UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE
Southeast Regional Office
263 13th Avenue South
St. Petersburg, Florida 33701-5505
http://sero.nmfs.noaa.gov

SER 24:SB

Mr. Doug Boyd, Chairman
Gulf of Mexico Fishery Management Council
2203 North Lois Avenue, Suite 1100
Tampa, Florida 33607

MAY 14 2013

Dear Mr. Boyd:

Thank you for your letter of April 25, 2013, requesting, on behalf of the Gulf of Mexico Fishery Management Council (Council), that regulations associated with Amendment 30B to the Fishery Management Plan for Reef Fish Resources of the Gulf of Mexico (FMP) be removed via emergency rulemaking prior to the June 1, 2013, start of the recreational red snapper fishing season. The regulation in question, 50 CFR 622.20(b)(3) (commonly referred to as the 30B rule), requires federally permitted for-hire vessels to comply with stricter federal regulations for reef fish when fishing in state or federal waters. Thus, when states have less restrictive fishing seasons than those provided by federal regulations, these permitted vessels cannot harvest or possess a species in state waters if federal waters are closed to the harvest of that species.

Neither the Council discussion at the April 2013 meeting nor your letter addressed the full range of issues associated with this request. Measures contained in Amendment 30B, in effect since 2009,[1] apply to both commercial and for-hire vessels fishing for all reef fish species. Your request asks NOAA Fisheries to rescind the restriction on federally permitted for-hire vessels, but the discussion at the meeting and the concerns identified in your letter contain no mention of the commercial sector, and how it is fair and equitable to all fishermen to remove the restrictions only on for-hire vessels. There may be very reasonable justifications for treating the different sectors differently in this regard, but no such justification has been offered. Similarly, the regulations apply to all federally managed reef fish species, but the discussions at the meeting and the concerns identified in your letter focus exclusively on red snapper. It is unclear how red snapper issues alone support removing a restriction applicable to all species in the reef fish FMP; no justification is provided regarding the need for emergency action for other reef fish species.

Your letter states that the 30B rule places an unfair burden on for-hire vessels and their customers that is not placed on anglers who fish from private vessels, presenting a serious conservation and management problem in the fishery. In fact, removing the 30B rule would exacerbate the conservation and management issues that led some states to take actions that have created the disparity. The current situation now exists because certain states chose to adopt less restrictive recreational red snapper fishing seasons. The states did so with a full understanding of the impacts on the for-hire sector as a result of the 30B rule. These impacts were foreseeable when the Council voted 16 to 1 in favor of the action in August 2008. To compensate for the additional state-water harvest resulting from the state's actions, NOAA Fisheries must shorten

[1] 74 FR 17603 (April 16, 2009).

the federal fishing season, whether region-wide or state-by-state. At the February 2013 meeting, NOAA Fisheries informed the Council that the recreational sector would reach its quota even more quickly if the 30B rule were rescinded, requiring a further restriction of the federal season,[2] which would impose additional adverse impacts on *all* recreational vessels harvesting reef fish in federal waters.

Rescinding the 30B rule also would exacerbate conservation concerns. The final rule implementing Amendment 30B notes the importance of state cooperation in achieving the harvest and fishing mortality reductions needed to end overfishing and rebuild overfished stocks, as required by the Magnuson-Stevens Fishery Conservation and Management Act. The final rule for Amendment 30B (see footnote 1 for citation) notes that federal regulations assume that Gulf states will implement consistent federal regulations. Removing the provision eliminates a strong incentive for states to implement consistent regulations in state waters. Given that consistent measures are an important part of effective management and enforcement, removing the provision would be counter-productive. If inconsistent state regulations lead to overages, then subsequent more stringent federal regulations would result in much larger adverse economic effects on federally permitted for-hire vessels, whether or not they also fish in state waters. The implementing regulations also explain that the 30B requirement does not preclude for-hire operators from fishing in state waters under state regulations if different from federal regulations. A vessel owner could relinquish their federal permit and no longer be subject to the restriction, but would no longer be afforded the opportunity to conduct the activities authorized by their federal permit.

Your letter suggests the benefits associated with immediately addressing the disparate impacts on for-hire vessels versus private recreational anglers outweighs the value of advance notice and more deliberative consideration of the expected impacts of the action. NOAA Fisheries does not share this view. While the 30B rule has become increasingly controversial in recent years as the recreational red snapper season has become increasingly shorter, many have still expressed support for the provision based on a more complete understanding of the impacts associated with rescinding the rule. The Council's emergency rule request was discussed in the closing minutes of the April 2013 Council meeting, and the discussion was not informed by any meaningful analysis or a thorough consideration of the facts. NOAA Fisheries suggests that any future action to rescind the 30B rule is more appropriately addressed through the normal rulemaking process and a much more informed and deliberate consideration of the underlying facts and potential impacts.

Your letter states, at the time the Council requested the current emergency rule (February 8, 2013), the impact of that rule on the federal recreational red snapper season was unknown. The letter indicates the Council expected state-specific seasons to differ, but that the final seasons resulting from the rule are unexpectedly short. According to the letter, the Council's requested emergency action is warranted and complies with existing policy guidelines for the use of emergency rules[3] because these facts constitute recent and unforeseen events, or recently discovered circumstances, as envisioned under the policy guidelines.

---

[2] Pages 197-198 and 201-202 of the February 2013 Council meeting minutes.
[3] 62 FR 44421

NOAA Fisheries has determined that this conclusion is not supported in the record. When requesting the current emergency rule, the Council was aware the federal recreational red snapper season would be substantially shorter if states enacted less restrictive seasons in their state waters. NOAA Fisheries provided preliminary estimates of the federal seasons at the October 2012 Council meeting. This presentation[4] indicated certain states would have substantially reduced federal seasons under certain scenarios, including as few as zero days open in federal waters.[5] A similar presentation[6] made to the Council's Reef Fish Committee (Committee) during its special January 2013 meeting indicated the federal season could be as short as two weeks,[7] prompting the discussion that led the Committee to recommend the current emergency rule to the Council. Also, when the Council was considering the emergency rule at its February 2013 meeting, NOAA Fisheries advised the Council that the federal season off Texas could be as short as 11 days and Louisiana's federal season could be as short as 1-2 weeks,[8] and the Council further discussed this information during its deliberations at the meeting.[9]

Thus, the statement in your letter that the shortened seasons resulting from the current emergency rule constitute recent and unforeseen information is unsupported. Both Committee- and Council-level discussions and conclusions regarding the emergency rule were driven by the understanding that the federal recreational red snapper season would be shortened to compensate for less restrictive state-water regulations and motivated by a desire to ensure those additional restrictions were fair and equitable to all participants in the recreational sector. NOAA Fisheries made it clear in those discussions that federal seasons off some non-compliant states could be only 1-2 weeks or shorter, based on the information the agency had at that time.

Additionally, NOAA Fisheries does not have sufficient time to implement an emergency action prior to the June 1, 2013, recreational red snapper fishing season. As an example of the time needed to implement an emergency rule, NOAA Fisheries staff initiated activities to implement the current emergency rule on January 10, 2013, immediately after the Reef Fish Committee voted to recommend the action for Council consideration at its February 2013 meeting. That rule was available for the Council's review at its February meeting, and published on March 25, 2013, 74 days after initiation of development. There is much less time in which to implement this requested rulemaking and no supporting analysis or documentation has been prepared beyond what is contained in the Council's request.

Finally, announcing a substantive change in the federal season length immediately prior to the June 1 season opening would be seriously disruptive to the for-hire industry and private anglers who have planned to vacation in Gulf states. Preliminary data indicate the 2013 federal season would be reduced to zero off Texas and considerably shortened off of Florida and Louisiana under the status quo management regime, if NOAA Fisheries rescinded the 30B rule. In addition to rescinding the 30B rule, the Council also has asked NOAA Fisheries to rescind the current

---

[4] Tab B Number 13 in the October 2012 Council briefing book.

[5] Pages 107-108 of the October 2012 Council minutes and pages 91-98 in the October 2012 Reef Fish Committee Report.

[6] Tab SP Number 3(b) in the January Reef Fish Committee briefing book.

[7] Pages 22-28 in the January 2013 Reef Fish Committee Report.

[8] Pages 167-168 and 185-186 of the February 2013 Council meeting minutes.

[9] Pages 170, 175, 177, 196 and 198, among others, of the February 2013 Council meeting minutes.

emergency rule. If both these requests were approved, preliminary data indicate the federal season would be reduced to 13 days Gulf-wide.

In summary, NOAA Fisheries finds the Council's requested action to rescind the 30B rule is not warranted and would not be feasible to implement before the start of the June 1, 2013, recreational red snapper fishing season. The Council has failed to compellingly document that the action is consistent with the Magnuson-Stevens Fishery Conservation and Management Act, other applicable law, and NOAA Fisheries' policy guidelines for the use of emergency rules. Further, the Council has not presented sufficient rationale in support of the request, including how the stated benefits of the requested action justify the associated adverse impacts, and has not demonstrated that it understands the full impacts of the request.

Sincerely,

Roy E. Crabtree, Ph.D.
Regional Administrator