

COASTAL CONSERVATION ASSOCIATION

COMMENTS AND RECOMMENDATIONS ON GULF COUNCIL GAG AND RED GROUPE MANAGEMENT

1. INTRODUCTION

The Gulf of Mexico Fishery Management Council has proposed inequitable reductions in gag grouper take. These proposals brought opposition from hundreds of anglers and divers at the Council's January 30 Public hearing. The Council is proposing a forty five percent reduction in gag take. This results in recreational fishers being limited to only one gag grouper in a three fish aggregate bag limit. Fishing for all groupers will be closed to recreational take from January 15 to April 15. These severe restrictions on recreational fishers are being proposed while commercial fishers retain their 6,000 pound trip limit of any grouper, and have only a one month closure during the spawning aggregation period.

In addition, the federal Council is expediting the implementation of a program which will transfer the exclusive right of access to more than one half of the Gulf grouper into the hands of a limited number of commercial fishermen. The program is called an Individual Fishable Quota (IFQ).

CCA opposes the Council's preferred alternative for bag limits and seasons, opposes the commercial IFQ for grouper, and requests the development of management measures that fairly and equitably distribute the impacts of the quota reduction between the sectors.

2. RECOMMENDATIONS

- CLOSE COMMERCIAL TAKE FROM JANUARY 15 TO APRIL 15, THE PRIMARY GAG SPAWNING AGGREGATION MONTHS

The commercial industry is being allowed to target gag grouper spawning aggregations. Gag grouper have definite spawning aggregation months and are subject to directed and concentrated commercial effort on the spawning aggregations.

Such closures may have a positive impact on the percentage of males in the population, an issue which has been identified as a concern. Males are more aggressive feeders in aggregations and are, thus, more subject to exploitation.

All recreational take will be prohibited from January 15 through April 15 even though it is highly unlikely that recreational fishers will travel 50 to 80 miles offshore for a single fish. The commercial fishers will only have a one month closure. The one month closure did not reduce commercial take when it was

adopted several years ago because commercial fishers intensified their efforts on either side of the closure. In addition, new commercial quotas start again annually on January 1 at the beginning of the spawning season. The commercial boats will be able to hammer the gag spawning aggregations with a new annual quota and 6,000 pound trip limits.

- **OPPOSE PUBLIC RESOURCE GIVE AWAY – GROUPEL IFQ PROGRAM**
The IFQ Program will allocate and give exclusive right of access to more than half of all the Gulf grouper, to a limited number of commercial interests. The commercial fishers will be able to take, sell, lease, or broker the grouper quota shares. There are only a few hundred commercial fishermen in this fishery. Within that total a much smaller number of participants, such as the longline boats, take a disproportionate amount of the fish. The allocation of the quota greatly advantages this group already. CCA is opposed to locking up access to a public resource in a small number of individuals until there is a reallocation of the resource that fairly and equitably distributes the benefits of the fishery.
- **PROHIBIT COMMERCIAL LONGLINES OUT TO 50 FATHOMS AND MODIFY RED GROUPEL ALLOCATION**
The federal waters off of Florida's west coast are the only areas in the Gulf where commercial bottom longlining is allowed inside of 50 fathoms. Off of Texas, Louisiana, Mississippi and Alabama, bottom longlining is prohibited out to 50 fathoms. Off of Florida longlining is prohibited out to only 20 fathoms.

In 2001, the Florida Fish and Wildlife Conservation Commission (FWC) urged the feds to prohibit bottom longlining out to 50 fathoms. The Gulf Council voted overwhelmingly to support the recommendation. The NMFS withheld action for several months, determined that the red grouper resource was not in as bad a condition as it thought it was, and rejected the 50 fathom recommendation. CCA supports a 50 fathom closure off the State of Florida.

In 2005, The Florida FWC urged the feds to re-examine the red grouper allocation. No action was taken. So the FWC asked again in 2007 to revisit the allocation. A prime example of inequitable allocation is red grouper in the Gulf of Mexico. The federal process has determined that as much as 81% of the red grouper harvest should be taken by commercial interests. Recreational fishers have been continuously reduced to the point where the recreational bag limit is only one fish, with an added one month closure. CCA filed a lawsuit in 2005 against NMFS when it attempted to enact Interim Rules to close the entire Gulf of Mexico to all recreational take, for all groupers, for three months. CCA won the lawsuit and only red grouper was limited. During the lawsuit, it was shown that commercial longline boats take the majority of the commercial allocation of red grouper. It was also shown that just 25 commercial longline boats took more red grouper than what was allocated to all the recreational fishers in the entire Gulf of Mexico!

Years have passed and the Gulf recreational red grouper bag limit is still only a single fish. Commercial longline boats continue to take thousands of pounds per trip and up to 81% of the total take is still allocated to the commercial industry.

The Magnuson – Stevens Fishery Conservation and Management Act states that allocation of fisheries must be “fair and equitable”. This standard has to be judged against the impact of the allocation on individual sectors in the fishery. Specifically, the law defines “fishery” to mean “one of more stocks of fish which can be treated as a unit for purposes of conservation and management and which are identified on the basis of geographical, scientific, technical, **recreational**, and economic characteristics.” (*emphasis added*). The Act requires any fishery management plan or plan amendment to “include a description of the commercial, recreational, and charter fishing sectors which participate in the fishery...” and “to the extent that rebuilding plans or other conservation and management measures which reduce the overall harvest in a fishery are necessary, allocate, taking into consideration the economic impact of the harvest restrictions or recovery benefits on the fishery participants in each sector.”

The proposed allocation and closure for the recreational sector does not properly reflect the significant fishery participants in the recreational sector. The allocation and harvest restrictions are inconsistent with the clear intent of the law to provide a fair and equitable distribution of the fishery resource. It certainly is not fair or economic to restrict the participation of hundreds of thousands of citizens while preserving a small and increasingly uneconomic commercial fishery.

- **LIMIT RECREATIONAL CLOSURES TO GAG GROUPER ONLY – THE CLOSURE OF ALL RECREATIONAL TAKE OF ALL GROUPERS IS UNWARRANTED.**

The measure to close all recreational grouper fishing for three months to reduce take of one species is a repeat of the same NMFS action that occurred in 2005 on red grouper. NMFS moved to enact Interim Rules to close all recreational fishing for all groupers to protect red grouper from overfishing. The FWC opposed the NMFS rule and requested red grouper be limited to one fish with no closures. NMFS rejected the FWC’s request and was met with a lawsuit from CCA and others. The federal judge ruled that only reds should be closed, not all groupers. The next stock assessment determined that red grouper had not been overfished. The action is unwarranted because there is no indication that the impact on other reef fish that are not being overfished is a problem. NMFS is imposing the maximum economic impact on the recreational fishery to save fish that are not overfished. There is no rational for that.

- **PROTECTION LEVELS AND RESOURCE GOALS**

The requirement to prevent overfishing and rebuild stocks within two years of identifying the fishery as overfished does not go into place until 2010 at the earliest. NMFS has the discretion to mitigate the impacts of these measures through the use of existing flexibility in the statute. CCA would like the agency to consider how it can mitigate these impacts while achieving the objective of stopping overfishing. For example, forty percent SPR is used as one of the proxies to develop management goals for gag grouper, which is high resource protection goal. What is the impact of using 35% SPR as the proxy? Is it a valid conservation goal? Is it allowable under the Magnuson Act? What is the amount of catch reduction needed for 35% versus 40%? An analysis of the bag limit and

season closures that would result from a 35% SPR proxy versus the proposed 40% should be evaluated. What would the impact be of preventing a commercial catch of spawning male gag groupers? There needs to be more analysis here rather than simply closing recreational fisheries.

- **OPPOSE CREATION OF ADDITIONAL MARINE PROTECTED AREAS (MPA) OR EXPANTION OF EXISTING MPA'S.**
There is no evidence that the current MPA's have had any measurable impact on Gulf gag grouper stocks. The far offshore location of the closed areas creates numerous enforcement problems. Protecting spawning aggregations from large scale commercial take can be better accomplished with spawning month closures which can be enforced throughout the range of the fishery and at dockside.
- **DEVELOP REASONABLE AND COMPARABLE RECREATIONAL BAG LIMITS AND COMMERCIAL TRIP LIMITS**
A fishery that requires a 45 percent reduction in total take can not sustain a large scale commercial and recreational fishery. What is the commercial trip limit comparable to the 3 fish aggregate recreational bag limit? It is certainly not the current 6,000 pound trip limit. The Council must develop bag limits, trip limits, and closed seasons that fairly and equitably distribute the benefits and hardships in this fishery. A three fish bag limit and a 6000 pound trip limit simply doesn't do that.
- **CLOSING COMMENT ON PUBLICLY OWNED RESOURCES**
Robert Hayes, CCA Legal Counsel, states that "On the argument that the U.S. federal government is the steward of the resources for all its citizens and the commercial fishermen is providing consumers access to that resource, the U.S. is the steward of all of its resources – sunfish, ducks, deer, and striped bass – all of them. The concept that a private commercial enterprise is necessary to provide the public with the enjoyment of those resources by selling them to consumers so they can eat them was rejected by the federal government and state wildlife managers before 1900. There is no basis in any federal common law, any wildlife law or the constitution for such proposition. Anybody making this argument should be asked to provide some authority for it."

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