

5/13/2013

Dr. Roy Crabtree
Regional Administrator
National Marine Fisheries Service
9721 Executive Center Drive North
St. Petersburg, FL 33702

Re: Minority Report for April 2013 Meeting of the GMFMC

Dear Dr. Crabtree:

As voting members of the Gulf of Mexico Fisheries Management Council (hereinafter "Council"), we are submitting this minority opinion under Section 302 of the Magnuson-Stevens Fishery Conservation and Management Act (hereinafter "Act") in response to two actions that were adopted at the April 2013 meeting of the Council. The two actions in question are:

1. An emergency rule that would remove the regulatory authority created by Section 2.13 Action 13 of Reef Fish 30B regarding the for-hire fleet which requires vessels with a Gulf of Mexico Charter Headboat Reef Fish Permit to fish by the stricter of federal or state regulations and replace it with the status quo alternative that was included in Amendment 30B of that section which is Action 13. Federal Regulatory Compliance; Alternative 1. No action. All vessels with federal commercial or charter reef fish permits are subject to applicable federal reef fish regulations when fishing in the EEZ, and are subject to applicable state reef fish regulations when fishing in state waters. (April 2013 Minutes of the GMFMC, p. 203).

And,

2. The motion is to recommend that the Secretary of Commerce rescind the emergency rule that established recreational closure authority specific to federal waters off individual states for the red snapper component of the reef fish fishery. (April 2013 Minutes of the GMFMC, p. 209).

The two actions adopted by the majority are contrary to the provisions of the Act in that implementation of regulations consistent with the actions approved by the majority would adversely affect some states (Alabama and Mississippi) more than others (namely,

Louisiana and Texas). In addition, the majority failed to follow and abide by recognized and established procedures for the adoption of rules by the Council.

Background

Red snapper within the Gulf of Mexico is a valuable natural resource important to many coastal communities and fishermen (both commercial and recreational) and desired by many consumers of seafood throughout the United States. Maximum access to this resource is dependent upon management measures which ensure catches remain at or below maximum sustainable yield. The National Marine Fisheries Service (NMFS) is designated responsibility to manage fisheries within waters of the Exclusive Economic Zone (EEZ) throughout the United States and its territories by the Secretary of Commerce as outlined in Act (MSFMCA). The MSFCMA also details the use of regional bodies made up of representatives from commercial and recreational fishing backgrounds, academia and the state marine fisheries management agencies located within the respective region. These bodies make fisheries decisions about how to best manage fisheries within the respective council's region for the NMFS.

Currently, red snapper within the Gulf of Mexico are not considered to be undergoing overfishing by NMFS. However, the stock is considered to be overfished and various management measures (e.g. quotas for each segment of the fishery, size limits, bag limits, defined fishing seasons, etc.) have been used by the Council to rebuild the stock and maintain the trajectory to fully rebuilt status. As the U.S. Gulf of Mexico red snapper stock is considered to be one stock the NMFS quantifies all sources of harvest regardless of where fish are caught within the stock's range and uses this information in the development of stock assessments. In order to meet the timeline for rebuilding the stock management of red snapper has relied upon cooperation from the Gulf States to create compatible fishing seasons, size limits and bag limits to those used by the NMFS in federal waters. Texas, since 1997, and Florida in 2008, are the only instances where states have not been compatible with federal regulations. Even with these exceptions, compatibility with federal seasons by the Gulf States, referred to as compliance, has in effect provided for equal access to the resource for fishers throughout the Gulf regardless of which state fishers departed from. This is due to the fact that the fishing season is calculated by dividing the average daily federal waters catch rate into the total quota after pounds for fish landed outside the federal season is deducted.

Even though fishers were able to harvest red snapper in state waters when the state season is open most of the historical Gulf red snapper harvest (since 1986) has occurred in federal waters.¹ From 2006-2011 (except landings from 2010) the amount of harvest from state waters Gulf-wide was 23.2%. Increasing the amount of time fishers can fish in state waters of non-compliant states will shift the dynamic in the red snapper fishery and significantly alter how fish are accessed. From 2006-2011 (except 2010), harvest of red snapper from state waters in Alabama and Mississippi accounted for only 5.9% of the total pounds of fish landed in the two states. This figure indicates how significant the

¹ Scoping Document for Amendment 39 to the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico. Gulf of Mexico Fishery Management Council Special Reef Fish Committee meeting, Jan. 2013, Tab SP, No. 6(a).

adjacent federal waters are to fishers within Alabama and Mississippi and reductions in the number of days to fish in federal waters caused by another state(s) being non-compliant would have an inequitable and unfair impact on those fishers, a violation of National Standard 4. Fishers in Alabama and Mississippi would be unfairly treated because they rely upon access to the resource in federal waters at rates higher than fishers in other state(s). Although, the combined Gulf coastline of Alabama and Mississippi accounts for 7.4% of the U.S. Gulf coast, fishers within these two states account for 41.2% of total landings (2006-2011, except 2010). Furthermore, Alabama and Mississippi fishers accounted for 39.9% of all recreational fishing trips with reported red snapper harvest.

The 2013 federal red snapper season was projected to be 28 days if all states were compliant.² However, Louisiana declared an 88-day fishing year in state waters and Florida has voted on a 44-day state fishing season. Texas continues to remain non-compliant. The non-compliance of these states resulted in an estimated reduction of the federal season by six days (21%) for Alabama and Mississippi. The loss of these days will result in economic hardship within the coastal communities of Alabama and Mississippi which to this point is not estimated. The reduced number of days to fish off Alabama and Mississippi also exacerbates the derby fishing conditions and increases the chances fishers will fish in inclement weather.

Besides the issue of fairness and equality, there is a need for compliance by our member states to ensure that the rebuilding program continues. A lack of compliance could create a situation of additional overharvest contributing to negative effects in the rebuilding process which could lead to an overfished situation.

Violation of National Standards of the Act

The red snapper resource of the Gulf of Mexico is a valuable and renewable natural resource dependent upon a quality environment and management measures that ensure their maximum sustainable yield. The Gulf of Mexico red snapper stock, however, is in an overfished condition that requires stringent management measures to rebuild the stock. Currently the stock is not undergoing overfishing and is in the rebuilding process. This process has required specific management measures to ensure that the population is rebuilt and sustained at the proper level. These management measures include: quotas for each segment of the fishery (i.e., commercial and recreational), size limits, bag limits, seasons, and more. In order to more accurately account for fishing pressure from for-hire vessels, the Council previously adopted Reef Fish Amendment 30B requiring all vessels with federal commercial or charter reef fish permits to abide by the regulations set for the

² Gulf-wide and State-specific projected 2013 red snapper federal season closure dates. NOAA Fisheries Service. March 19, 2013. SERO-LAPP-2013-002, http://sero.nmfs.noaa.gov/sustainable_fisheries/gulf_fisheries/red_snapper/documents/pdfs/2013_red_snap_per_emergency_regs.pdf

reef fish by the NMFS Regional Administrator. At the February 2013 meeting of the Council an emergency measure was approved granting the NMFS Regional Administrator the authority to close the EEZ adjacent to a noncompliant state. (February 2013 Minutes of GMFMC, p. 187).

Despite the need to alleviate the overfished condition of the red snapper in the Gulf of Mexico, there has been less than full cooperation by some states. For a number of years Texas has not complied with the red snapper fishery management plan approved by the Council. This non-compliance has led to red snapper harvests that exceed the recreational quotas established by the Council. To account for the non-compliance by Texas the length of the recreational red snapper season has been reduced across the entire Gulf of Mexico. Texas' non-compliance has adversely affected the other four states that comprise the Council. Louisiana has now decided to join Texas in non-compliance thus creating a situation that will lead to additional over harvest, cause detrimental effects to the rebuilding process and potentially result in the overfishing of red snapper in the Gulf.

The two actions identified above will not alleviate overfishing. To the contrary, the actions of the majority will contribute to the overharvesting of red snapper in the Gulf of Mexico and result in a reduced recreational red snapper season for states that remain in compliance with the federal regulations.

The complained of actions by the majority:

- (1) Will result in overfishing or even return to an overfished stock - a violation of National Standard 1;
- (2) Was not based on the best scientific information available - a violation of National Standard 2;
- (3) Thwarts efforts to promote compliance and to manage the red snapper stock as a unit - a violation of National Standard 3;
- (4) Will result in a reduction in the number of days for the recreational red snapper season in the EEZ and thereby adversely affect the citizens of the states of Alabama and Mississippi - a violation of National Standard 4;
- (5) Increases the cost of management and enforcement - a violation of National Standard 7; and
- (6) Will exacerbate derby fishing conditions which do not promote the safety of human life at sea - a violation of National Standard 10.

Procedural Deficiencies

Section 302(i) of the Act provides, in part, that "The published agenda of the meeting may not be modified to include additional matters for Council action without public

notice or within 14 days prior to the meeting date, unless such modification is to address an emergency action under section 305(c), in which case public notice shall be given immediately." The published agenda for the April 2013 meeting of the Council did not contain any reference for actions on "Section 2.13 Action 13 of Reef Fish 30B" or to "rescind the emergency rule that established recreational closure authority specific to federal waters off individual states for the red snapper component of the reef fish fishery" and no public notice was issued in accordance with Section 302(i).³ Considering the totality of the circumstances, no notice of the actions of the majority was given to the public or even to the minority members of the Council.

The Council's Administrative Handbook and the Statement of Organization Practices and Procedures provide that "Meetings will generally be conducted in accordance with Roberts Rules of Order, Newly Revised." (GMFMC Administrative Handbook Section VIII.D.2.; GMFMC SOPP Sec. 3.2.5). Roberts Rules of Order requires advance notice of motions to rescind actions taken at a prior meeting. Again, no such advance notice was provided by the majority. (See Robert, Henry M. (2000). *Robert's Rules of Order Newly Revised*, 10th ed., p. 293-299 (RONR)). Roberts Rules of Order provides that if no advance notice is given, then adoption of the motion requires a two-thirds vote or the vote of a majority of the entire membership of the voting body.⁴ At the time that the Council considered the two actions complained of there were only 15 members present. A two-thirds vote would have required 10 members to vote for the motions to pass. If the entire Council had been present, the motions would have required 9 votes.

Section 305(c) of the Act addresses Emergency Actions and provides:

(c) EMERGENCY ACTIONS AND INTERIM MEASURES.--

(1) If the Secretary finds that an emergency or overfishing exists or that interim measures are needed to reduce overfishing for any fishery, he may promulgate emergency regulations or interim measures necessary to address the emergency or overfishing, without regard to whether a fishery management plan exists for such fishery.

(2) If a Council finds that an emergency or overfishing exists or that interim measures are needed to reduce overfishing for any fishery within its jurisdiction, whether or not a fishery management plan exists for such fishery--

³ Admittedly, at the beginning of the April 2013 meeting one of the Council members added to the agenda "some discussion on the emergency rule that the council passed at the last council session." (April 2013 Minutes of the GMFMC, p.5). However, there was no indication that the Council would be taking any "action" nor was there any indication that an emergency rule would be implemented or action to rescind previously adopted regulations.

⁴ Advance notice and super-majority passage are required to avoid internecine warfare. Without these procedural protections members would leave the room for coffee (or to catch an early flight) at the peril of having a faction of the Council waiting for an opportunity to undo previously approved regulations.

(A) the Secretary shall promulgate emergency regulations or interim measures under paragraph (1) to address the emergency or overfishing if the Council, by unanimous vote of the members who are voting members, requests the taking of such actions; and

(B) the Secretary may promulgate emergency regulations or interim measures under paragraph (1) to address the emergency or overfishing if the Council, by less than a unanimous vote, requests the taking of such action.

The two complained of actions taken by the majority were not justified as "an emergency" and the actions were not designed to prevent overfishing. In addition, a "unanimous vote" of the voting members of the Council did not occur. In the absence of a "unanimous vote," the adoption of any emergency regulation by the Secretary is purely discretionary.

Considering all of the foregoing, the below listed members of the Council urge the Secretary to reject the complained of actions of the majority.

Respectfully submitted on this the 13th day of May, 2013.

Representatives to the GMFMC from the State of Alabama:



Kevin J. Anson

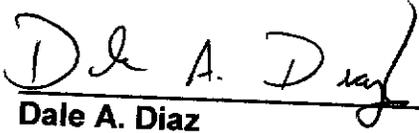


Robert L. Shipp, PhD.



John R. Greene

Representatives to the GMFMC from the State of Mississippi:



Dale A. Diaz



William S. Perret