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L. Scott Jackson  
University of Florida - IFAS  
Florida Sea Grant Extension Programs  
Bay County Extension  
2728 E. 14th Street  
Panama City, FL 32401-5022

Re: Rules Related to Fish Venting (NSGLC-12-04-02)

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Dear Scott,

Below is the summary of research of the National Sea Grant Law Center regarding the question you posed to us about whether federal regulations require fishermen to vent every reef fish they catch or only those that show signs of barotrauma. The following information is intended for informational purposes only and does not constitute legal representation of Florida Sea Grant or its constituents. It represents our interpretation of the relevant laws, regulations, and cases.

Regulations relating to the venting of reef fish were first proposed by the Gulf of Mexico Fishery Management Council in 2007 as part of Amendment 27 to the Reef Fish Fishery Management Plan. Upon approval of Amendment 27, NOAA issued regulations implementing the Reef Fish FMP. Those regulations included the following provision:

At least one venting tool is required and must be used to deflate the abdominal cavities of Gulf reef fish to release the fish with minimum damage. This tool must be a sharpened, hollow instrument, such as a hypodermic syringe with the plunger removed, or a 16-gauge needle fixed to a hollow wooden dowel. A tool such as a knife or an ice-pick may not be used. The venting tool must be inserted into the fish at a 45-degree angle approximately 1 to 2 inches (2.54 to 5.08 cm) from the base of the pectoral fin. The tool must be inserted just deep enough

to release the gases, so that the fish may be released with minimum damage.<sup>1</sup>

As I interpret this regulation, it does not require a fisherman to pierce and vent the swim bladder of every reef fish caught and released. Rather, it simply requires fishermen to have a specific type of venting tool on board at all times and use that tool if necessary “to deflate the abdominal cavities.” If a reef fish’s abdominal cavity is not inflated, there would be no need to deflate it and hence no requirement to use a venting tool. Only if venting were necessary would the regulation require the use of a venting tool that can deflate the swim bladders of Gulf reef fish with minimum damage.

Guidance documents and informational resources promoted by NMFS and the Gulf of Mexico Fishery Management Council also support this conclusion. In 2008, the National Marine Fisheries Services issued a “Frequently Asked Questions” fact sheet on the new gear regulations for the Gulf reef fish fishery.<sup>2</sup> NMFS instructs fishermen to carefully assess the condition of the fish to determine whether a reef fish needs to be vented. According to NMFS, “If the fish is bloated and floats (is unable to control its buoyancy) or if the fish’s stomach is distended from the mouth, the fish requires venting. If the fish appears normal, not bloated, and appears like it would be able to swim down to the depth where it lives, venting is not necessary.”<sup>3</sup> The Gulf of Mexico Fishery Management Council’s website directs interested parties to an informational brochure prepared by the Florida Sea Grant, which also provides guidance on how to determine which fish to vent.<sup>4</sup>

The related question you posed regarding whether fishermen could use newly developed recompression tools, like the Seaqualizer, is more difficult. The developers of the Seaqualizer claim that their device allows a fisherman to “return the fish to a sufficient survival depth without puncturing or injuring the fish.”<sup>5</sup> The federal regulation, however, expressly mandates the use of a “sharpened, hollow instrument, such as a hypodermic syringe with the plunger removed, or a 16-gauge needle fixed to a hollow wooden dowel.” A venting tool that does not meet this definition presumably cannot be used to treat and release a fish suffering from the effects of barotrauma.

The Gulf of Mexico Fishery Management Council sought to mandate use of venting tools when harvesting red snapper because preliminary data from a Mote Marine Laboratory study suggested “that venting increases survival in red snapper caught in deep water.”<sup>6</sup> The GMFMC “believed that venting, when properly executed, could increase survival of released fish” and “reduce predation on red snapper and other bycatch species.”<sup>7</sup> If studies have revealed that recompression tools are equally effective in increasing the survival of released fish, the GMFMC may wish to revise its Reef Fish FMP to allow for their use. NOAA would then amend its regulations to align with the amended FMP. Regulatory changes are a lengthy process, as both the Council’s FMP amendments and NOAA regulations would

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<sup>1</sup> 50 C.F.R. § 622.4(m)(3).

<sup>2</sup> NOAA FISHERIES SERVICE, SOUTHEAST REGIONAL OFFICE, NEW REGULATIONS REQUIRING CIRCLE HOOKS, DEHOOKING DEVICES, AND VENTING TOOLS FOR GULF OF MEXICO REEF FISH EFFECTIVE JUNE 1, 2008: FREQUENTLY ASKED QUESTIONS (March 2008), available at <http://sero.nmfs.noaa.gov/sf/pdfs/Discard%20Mortality%20FAQ.pdf>.

<sup>3</sup> *Id.*

<sup>4</sup> JOHN STEVELY, DON SWEAT, CHUCK ADAMS, RICH NOVAK, VENTING: A GUIDE TO RELEASING REEF FISH WITH RUPTURED SWIMBLADDERS (Oct. 2011); *see also* <http://www.flseagrant.org/fish-venting>.

<sup>5</sup> <http://theseaqualizer.com/SeaQualizer/Welcome.html>.

<sup>6</sup> *See*, GULF OF MEXICO FISHERY MANAGEMENT COUNCIL, FINAL AMENDMENT 27 TO THE REEF FISH FISHERY MANAGEMENT PLAN AND AMENDMENT 14 TO THE SHRIMP FISHERY MANAGEMENT PLAN, 31 (June 2007).

<sup>7</sup> *Id.* at 32-33.

be subject to public notice and comment. Without a change to the regulatory definition in § 622.4(m)(3), however, recompression tools may not be used. Until that time, reef fish must be vented with a “sharpened, hollow instrument.”

I hope you find this information useful. Please let me know if you have follow-up questions or need additional information.

Sincerely,

Handwritten signature of Stephanie Showalter Otts in cursive script.

Stephanie Showalter Otts  
Director, National Sea Grant Law Center