Regulatory Planning and Review, signed in 1993, requires federal agencies to assess the costs and benefits of their proposed regulations, including distributional impacts, and to select alternatives that maximize net benefits to society. To comply with E.O. 12866, NOAA Fisheries Service prepares a Regulatory Impact Review (RIR) for all fishery regulatory actions that either implement a new fishery management plan or significantly amend an existing plan. RIRs provide a comprehensive analysis of the costs and benefits to society of proposed regulatory actions, the problems and policy objectives prompting the regulatory

proposals, and the major alternatives that could be used to solve the problems. The reviews also serve as the basis for the agency's determinations as to whether proposed regulations are a "significant regulatory action" under the criteria provided in E.O. 12866 and whether proposed regulations would have a significant economic impact on a substantial number of small entities in compliance with the RFA. A regulation is significant if it a) has an annual effect on the economy of \$100 million or more or adversely affects in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments and communities; b) creates a serious inconsistency or otherwise interferes with an action taken or planned by another agency; c) materially alters the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or d) raises novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order. NOAA Fisheries Service has preliminarily determined that this action will not meet the economic significance threshold of any criteria.

E.O. 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low Income Populations

Executive Order 12898 requires federal agencies conduct their programs, policies, and activities in a manner to ensure individuals or populations are not excluded from participation in, or denied the benefits of, or subjected to discrimination because of their race, color, or national origin. In addition, and specifically with respect to subsistence consumption of fish and wildlife, federal agencies are required to collect, maintain, and analyze information on the consumption patterns of populations who principally rely on fish and/or wildlife for subsistence. This executive order is generally referred to as environmental justice (EJ). See Section 4.4 for a discussion of the expected EJ issues associated with this proposed action.

E.O. 12962: Recreational Fisheries

This Executive Order requires federal agencies, in cooperation with states and tribes, to improve the quantity, function, sustainable productivity, and distribution of U.S. aquatic resources for increased recreational fishing opportunities through a variety of methods including, but not limited to, developing joint partnerships; promoting the restoration of recreational fishing areas that are limited by water quality and habitat degradation; fostering sound aquatic conservation and restoration endeavors; and evaluating the effects of federally-funded, permitted, or authorized actions on aquatic systems and recreational fisheries, and documenting those effects. Additionally, it establishes a seven-member National Recreational Fisheries Coordination Council responsible for, among other things, ensuring that social and economic values of healthy aquatic systems that support recreational fisheries are considered by federal agencies in the course of their actions, sharing the latest resource information and management technologies, and reducing duplicative and cost-inefficient programs among federal agencies involved in conserving or managing recreational fisheries. The Council also is responsible for developing, in cooperation with federal agencies, States and Tribes, a Recreational Fishery Resource Conservation Plan - to include a five-year agenda. Finally, the Order requires NOAA Fisheries Service and the U.S. Fish and Wildlife Service to develop a joint agency policy for administering the ESA.

E.O. 13089: Coral Reef Protection

The Executive Order on Coral Reef Protection requires federal agencies whose actions may affect U.S. coral reef ecosystems to identify those actions, utilize their programs and authorities to protect and enhance the conditions of such ecosystems, and, to the extent permitted by law, ensure actions that they authorize, fund, or carry out do not degrade the condition of that ecosystem. By definition, a U.S. coral reef ecosystem means those species, habitats, and other national resources associated with coral reefs in all maritime areas and zones subject to the jurisdiction or control of the United States (e.g., federal, state, territorial, or commonwealth waters).

Regulations are already in place to limit or reduce habitat impacts within the Flower Garden Banks National Marine Sanctuary. Additionally, NOAA Fisheries Service approved and implemented Generic Amendment 3 for EFH, which established additional HAPCs and gear restrictions to protect corals throughout the Gulf (GMFMC 2010). There are no implications to coral reefs by the actions proposed in this amendment.

E.O. 13132: Federalism

The Executive Order on Federalism requires agencies in formulating and implementing policies, to be guided by the fundamental Federalism principles. The Order serves to guarantee the division of governmental responsibilities between the national government and the states that was intended by the framers of the Constitution. Federalism is rooted in the belief that issues not national in scope or significance are most appropriately addressed by the level of government closest to the people. This Order is relevant to FMPs, amendments, and rulemaking given the overlapping authorities of NOAA Fisheries Service, the states, and local authorities in managing coastal resources, including fisheries, and the need for a clear definition of responsibilities. It is important to recognize those components of the ecosystem over which fishery managers have no direct control and to develop strategies to address them in conjunction with appropriate state, tribes and local entities (international too).

No Federalism issues have been identified relative to the action proposed in this amendment. Therefore, consultation with state officials under Executive Order 12612 is not necessary.

E.O. 13158: Marine Protected Areas (MPA)

This Executive Order requires federal agencies to consider whether their proposed action(s) will affect any area of the marine environment that has been reserved by federal, state, territorial, tribal, or local laws or regulations to provide lasting protection for part or all of the natural or cultural resource within the protected area.

There are several marine protected areas, HAPCs, and gear-restricted areas in the eastern and northwestern Gulf (GMFMC 2010). 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 proposed action would not substantially 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. The action in the regulatory amendment would not affect any areas reserved by federal, state, territorial, tribal or local jurisdictions.

Essential Fish Habitat (EFH)

The amended Magnuson-Stevens Act included a new habitat conservation provision known as EFH that requires each existing and any new FMPs to describe and identify EFH for each federally managed species, minimize to the extent practicable impacts from fishing activities on EFH that are more than minimal and not temporary in nature, and identify other actions to encourage the conservation and enhancement of that EFH. To address these requirements the Council has, under separate action, approved an EIS (GMFMC 2004b) to address the new EFH requirements contained within the Magnuson-Stevens Act. Section 305(b)(2) requires federal agencies to obtain a consultation for any action that may adversely affect EFH. An EFH consultation was conducted for this action.

7 LIST OF PREPARERS

Name	Expertise	Responsibility	Agency
Dr. Steve Branstetter	Biologist	Review and Editing	SERO
Dr. Stephen Holiman	Economist	Economic and Social Analyses/Review	SERO
Ms. Cynthia Meyer	Biologist	Introduction , Purpose and Need, and FONSI, Environmental Consequences	SERO
Mr. Noah Silverman	NEPA Specialist	NEPA Coordinator	SERO

8 LIST OF AGENCIES CONSULTED

Gulf of Mexico Fishery Management Council
NOAA Southeast Fishery Science Center
NOAA SERO Protected Resources Division
NOAA SER General Counsel

9 LITERATURE CITED

GMFMC. 2011. Final Regulatory Amendment to the Reef Fish Fishery Management Plan to Set Total Allowable Catch for Red Snapper. Gulf of Mexico Fishery Management Council, 2203 North Lois Avenue, Suite 1100, Tampa, FL 33607. 58 pp with appendices.

GMFMC. 2010. Final Regulatory Amendment to the Reef Fish Fishery Management Plan to Set Total Allowable Catch for Red Snapper. Gulf of Mexico Fishery Management Council, 2203 North Lois Avenue, Suite 1100, Tampa, FL 33607. 78 pp with appendices.

GMFMC. 2007. Final Amendment 27 to the Reef Fish Fishery Management Plan and Amendment 14 to the Shrimp Fishery Management Plan. Gulf of Mexico Fishery Management Council, 2203 North Lois Avenue, Suite 1100, Tampa, FL 33607. 490 pp with appendices.

GMFMC. 2004a. Amendment 22 to the fishery management plan for the reef fish fishery of the Gulf of Mexico, U.S. waters, with supplemental environmental impact statement, regulatory impact review, initial regulatory flexibility analysis, and social impact assessment. Gulf of Mexico Fishery Management Council, 2203 North Lois Avenue, Suite 1100, Tampa, Florida 33607.

GMFMC. 2004b. Environmental Impact Statement for the Generic Essential Fish Habitat Amendment to the following fishery management plans of the Gulf of Mexico (Gulf): Shrimp Fishery of the Gulf of Mexico, Red Drum Fishery of the Gulf of Mexico, Reef Fish Fishery of the Gulf of Mexico, Stone Crab Fishery of the Gulf of Mexico, Coral and Coral Reef Fishery of the Gulf of Mexico, Spiny Lobster Fishery of the Gulf of Mexico and South Atlantic, Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic. Gulf of Mexico Fishery Management Council, 2203 North Lois Avenue, Suite 1100, Tampa, Florida 33607. 118 pp.

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SEDAR 7 Update. 2009. Stock Assessment of Red Snapper in the Gulf of Mexico - SEDAR Update Assessment. Report of the Update Assessment Workshop, SEFSC, Miami, Florida. 111 pp.

SEDAR 7. 2005. Stock assessment report of SEDAR 7 Gulf of Mexico Red Snapper. SEDAR (<http://www.sefsc.noaa.gov/sedar/>), Charleston, South Carolina. 480 pp.

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 to increase the recreational quota does not alter the manner in which the fishery is conducted. 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, should the quota not be met, 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 in that the increased quota allows harvest at the designated optimum yield level for the stock.

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 possible timing) in which the fishery is conducted. 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. 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. 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 increase the harvest of red snapper during a potentially altered time frame are 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 allow harvest at the designated optimum yield level during a potentially altered time frame.

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 gives NOAA Fisheries Service the authority to re-open the recreational red snapper season after September 30, 2011, and adjusts the 2011 total allowable catch for red snapper. These actions do not alter the overall manner in which the fishery is conducted, only the level of harvest and 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 of Mexico (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. The proposed actions would allow harvest at the optimum yield level and potentially allow such harvest 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 actions would give NOAA Fisheries Service the authority to re-open the recreational red snapper season after September 30, 2011, and increase the 2011 total allowable catch for red snapper harvest. These actions do not alter the manner in which the fishery is conducted. 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 is biologically neutral. Stock rebuilding would not be expected to occur substantially quicker if the quota were not allowed to be harvested. The proposed actions provide 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 expected to have significant impacts on 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 commercial sector has expressed concern that this temporary re-allocation of allowable catches sets a precedent for future re-allocation considerations, but they also recognize this is a limited increase in harvest. The proposed actions would ultimately provide greater flexibility to the recreational sector to harvest red snapper at the designated optimum yield level, and is expected to be perceived as an appropriate and favorable action. Conversely, the proposed actions 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. 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.

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 actions are 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 these actions 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, 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 actions allow a slightly increased harvest in accord with the established rebuilding plan, and would allow such harvest during a modified time frame. These do not constitute unique or unknown risks. NOAA Fisheries Service regularly adjusts quotas and re-opens fisheries when it has been determined such quotas are not met. 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.

Impacts of the Deepwater Horizon MC252 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, yet at this time, there is no specific information regarding these potential 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. 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. 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 seasonal closure to bottom fishing in Madison Swanson and Steamboat Lumps ecologically-critical areas. The Gulf of Mexico Fishery Management Council (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. 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?*

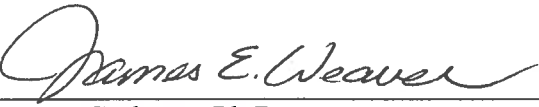
Response: No. The proposed action is being taken to ensure compliance with federal laws such as the Magnuson-Stevens Fishery Conservation and Management Act, and is not reasonably expected to threaten a violation of other Federal, State, local law, or requirements imposed for the protection of the environment.

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. The proposed actions would provide the authority to re-open the fishing season in 2011, and increase the total allowable catch for the red snapper reef fish fishery in accordance with the established rebuilding plan. 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. 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.

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

7/21/11
Date