

RED SNAPPER ACT

NOVEMBER 27, 2018.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. BISHOP of Utah, from the Committee on Natural Resources, submitted the following

R E P O R T

together with

DISSENTING VIEWS

[To accompany H.R. 3588]

[Including cost estimate of the Congressional Budget Office]

The Committee on Natural Resources, to whom was referred the bill (H.R. 3588) to amend the Magnuson-Stevens Fishery Conservation and Management Act to provide for management of red snapper in the Gulf of Mexico, and for other purposes, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

PURPOSE OF THE BILL

The purpose of H.R. 3588 is to amend the Magnuson-Stevens Fishery Conservation and Management Act to provide for management of red snapper in the Gulf of Mexico.

BACKGROUND AND NEED FOR LEGISLATION

The red snapper is a species of fish found in the South Atlantic and the Gulf of Mexico with a known range in the United States from the Carolinas to Texas.¹ These can be large fish, growing upwards of 40 inches and 50 pounds, and can have a lifespan of over 50 years.² Categorized as “reef fish,” typical adult red snapper

¹ FishWatch, National Oceanic and Atmospheric Administration (NOAA): Red Snapper, (Feb. 28, 2014).

² *Id.*

habitat is on the bottom of the ocean usually near reefs, rocks, ledges and caves.³

According to the National Oceanic and Atmospheric Administration (NOAA), red snapper has been caught in the Gulf of Mexico since at least the mid-1800s.⁴ Since then, red snapper has become a highly sought-after species by both commercial and recreational fishermen in the area. In 1979, the Gulf of Mexico Fishery Management Council (Council) created its “Reef Fish Management Plan” which included red snapper.⁵ An integral part of this program was new and intensive restrictions on commercial and recreational catches to help rebuild the declining stock.⁶

The Magnuson-Stevens Fishery Conservation and Management Act of 1996 (Public Law 94–265) contained components addressing bycatch and rebuilding overfished fisheries.⁷ In the spring of 1998, the Council passed an amendment to require bycatch reduction devices (BRD) in federal waters for shrimp trawls that were inadvertently catching red snapper in their shrimp nets.⁸ With the BRD requirement in place, the recovery of red snapper was premised on closed seasons, commercial quotas, recreational bag limits, size limits and effective reduction in bycatch due to BRDs. The introduction of BRDs in 1998 allowed recreational and commercial anglers to roughly split a 9.12 million-pound annual Total Allowable Catch.⁹

A 2005 NOAA assessment found that the stock had failed to meet certain improvement targets mandated by the rebuilding plan.¹⁰ This assessment resulted in further quota reductions, which reached an all-time low in 2011 when the recreational and commercial quota was set at five million pounds combined.¹¹ However, the quotas have increased since then, with an all-time high quota set at 14.3 million pounds for 2015.¹²

Because the red snapper is a federally managed species under the Magnuson-Stevens Fishery Conservation and Management Act, the recreational and commercial quotas for red snapper in federal waters are ultimately determined by the Council, which consists of members of the recreational, commercial, and charter-for-hire fisheries as well as a representative from each of the five Gulf States (Texas, Louisiana, Mississippi, Alabama and Florida), NOAA, and the U.S. Fish and Wildlife Service. The red snapper commercial fishery is managed under an Individual Fishing Quota program for all federally permitted vessels.¹³ The federal recreation season is set in terms of days, with the Council setting a recreational quota

³ *Id.*

⁴ NOAA Fisheries, Southeast Regional Office: Gulf Fisheries.

⁵ Gulf of Mexico Fishery Management Council: *Environmental Impact Statement and Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico*, August 1981.

⁶ *Id.*

⁷ P.L. 104–297, approved October 11, 1996.

⁸ Gulf of Mexico Fishery Management Council: *Regulatory Amendment to the Reef Fish Fishery Management Plan for the 1998 Red Snapper Total Allowable Catch and the Recreational Bag Limit*, February, 1998.

⁹ *Coastal Conservation Ass’n v. Gutierrez*, 512 F. Supp. 2d 896, (S.D. Tex. 2007).

¹⁰ *Id.* at 5.

¹¹ NOAA: Framework Action to the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico including Environmental Assessment, Regulatory Impact Review, and Regulatory Flexibility Act Analysis (March 2015).

¹² *Id.*

¹³ NOAA: NOAA Catch Share Policy.

in pounds and then setting a season length based on how long it would take the recreational sector to catch the quota historically.¹⁴

The federally-permitted commercial sector currently receives 51 percent of the overall red snapper quota and the recreational/charter-for-hire sector receives 49 percent.¹⁵ In August 2017, the Council approved Amendment 28 which would shift the overall quota for red snapper, with the federally-permitted commercial sector receiving 48.5 percent and the recreational/charter-for-hire sector receiving 51.5 percent.¹⁶ Amendment 28 is currently pending with the U.S. Secretary of Commerce.

A 2014 U.S. District Court decision in a suit filed by Mr. Keith Guindon of Kate's Seafood in Galveston, Texas¹⁷ found that NOAA failed to require adequate accountability measures for the recreational industry.¹⁸ As a result, NOAA implemented an annual catch target (ACT) for the recreational sector to prevent the quota from being exceeded, which is 20% lower than the actual recreational quota set by the Council.¹⁹

In December 2014, the Council approved and submitted Reef Fish Amendment 40: Partitioning the Recreational Sector to NOAA requesting that the federal recreational quota for red snapper be divided into two parts—allotting 42.3 percent of the recreational quota to charter-for-hire boats and 57.7 percent of the recreational quota to private anglers.²⁰ For 2015, the total quota of 14.3 million pounds was split approximately 7.3 million pounds to commercial and 7 million pounds to recreational/charter-for-hire. However, in accounting for the ACT, the actual catchable quota for the recreational/charter-for-hire sector was only 5.6 million pounds for 2015. This resulted in a 2015 recreational angler season with 10 days in federal waters for private anglers, and a charter-for-hire season of 44 days in federal waters.²¹

Each of the five Gulf States has the authority to manage the red snapper fishery in their respective State waters. The States establish their own fishing seasons and use bag limits (amount of fish an angler can retain daily) and size limits for retained fish as management tools.

On May 2, 2017, NOAA announced that recreational anglers would have a 3-day season in federal waters in 2017.²² Three days would be the shortest red snapper season on record.²³ In an effort to increase access for recreational anglers, the Secretary of Commerce took emergency action in June 2017 to extend the recreational season in federal waters to 39 total days, and, as part of this agreement, the five Gulf States agreed to abide by this 39-day

¹⁴ *Id.*

¹⁵ Gulf of Mexico Fishery Management Council, Final Amendment 28 to the Reef Fish Resources of the Gulf of Mexico, (August 2015).

¹⁶ *Id.*

¹⁷ Buddy Guindon, Gulf of Mexico Reef Fish Shareholders Alliance.

¹⁸ NOAA: Framework Action to the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico including Environmental Assessment, Regulatory Impact Review, and Regulatory Flexibility Act Analysis, (March 2015).

¹⁹ *Id.*

²⁰ Gulf of Mexico Fishery Management Council, Final Amendment 40 to the Reef Fish Resources of the Gulf of Mexico, (December 2014).

²¹ Florida Fish and Wildlife Conservation Commission, Gulf Red Snapper, factsheet.

²² http://sero.nmfs.noaa.gov/fishery_bulletins/2017/023/FB17-023index.html.

²³ http://www.al.com/news/mobile/index.ssf/2017/05/shortest_ever_federal_snapper.html.

season in State waters through September 4, 2017.²⁴ This is the first time in over a decade that the State and federal seasons have been in alignment.²⁵ While the extension provides immediate relief for private anglers, it does not solve the systemic problems plaguing management of many recreational fisheries.

Because of limited recreational seasons in federal waters, criticism of the science used in justifying such seasons, ongoing objections to the overall allocation of red snapper, and strong opposition to programs in place for the commercial sector and proposed for the charter/for-hire sector, recreational anglers and the five Gulf States have sought management changes to improve recreational access.

H.R. 3588, the RED SNAPPER Act, is one such proposal. This legislation looks to remedy a longstanding issue of recreational access to the red snapper fishery in the Gulf of Mexico. Specifically, the bill establishes a depth-based scheme for State management of red snapper by establishing a continuous line in the Gulf at 25 fathoms of depth or 25 nautical miles from shore where States would exercise exclusive management authority over red snapper.

In the 114th Congress, the Natural Resources Committee favorably reported legislation that similarly focused on empowering States to address the problems associated with red snapper management in the Gulf of Mexico.²⁶

SECTION-BY-SECTION ANALYSIS

Section 1. Short title

This section provides the short title for the bill, the Regionally Empowered Decision-making for Snapper, Noting the Angling Public and the Preservation of an Exceptional Resource Act, or the RED SNAPPER Act.

Section 2. State exclusive fishery management authority over private recreational red snapper fishing seasons in the Gulf of Mexico

This section directs the Secretary of Commerce to produce a map with a continuous line along the coast of the Gulf States in the waters of the Gulf of Mexico that generally denotes a depth of 25 fathoms. Gulf States will exercise exclusive management authority of the recreational red snapper fishery for fishing years 2018–2024 in waters extending to the farther of the 25-fathom line or 25 nautical miles from shore. State management authority currently only extends out to nine miles from shore.

This section also requires Gulf States to consider a variety of scientific factors in development of their management plans, including the most recent stock assessment for the red snapper in the Gulf of Mexico, data from a variety of governmental and nongovernmental sources, the duration of the fishing season in State waters, and estimated private recreational fishing efforts and catch rates.

Section 3. Federal Gulf of Mexico red snapper management

This section establishes a process and a timeline for certification of State recreational fishery surveys and provides for their incorpo-

²⁴ <https://www.commerce.gov/news/press-releases/2017/06/department-commerce-announces-changes-2017-gulf-mexico-red-snapper>.

²⁵ http://www.al.com/news/mobile/index.ssf/2017/05/shortest_ever_federal_snapper.html.

²⁶ H.R. 3094, Gulf States Red Snapper Management Authority Act, introduced by Rep Garret Graves (R-LA), 114th Congress.

ration into management decisions for the red snapper fishery. This section also includes savings clauses aimed at preserving commercial allocation as well as access for federally-permitted charter fishermen. Finally, this section directs the States to develop best practices to reduce barotrauma, which often leads to discard mortality when red snapper is caught and released.

COMMITTEE ACTION

H.R. 3588 was introduced on July 28, 2017, by Congressman Garret Graves (R-LA). The bill was referred to the Committee on Natural Resources, and within the Committee to the Subcommittee on Water, Power and Oceans. On September 26, 2017, the Subcommittee held a hearing on the bill. On December 12, 2017, the Natural Resources Committee met to consider the bill. The Subcommittee was discharged by unanimous consent. Congressman Alan S. Lowenthal (D-CA) offered and withdrew an amendment designated (001). No other amendments were offered, and the bill was ordered favorably reported to the House of Representatives on December 13, 2017, by a bipartisan roll call vote of 22 ayes to 16 noes, as follows:

Committee on Natural Resources

U.S. House of Representatives

115th Congress

Date: 12-13-17

Recorded Vote #: 10

Meeting on / Amendment on: **FC Mark Up on Favorably Reporting H.R. 3588**, To amend the Magnuson-Stevens Fishery Conservation and Management Act to provide for management of red snapper in the Gulf of Mexico, and for other purposes. "RED SNAPPER Act."

MEMBERS	Yes	No	Pres	MEMBERS	Yes	No	Pres
Mr. Bishop, UT, Chairman	X			Mr. Cook, CA	X		
<i>Mr. Grijalva, AZ, Ranking Member</i>		X		<i>Mr. Soto, FL</i>		X	
Mr. Young, AK, Chairman Emeritus	X			Mr. Westerman, AR	X		
<i>Mrs. Napolitano, CA</i>		X		<i>Mr. McEachin, VA</i>		X	
Mr. Gohmert, TX, Vice Chairman				Mr. Graves, LA	X		
<i>Ms. Bordallo, Guam</i>		X		<i>Mr. Brown, MD</i>		X	
Mr. Lamborn, CO	X			Mr. Hice, GA	X		
<i>Mr. Costa, CA</i>		X		<i>Mr. Clay, MO</i>	X		
Mr. Wittman, VA	X			Mrs. Radewagen, AS	X		
<i>Mr. Sablan, CNMI</i>		X		<i>Mr. Gomez, CA</i>		X	
Mr. McClintock, CA	X			Mr. LaHood, IL	X		
<i>Ms. Tsongas, MA</i>		X		Mr. Webster, FL	X		
Mr. Pearce, NM				Mr. Bergman, MI	X		
<i>Mr. Huffman, CA</i>		X		Ms. Cheney, WY	X		
Mr. Thompson, PA	X			Mr. Johnson, LA			
<i>Mr. Lowenthal, CA</i>		X		Ms. González-Colón, PR	X		
Mr. Gosar, AZ	X			Mr. Gianforte, MT	X		
<i>Mr. Beyer, VA</i>		X					
Mr. Labrador, ID	X						
<i>Mrs. Torres, CA</i>		X					
Mr. Tipton, CO							
<i>Mr. Gallego, AZ</i>							
Mr. LaMalfa, CA	X						
<i>Ms. Hanabusa, HI</i>		X					
Mr. Denham, CA	X						
<i>Ms. Barragán, CA</i>		X		TOTAL:	22	16	

COMMITTEE OVERSIGHT FINDINGS AND RECOMMENDATIONS

Regarding clause 2(b)(1) of rule X and clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee on Natural Resources' oversight findings and recommendations are reflected in the body of this report.

COMPLIANCE WITH HOUSE RULE XIII AND CONGRESSIONAL BUDGET ACT

1. Cost of Legislation and the Congressional Budget Act. With respect to the requirements of clause 3(c)(2) and (3) of rule XIII of the Rules of the House of Representatives and sections 308(a) and 402 of the Congressional Budget Act of 1974, the Committee has received the following estimate for the bill from the Director of the Congressional Budget Office:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, March 16, 2018.

Hon. ROB BISHOP,
*Chairman, Committee on Natural Resources,
House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 3588, the RED SNAPPER Act.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Robert Reese.

Sincerely,

KEITH HALL,
Director.

Enclosure.

H.R. 3588—RED SNAPPER Act

H.R. 3588 would amend the Magnuson-Stevens Fishery Conservation and Management Act to authorize the U.S. Gulf States (Alabama, Florida, Louisiana, Mississippi, and Texas) to exercise exclusive management authority over the recreational red snapper fishery through 2024.¹ The bill also would require the Gulf States to consider a variety of factors, including up-to-date stock assessments, surveys, and recreational catch rates for red snapper, when developing management plans. Those plans would be reviewed and approved by the National Oceanic and Atmospheric Administration (NOAA).

Using information from NOAA, CBO estimates that any additional costs related to collecting and reviewing state management plans under H.R. 3588 would not be significant.

Enacting H.R. 3588 would not affect direct spending or revenues; therefore, pay-as-you-go procedures do not apply.

CBO estimates that enacting H.R. 3588 would not increase net direct spending or on-budget deficits in any of the four consecutive 10-year periods beginning in 2028.

¹The Gulf States would manage the fishery in the region between the shore and the line at which the ocean is 25 fathoms (or 150 feet) deep or 25 nautical miles, whichever is further.

H.R. 3588 would impose an intergovernmental mandate as defined in the Unfunded Mandates Reform Act (UMRA) by requiring the five Gulf States to develop and promote best practices to reduce barotrauma in red snapper. Using information on similar practices, CBO estimates the states' costs would be small and fall well below the thresholds established in UMRA for intergovernmental mandates (\$78 million in 2017).

The bill contains no private-sector mandates as defined in UMRA.

The CBO staff contacts for this estimate are Robert Reese (for federal costs) and Zachary Byrum (for mandates). The estimate was approved by H. Samuel Papenfuss, Deputy Assistant Director for Budget Analysis.

2. General Performance Goals and Objectives. As required by clause 3(c)(4) of rule XIII, the general performance goal or objective of this bill is to amend the Magnuson-Stevens Fishery Conservation and Management Act to provide for management of red snapper in the Gulf of Mexico.

EARMARK STATEMENT

This bill does not contain any Congressional earmarks, limited tax benefits, or limited tariff benefits as defined under clause 9(e), 9(f), and 9(g) of rule XXI of the Rules of the House of Representatives.

COMPLIANCE WITH PUBLIC LAW 104-4

This bill contains no unfunded mandates.

COMPLIANCE WITH H. RES. 5

Directed Rule Making. This bill does not contain any directed rule makings.

Duplication of Existing Programs. This bill does not establish or reauthorize a program of the federal government known to be duplicative of another program. Such program was not included in any report from the Government Accountability Office to Congress pursuant to section 21 of Public Law 111-139 or identified in the most recent Catalog of Federal Domestic Assistance published pursuant to the Federal Program Information Act (Public Law 95-220, as amended by Public Law 98-169) as relating to other programs.

PREEMPTION OF STATE, LOCAL OR TRIBAL LAW

This bill is not intended to preempt any State, local or tribal law.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, and existing law in which no change is proposed is shown in roman):

**MAGNUSON-STEVENS FISHERY CONSERVATION AND
MANAGEMENT ACT**

* * * * *

**TITLE I—UNITED STATES RIGHTS AND AUTHORITY
REGARDING FISH AND FISHERY RESOURCES**

**SEC. 101. UNITED STATES SOVEREIGN RIGHTS TO FISH AND FISHERY
MANAGEMENT AUTHORITY.**

(a) **IN THE EXCLUSIVE ECONOMIC ZONE.**—Except as provided in section ~~102,~~ *102 and section 407(e)*, the United States claims, and will exercise in the manner provided for in this Act, sovereign rights and exclusive fishery management authority over all fish, and all Continental Shelf fishery resources, within the exclusive economic zone.

(b) **BEYOND THE EXCLUSIVE ECONOMIC ZONE.**—The United States claims, and will exercise in the manner provided for in this Act, exclusive fishery management authority over the following:

(1) All anadromous species throughout the migratory range of each such species beyond the exclusive economic zone; except that that management authority does not extend to any such species during the time they are found within any waters of a foreign nation.

(2) All Continental Shelf fishery resources beyond the exclusive economic zone.

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**TITLE III—NATIONAL FISHERY MANAGEMENT
PROGRAM**

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SEC. 302. REGIONAL FISHERY MANAGEMENT COUNCILS.

(a) **ESTABLISHMENT.**—(1) There shall be established, within 120 days after the date of the enactment of this Act, eight Regional Fishery Management Councils, as follows:

(A) **NEW ENGLAND COUNCIL.**—The New England Fishery Management Council shall consist of the States of Maine, New Hampshire, Massachusetts, Rhode Island, and Connecticut and shall have authority over the fisheries in the Atlantic Ocean seaward of such States (except as provided in paragraph (3)). The New England Council shall have 18 voting members, including 12 appointed by the Secretary in accordance with subsection (b)(2) (at least one of whom shall be appointed from each such State).

(B) **MID-ATLANTIC COUNCIL.**—The Mid-Atlantic Fishery Management Council shall consist of the States of New York, New Jersey, Delaware, Pennsylvania, Maryland, Virginia, and North Carolina and shall have authority over the fisheries in the Atlantic Ocean seaward of such States (except North Carolina, and as provided in paragraph (3)). The Mid-Atlantic Council shall have 21 voting members, including 13 appointed by the Secretary in accordance with subsection (b)(2) (at least one of whom shall be appointed from each such State).

(C) SOUTH ATLANTIC COUNCIL.—The South Atlantic Fishery Management Council shall consist of the States of North Carolina, South Carolina, Georgia, and Florida and shall have authority over the fisheries in the Atlantic Ocean seaward of such States (except as provided in paragraph (3)). The South Atlantic Council shall have 13 voting members, including 8 appointed by the Secretary in accordance with subsection (b)(2) (at least one of whom shall be appointed from each such State).

(D) CARIBBEAN COUNCIL.—The Caribbean Fishery Management Council shall consist of the Virgin Islands and the Commonwealth of Puerto Rico and shall have authority over the fisheries in the Caribbean Sea and Atlantic Ocean seaward of such States and of commonwealths, territories, and possessions of the United States in the Caribbean Sea (except as provided in paragraph (3)). The Caribbean Council shall have 7 voting members, including 4 appointed by the Secretary in accordance with subsection (b)(2) (at least one of whom shall be appointed from each such State).

(E) GULF COUNCIL.—The Gulf of Mexico Fishery Management Council shall consist of the States of Texas, Louisiana, Mississippi, Alabama, and Florida and shall have authority over the fisheries in the Gulf of Mexico seaward of such States (except as provided in [paragraph (3)].) *paragraph (3) of this subsection and section 407(e)*. The Gulf Council shall have 17 voting members, including 11 appointed by the Secretary in accordance with subsection (b)(2) (at least one of whom shall be appointed from each such State).

(F) PACIFIC COUNCIL.—The Pacific Fishery Management Council shall consist of the States of California, Oregon, Washington, and Idaho and shall have authority over the fisheries in the Pacific Ocean seaward of such States. The Pacific Council shall have 14 voting members, including 8 appointed by the Secretary in accordance with subsection (b)(2) (at least one of whom shall be appointed from each such State), and including one appointed from an Indian tribe with Federally recognized fishing rights from California, Oregon, Washington, or Idaho in accordance with subsection (b)(5).

(G) NORTH PACIFIC COUNCIL.—The North Pacific Fishery Management Council shall consist of the States of Alaska, Washington, and Oregon and shall have authority over the fisheries in the Arctic Ocean, Bering Sea, and Pacific Ocean seaward of Alaska. The North Pacific Council shall have 11 voting members, including 7 appointed by the Secretary in accordance with subsection (b)(2) (5 of whom shall be appointed from the State of Alaska and 2 of whom shall be appointed from the State of Washington).

(H) WESTERN PACIFIC COUNCIL.—The Western Pacific Fishery Management Council shall consist of the States of Hawaii, American Samoa, Guam, and the Northern Mariana Islands and shall have authority over the fisheries in the Pacific Ocean seaward of such States and of the Commonwealths, territories, and possessions of the United States in the Pacific Ocean area. The Western Pacific Council shall have 13 voting members, including 8 appointed by the Secretary in accordance with sub-

section (b)(2) (at least one of whom shall be appointed from each of the following States: Hawaii, American Samoa, Guam, and the Northern Mariana Islands).

(2) Each Council shall reflect the expertise and interest of the several constituent States in the ocean area over which such Council is granted authority.

(3) The Secretary shall have authority over any highly migratory species fishery that is within the geographical area of authority of more than one of the following Councils: New England Council, Mid-Atlantic Council, South Atlantic Council, Gulf Council, and Caribbean Council.

(b) VOTING MEMBERS.—(1) The voting members of each Council shall be:

(A) The principal State official with marine fishery management responsibility and expertise in each constituent State, who is designated as such by the Governor of the State, so long as the official continues to hold such position, or the designee of such official.

(B) The regional director of the National Marine Fisheries Service for the geographic area concerned, or his designee, except that if two such directors are within such geographical area, the Secretary shall designate which of such directors shall be the voting member.

(C) The members required to be appointed by the Secretary in accordance with paragraphs (2) and (5).

(2)(A) The members of each Council required to be appointed by the Secretary must be individuals who, by reason of their occupational or other experience, scientific expertise, or training, are knowledgeable regarding the conservation and management, or the commercial or recreational harvest, of the fishery resources of the geographical area concerned. Within nine months after the date of enactment of the Fishery Conservation Amendments of 1990, the Secretary shall, by regulation, prescribe criteria for determining whether an individual satisfies the requirements of this subparagraph.

(B) The Secretary, in making appointments under this section, shall, to the extent practicable, ensure a fair and balanced apportionment, on a rotating or other basis, of the active participants (or their representatives) in the commercial and recreational fisheries under the jurisdiction of the Council. On January 31, 1991, and each year thereafter, the Secretary shall submit to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Merchant Marine and Fisheries of the House of Representatives a report on the actions taken by the Secretary to ensure that such fair and balanced apportionment is achieved. The report shall—

(i) list the fisheries under the jurisdiction of each Council, outlining for each fishery the type and quantity of fish harvested, fishing and processing methods employed, the number of participants, the duration and range of the fishery, and other distinguishing characteristics;

(ii) assess the membership of each Council in terms of the apportionment of the active participants in each such fishery; and

(iii) state the Secretary's plans and schedule for actions to achieve a fair and balanced apportionment on the Council for the active participants in any such fishery.

(C) The Secretary shall appoint the members of each Council from a list of individuals submitted by the Governor of each applicable constituent State. A Governor may not submit the names of individuals to the Secretary for appointment unless the Governor has determined that each such individual is qualified under the requirements of subparagraph (A) and unless the Governor has, to the extent practicable, first consulted with representatives of the commercial and recreational fishing interests of the State regarding those individuals. Each such list shall include the names and pertinent biographical data of not less than three individuals for each applicable vacancy and shall be accompanied by a statement by the Governor explaining how each such individual meets the requirements of subparagraph (A). The Secretary shall review each list submitted by a Governor to ascertain if the individuals on the list are qualified for the vacancy on the basis of such requirements. If the Secretary determines that any individual is not qualified, the Secretary shall notify the appropriate Governor of that determination. The Governor shall then submit a revised list or resubmit the original list with an additional explanation of the qualifications of the individual in question. An individual is not eligible for appointment by the Secretary until that individual complies with the applicable financial disclosure requirements under subsection (k).

(D)(i) The Governor of a State submitting a list of names of individuals for appointment by the Secretary of Commerce to the Gulf of Mexico Fisheries Management Council under subparagraph (C) shall include—

(I) at least 1 nominee each from the commercial, recreational, and charter fishing sectors; and

(II) at least 1 other individual who is knowledgeable regarding the conservation and management of fisheries resources in the jurisdiction of the Council.

(ii) Notwithstanding the requirements of subparagraph (C), if the Secretary determines that the list of names submitted by the Governor does not meet the requirements of clause (i) the Secretary shall—

(I) publish a notice in the Federal Register asking the residents of that State to submit the names and pertinent biographical data of individuals who would meet the requirement not met for appointment to the Council; and

(II) add the name of any qualified individual submitted by the public who meets the unmet requirement to the list of names submitted by the Governor.

(iii) For purposes of clause (i) an individual who owns or operates a fish farm outside of the United States shall not be considered to be a representative of the commercial or recreational fishing sector.

(iv) The requirements of this subparagraph shall expire at the end of fiscal year 2012.

(E) Whenever the Secretary makes an appointment to a Council, the Secretary shall make a public announcement of such appointment not less than 45 days before the first day on which the individual is to take office as a member of the Council.

(3) Each voting member appointed to a Council by the Secretary in accordance with paragraphs (2) and (5) shall serve for a term of 3 years; except that the Secretary may designate a shorter term if necessary to provide for balanced expiration to terms of office. No member appointed after January 1, 1986, may serve more than three consecutive terms. Any term in which an individual was appointed to replace a member who left office during the term shall not be counted in determining the number of consecutive terms served by that Council member.

(4) Successors to the voting members of any Council shall be appointed in the same manner as the original voting members. Any individual appointed to fill a vacancy occurring prior to the expiration of any term of office shall be appointed for the remainder of that term.

(5)(A) The Secretary shall appoint to the Pacific Council one representative of an Indian tribe with Federally recognized fishing rights from California, Oregon, Washington, or Idaho from a list of not less than 3 individuals submitted by the tribal governments. The Secretary, in consultation with the Secretary of the Interior and tribal governments, shall establish by regulation the procedure for submitting a list under this subparagraph.

(B) Representation shall be rotated among the tribes taking into consideration—

(i) the qualifications of the individuals on the list referred to in subparagraph (A),

(ii) the various rights of the Indian tribes involved and judicial cases that set forth how those rights are to be exercised, and

(iii) the geographic area in which the tribe of the representative is located.

(C) A vacancy occurring prior to the expiration of any term shall be filled in the same manner as set out in subparagraphs (A) and (B), except that the Secretary may use the list from which the vacating representative was chosen.

(D) The tribal representative appointed under subparagraph (A) may designate as an alternate, during the period of the representative's term, an individual knowledgeable concerning tribal rights, tribal law, and the fishery resources of the geographical area concerned.

(6) The Secretary may remove for cause any member of a Council required to be appointed by the Secretary in accordance with paragraphs (2) or (5) if—

(A) the Council concerned first recommends removal by not less than two-thirds of the members who are voting members and submits such removal recommendation to the Secretary in writing together with a statement of the basis for the recommendation; or

(B) the member is found by the Secretary, after notice and an opportunity for a hearing in accordance with section 554 of title 5, United States Code, to have committed an act prohibited by section 307(1)(O).

(c) NONVOTING MEMBERS.—(1) The nonvoting members of each Council shall be:

(A) The regional or area director of the United States Fish and Wildlife Service for the geographical area concerned, or his designee.

(B) The commander of the Coast Guard district for the geographical area concerned, or his designee; except that, if two Coast Guard districts are within such geographical area, the commander designated for such purpose by the commandant of the Coast Guard.

(C) The executive director of the Marine Fisheries Commission for the geographical area concerned, if any, or his designee.

(D) One representative of the Department of State designated for such purpose by the Secretary of State, or his designee.

(2) The Pacific Council shall have one additional nonvoting member who shall be appointed by, and serve at the pleasure of, the Governor of Alaska.

(d) COMPENSATION AND EXPENSES.—The voting members of each Council who are required to be appointed by the Secretary and who are not employed by the Federal Government or any State or local government, shall receive compensation at the daily rate for GS-15, step 7 of the General Schedule, when engaged in the actual performance of duties for such Council. The voting members of each Council, any nonvoting member described in subsection (c)(1)(C), and the nonvoting member appointed pursuant to subsection (c)(2) shall be reimbursed for actual expenses incurred in the performance of such duties, and other nonvoting members and Council staff members may be reimbursed for actual expenses.

(e) TRANSACTION OF BUSINESS.—

(1) A majority of the voting members of any Council shall constitute a quorum, but one or more such members designated by the Council may hold hearings. All decisions of any Council shall be by majority vote of the voting members present and voting.

(2) The voting members of each Council shall select a Chairman for such Council from among the voting members.

(3) Each Council shall meet at appropriate times and places in any of the constituent States of the Council at the call of the Chairman or upon the request of a majority of its voting members.

(4) If any voting member of a Council disagrees with respect to any matter which is transmitted to the Secretary by such Council, such member may submit a statement to the Secretary setting forth the reasons for such disagreement. The regional director of the National Marine Fisheries Service serving on the Council, or the regional director's designee, shall submit such a statement, which shall be made available to the public upon request, if the regional director disagrees with any such matter.

(5) At the request of any voting member of a Council, the Council shall hold a roll call vote on any matter before the Council. The official minutes and other appropriate records of any Council meeting shall identify all roll call votes held, the name of each voting member present during each roll call vote, and how each member voted on each roll call vote.

(f) STAFF AND ADMINISTRATION.—

(1) Each Council may appoint, and assign duties to, an executive director and such other full- and part-time administrative employees as the Secretary determines are necessary to the performance of its functions.

(2) Upon the request of any Council, and after consultation with the Secretary, the head of any Federal agency is authorized to detail to such Council, on a reimbursable basis, any of the personnel of such agency, to assist such Council in the performance of its functions under this Act.

(3) The Secretary shall provide to each Council such administrative and technical support services as are necessary for the effective functioning of such Council.

(4) The Administrator of General Services shall furnish each Council with such offices, equipment, supplies, and services as he is authorized to furnish to any other agency or instrumentality of the United States.

(5) The Secretary and the Secretary of State shall furnish each Council with relevant information concerning foreign fishing and international fishery agreements.

(6) Each Council shall determine its organization, and prescribe its practices and procedures for carrying out its functions under this Act, in accordance with such uniform standards as are prescribed by the Secretary. The procedures of a Council, and of its scientific and statistical committee and advisory panels established under subsection (g), must be consistent with the procedural guidelines set forth in subsection (i)(2). Each Council shall publish and make available to the public a statement of its organization, practices, and procedures.

(7) The Secretary shall pay—

(A) the compensation and expenses provided for in subsection (d);

(B) appropriate compensation to employees appointed under paragraph (1);

(C) the amounts required for reimbursement of other Federal agencies under paragraphs (2) and (4);

(D) the actual expenses of the members of the committees and panels established under subsection (g); and

(E) such other costs as the Secretary determines are necessary to the performance of the functions of the Councils.

(g) COMMITTEES AND ADVISORY PANELS.—

(1)(A) Each Council shall establish, maintain, and appoint the members of a scientific and statistical committee to assist it in the development, collection, evaluation, and peer review of such statistical, biological, economic, social, and other scientific information as is relevant to such Council's development and amendment of any fishery management plan.

(B) Each scientific and statistical committee shall provide its Council ongoing scientific advice for fishery management decisions, including recommendations for acceptable biological catch, preventing overfishing, maximum sustainable yield, and achieving rebuilding targets, and reports on stock status and health, bycatch, habitat status, social and economic impacts of management measures, and sustainability of fishing practices.

(C) Members appointed by the Councils to the scientific and statistical committees shall be Federal employees, State employees, academicians, or independent experts and shall have strong scientific or technical credentials and experience.

(D) Each member of a scientific and statistical committee shall be treated as an affected individual for purposes of paragraphs (2), (3)(B), (4), and (5)(A) of subsection (j). The Secretary shall keep disclosures made pursuant to this subparagraph on file.

(E) The Secretary and each Council may establish a peer review process for that Council for scientific information used to advise the Council about the conservation and management of the fishery. The review process, which may include existing committees or panels, is deemed to satisfy the requirements of the guidelines issued pursuant to section 515 of the Treasury and General Government Appropriations Act for Fiscal year 2001 (Public Law 106-554—Appendix C; 114 Stat. 2763A-153).

(F) In addition to the provisions of section 302(f)(7), the Secretary shall, subject to the availability of appropriations, pay a stipend to members of the scientific and statistical committees or advisory panels who are not employed by the Federal Government or a State marine fisheries agency.

(G) A science and statistical committee shall hold its meetings in conjunction with the meeting of the Council, to the extent practicable.

(2) Each Council shall establish such advisory panels as are necessary or appropriate to assist it in carrying out its functions under this Act.

(3)(A) Each Council shall establish and maintain a fishing industry advisory committee which shall provide information and recommendations on, and assist in the development of, fishery management plans and amendments to such plans.

(B) Appointments to a committee established under subparagraph (A) shall be made by each Council in such a manner as to provide fair representation to commercial fishing interests in the geographical area of authority of the Council.

(4) The Secretary shall establish advisory panels to assist in the collection and evaluation of information relevant to the development of any fishery management plan or plan amendment for a fishery to which subsection (a)(3) applies. Each advisory panel shall participate in all aspects of the development of the plan or amendment; be balanced in its representation of commercial, recreational, and other interests; and consist of not less than 7 individuals who are knowledgeable about the fishery for which the plan or amendment is developed, selected from among—

(A) members of advisory committees and species working groups appointed under Acts implementing relevant international fishery agreements pertaining to highly migratory species; and

(B) other interested persons.

(5) Decisions and recommendations made by committees and panels established under this subsection shall be considered to be advisory in nature.

(h) FUNCTIONS.—Each Council shall, in accordance with the provisions of this Act—

(1) for each fishery under its authority that requires conservation and management, prepare and submit to the Secretary (A) a fishery management plan, and (B) amendments to each such plan that are necessary from time to time (and promptly whenever changes in conservation and management measures in another fishery substantially affect the fishery for which such plan was developed);

(2) prepare comments on any application for foreign fishing transmitted to it under section 204(b)(4)(C) or section 204(d), and any fishery management plan or amendment transmitted to it under section 304(c)(4);

(3) conduct public hearings, at appropriate times and in appropriate locations in the geographical area concerned, so as to allow all interested persons an opportunity to be heard in the development of fishery management plans and amendments to such plans, and with respect to the administration and implementation of the provisions of this Act (and for purposes of this paragraph, the term “geographical area concerned” may include an area under the authority of another Council if the fish in the fishery concerned migrate into, or occur in, that area or if the matters being heard affect fishermen of that area; but not unless such other Council is first consulted regarding the conduct of such hearings within its area);

(4) submit to the Secretary such periodic reports as the Council deems appropriate, and any other relevant report which may be requested by the Secretary;

(5) review on a continuing basis, and revise as appropriate, the assessments and specifications made pursuant to section 303(a)(3) and (4) with respect to the optimum yield from, the capacity and extent to which United States fish processors will process United States harvested fish from, and the total allowable level of foreign fishing in, each fishery (except as provided in subsection (a)(3)) within its geographical area of authority; and

(6) develop annual catch limits for each of its managed fisheries that may not exceed the fishing level recommendations of its scientific and statistical committee or the peer review process established under subsection (g);

(7) develop, in conjunction with the scientific and statistical committee, multi-year research priorities for fisheries, fisheries interactions, habitats, and other areas of research that are necessary for management purposes, that shall—

(A) establish priorities for 5-year periods;

(B) be updated as necessary; and

(C) be submitted to the Secretary and the regional science centers of the National Marine Fisheries Service for their consideration in developing research priorities and budgets for the region of the Council; and

(8) conduct any other activities which are required by, or provided for in, this Act or which are necessary and appropriate to the foregoing functions.

(i) PROCEDURAL MATTERS.—(1) The Federal Advisory Committee Act (5 U.S.C. App. 1) shall not apply to the Councils, the Council

coordination committee established under subsection (l), or to the scientific and statistical committees or other committees or advisory panels established under subsection (g).

(2) The following guidelines apply with respect to the conduct of business at meetings of a Council, and of a Council, of the Council coordination committee established under subsection (l), and of the scientific and statistical committees or other committees or advisory panels established under subsection (g):

(A) Unless closed in accordance with paragraph (3), each regular meeting and each emergency meeting shall be open to the public.

(B) Emergency meetings shall be held at the call of the chairman or equivalent presiding officer.

(C) Timely public notice of each regular meeting and each emergency meeting, including the time, place, and agenda of the meeting, shall be provided by any means that will result in wide publicity in the major fishing ports of the region (and in other major fishing ports having a direct interest in the affected fishery), except that e-mail notification and website postings alone are not sufficient. Timely notice of each regular meeting shall also be published in the Federal Register. 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.

(D) Interested persons shall be permitted to present oral or written statements regarding the matters on the agenda at meetings. All written information submitted to a Council by an interested person shall include a statement of the source and date of such information. Any oral or written statement shall include a brief description of the background and interests of the person in the subject of the oral or written statement.

(E) Detailed minutes of each meeting of the Council, except for any closed session, shall be kept and shall contain a record of the persons present, a complete and accurate description of matters discussed and conclusions reached, and copies of all statements filed. The Chairman shall certify the accuracy of the minutes of each such meeting and submit a copy thereof to the Secretary. The minutes shall be made available to any court of competent jurisdiction.

(F) Subject to the procedures established under paragraph (4), and the guidelines prescribed by the Secretary under section 402(b), relating to confidentiality, the administrative record, including minutes required under subparagraph (E), of each meeting, and records or other documents which were made available to or prepared for or by the Council, committee, or panel incident to the meeting, shall be available for public inspection and copying at a single location in the offices of the Council or the Secretary, as appropriate.

(3)(A) Each Council, the Council Coordination Committee established under subsection (l), scientific and statistical committee, other committees, and advisory panel—

(i) shall close any meeting, or portion thereof, that concerns matters or information that bears a national security classification; and

(ii) may close any meeting, or portion thereof, that concerns matters or information that pertains to national security, employment matters, or briefings on litigation in which the Council is interested.

Subparagraphs (D) and (F) of paragraph (2) shall not apply to any meeting or portion thereof that is so closed.

(B) If any meeting or portion is closed, the Council concerned shall notify local newspapers in the major fishing ports within its region (and in other major, affected fishing ports), including in that notification the time and place of the meeting. This subparagraph does not require notification regarding any brief closure of a portion of a meeting in order to discuss employment or other internal administrative matters.

(4) Each Council shall establish appropriate procedures applicable to it and to its committee and advisory panels for ensuring the confidentiality of the statistics that may be submitted to it by Federal or State authorities, and may be voluntarily submitted to it by private persons; including, but not limited to, procedures for the restriction of Council employee access and the prevention of conflicts of interest; except that such procedures, in the case of statistics submitted to the Council by a State or by the Secretary under section 402(b), must be consistent with the laws and regulations of that State, or with the procedures of the Secretary, as the case may be, concerning the confidentiality of the statistics.

(5) Each Council shall specify those procedures that are necessary or appropriate to ensure that the committees and advisory panels established under subsection (g) are involved, on a continuing basis, in the development and amendment of fishery management plans.

(6) At any time when a Council determines it appropriate to consider new information from a State or Federal agency or from a Council advisory body, the Council shall give comparable consideration to new information offered at that time by interested members of the public. Interested parties shall have a reasonable opportunity to respond to new data or information before the Council takes final action on conservation and management measures.

(j) DISCLOSURE OF FINANCIAL INTEREST.—

(1) For the purposes of this subsection—

(A) the term “affected individual” means an individual who—

(i) is nominated by the Governor of a State for appointment as a voting member of a Council in accordance with subsection (b)(2); or

(ii) is a voting member of a Council appointed—

(I) under subsection (b)(2); or

(II) under subsection (b)(5) who is not subject to disclosure and recusal requirements under the laws of an Indian tribal government; and

(B) the term “designated official” means a person with expertise in Federal conflict-of-interest requirements who is designated by the Secretary, in consultation with the

- Council, to attend Council meetings and make determinations under paragraph (7)(B).
- (2) Each affected individual must disclose any financial interest held by—
- (A) that individual;
 - (B) the spouse, minor child, or partner of that individual; and
 - (C) any organization (other than the Council) in which that individual is serving as an officer, director, trustee, partner, or employee;
- in any harvesting, processing, lobbying, advocacy, or marketing activity that is being, or will be, undertaken within any fishery over which the Council concerned has jurisdiction, or with respect to an individual or organization with a financial interest in such activity.
- (3) The disclosure required under paragraph (2) shall be made—
- (A) in the case of an affected individual referred to in paragraph (1)(A)(i), before appointment by the Secretary; and
 - (B) in the case of an affected individual referred to in paragraph (1)(A)(ii), within 45 days of taking office.
- (4) An affected individual referred to in paragraph (1)(A)(ii) must update his or her disclosure form at any time any such financial interest is acquired, or substantially changed, by any person referred to in paragraph (2)(A), (B), or (C).
- (5) The financial interest disclosures required by this subsection shall—
- (A) be made on such forms, in accordance with such procedures, and at such times, as the Secretary shall by regulation prescribe;
 - (B) be kept on file by the Council and made available on the Internet and for public inspection at the Council offices during reasonable hours; and
 - (C) be kept on file by the Secretary for use in reviewing determinations under paragraph (7)(B) and made available for public inspection at reasonable hours.
- (6) The participation by an affected individual referred to in paragraph (1)(A)(ii) in an action by a Council during any time in which that individual is not in compliance with the regulations prescribed under paragraph (5) may not be treated as cause for the invalidation of that action.
- (7)(A) After the effective date of regulations promulgated under subparagraph (F) of this paragraph, an affected individual required to disclose a financial interest under paragraph (2) shall not vote on a Council decision which would have a significant and predictable effect on such financial interest. A Council decision shall be considered to have a significant and predictable effect on a financial interest if there is a close causal link between the Council decision and an expected and substantially disproportionate benefit to the financial interest of the affected individual relative to the financial interests of other participants in the same gear type or sector of the fishery. An affected individual who may not vote may participate in Council deliberations relating to the decision after notifying the Council of the voting recusal and identifying the financial interest that would be affected.

(B) At the request of an affected individual, or upon the initiative of the appropriate designated official, the designated official shall make a determination for the record whether a Council decision would have a significant and predictable effect on a financial interest.

(C) Any Council member may submit a written request to the Secretary to review any determination by the designated official under subparagraph (B) within 10 days of such determination. Such review shall be completed within 30 days of receipt of the request.

(D) Any affected individual who does not vote in a Council decision in accordance with this subsection may state for the record how he or she would have voted on such decision if he or she had voted.

(E) If the Council makes a decision before the Secretary has reviewed a determination under subparagraph (C), the eventual ruling may not be treated as cause for the invalidation or reconsideration by the Secretary of such decision.

(F) The Secretary, in consultation with the Councils and by not later than one year from the date of enactment of the Sustainable Fisheries Act, shall promulgate regulations which prohibit an affected individual from voting in accordance with subparagraph (A), and which allow for the making of determinations under subparagraphs (B) and (C).

(8) Section 208 of title 18, United States Code, does not apply to an affected individual referred to in paragraph (1)(A)(ii) during any time in which that individual is in compliance with the regulations prescribed under paragraph (5).

(9) On January 1, 2008, and annually thereafter, the Secretary shall submit a report to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Resources on action taken by the Secretary and the Councils to implement the disclosure of financial interest and recusal requirements of this subsection, including identification of any conflict of interest problems with respect to the Councils and scientific and statistical committees and recommendations for addressing any such problems.

(k) COUNCIL TRAINING PROGRAM.—

(1) TRAINING COURSE.—Within 6 months after the date of enactment of the Magnuson-Stevens Fishery Conservation and Management Reauthorization Act of 2006, the Secretary, in consultation with the Councils and the National Sea Grant College Program, shall develop a training course for newly appointed Council members. The course may cover a variety of topics relevant to matters before the Councils, including—

(A) fishery science and basic stock assessment methods;

(B) fishery management techniques, data needs, and Council procedures;

(C) social science and fishery economics;

(D) tribal treaty rights and native customs, access, and other rights related to Western Pacific indigenous communities;

(E) legal requirements of this Act, including conflict of interest and disclosure provisions of this section and related policies;

(F) other relevant legal and regulatory requirements, including the National Environmental Policy Act (42 U.S.C. 4321 et seq.);

(G) public process for development of fishery management plans;

(H) other topics suggested by the Council; and

(I) recreational and commercial fishing information, including fish harvesting techniques, gear types, fishing vessel types, and economics for the fisheries within each Council's jurisdiction.

(2) MEMBER TRAINING.—The training course shall be available to both new and existing Council members, staff from the regional offices and regional science centers of the National Marine Fisheries Service, and may be made available to committee or advisory panel members as resources allow.

(3) REQUIRED TRAINING.—Council members appointed after the date of enactment of the Magnuson-Stevens Fishery Conservation and Management Reauthorization Act of 2006 shall complete a training course that meets the requirements of this section not later than 1 year after the date on which they were appointed. Any Council member who has completed a training course within 24 months before the date of enactment of the Magnuson-Stevens Fishery Conservation and Management Reauthorization Act of 2006 shall be considered to have met the training requirement of this paragraph.

(1) COUNCIL COORDINATION COMMITTEE.—The Councils may establish a Council coordination committee consisting of the chairs, vice chairs, and executive directors of each of the 8 Councils described in subsection (a)(1), or other Council members or staff, in order to discuss issues of relevance to all Councils, including issues related to the implementation of this Act.

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TITLE IV—FISHERY MONITORING AND RESEARCH

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SEC. 407. GULF OF MEXICO RED SNAPPER RESEARCH.

(a) INDEPENDENT PEER REVIEW.—(1) Within 30 days of the date of enactment of the Sustainable Fisheries Act, the Secretary shall initiate an independent peer review to evaluate—

(A) the accuracy and adequacy of fishery statistics used by the Secretary for the red snapper fishery in the Gulf of Mexico to account for all commercial, recreational, and charter fishing harvests and fishing effort on the stock;

(B) the appropriateness of the scientific methods, information, and models used by the Secretary to assess the status and trends of the Gulf of Mexico red snapper stock and as the basis for the fishery management plan for the Gulf of Mexico red snapper fishery;

(C) the appropriateness and adequacy of the management measures in the fishery management plan for red snapper in the Gulf of Mexico for conserving and managing the red snapper fishery under this Act; and

(D) the costs and benefits of all reasonable alternatives to a limited access privilege program for the red snapper fishery in the Gulf of Mexico.

(2) The Secretary shall ensure that commercial, recreational, and charter fishermen in the red snapper fishery in the Gulf of Mexico are provided an opportunity to—

(A) participate in the peer review under this subsection; and

(B) provide information to the Secretary concerning the review of fishery statistics under this subsection without being subject to penalty under this Act or other applicable law for any past violation of a requirement to report such information to the Secretary.

(3) The Secretary shall submit a detailed written report on the findings of the peer review conducted under this subsection to the Gulf Council no later than one year after the date of enactment of the Sustainable Fisheries Act.

(b) PROHIBITION.—In addition to the restrictions under section 303(d)(1)(A), the Gulf Council may not, prior to October 1, 2002, undertake or continue the preparation of any fishery management plan, plan amendment or regulation under this Act for the Gulf of Mexico commercial red snapper fishery that creates an individual fishing quota program or that authorizes the consolidation of licenses, permits, or endorsements that result in different trip limits for vessels in the same class.

(c) REFERENDUM.—

(1) On or after October 1, 2002, the Gulf Council may prepare and submit a fishery management plan, plan amendment, or regulation for the Gulf of Mexico commercial red snapper fishery that creates a limited access privilege program or that authorizes the consolidation of licenses, permits, or endorsements that result in different trip limits for vessels in the same class, only if the preparation of such plan, amendment, or regulation is approved in a referendum conducted under paragraph (2) and only if the submission to the Secretary of such plan, amendment, or regulation is approved in a subsequent referendum conducted under paragraph (2).

(2) The Secretary, at the request of the Gulf Council, shall conduct referendums under this subsection. Only a person who held an annual vessel permit with a red snapper endorsement for such permit on September 1, 1996 (or any person to whom such permit with such endorsement was transferred after such date) and vessel captains who harvested red snapper in a commercial fishery using such endorsement in each red snapper fishing season occurring between January 1, 1993, and such date may vote in a referendum under this subsection. The referendum shall be decided by a majority of the votes cast. The Secretary shall develop a formula to weigh votes based on the proportional harvest under each such permit and endorsement and by each such captain in the fishery between January 1, 1993, and September 1, 1996. Prior to each referendum, the Secretary, in consultation with the Council, shall—

(A) identify and notify all such persons holding permits with red snapper endorsements and all such vessel captains; and

(B) make available to all such persons and vessel captains information about the schedule, procedures, and eligibility requirements for the referendum and the proposed individual fishing quota program.

[(d) CATCH LIMITS.—Any fishery management plan, plan amendment, or regulation submitted by the Gulf Council for the red snapper fishery after the date of enactment of the Sustainable Fisheries Act shall contain conservation and management measures that—

[(1) establish separate quotas for recreational fishing (which, for the purposes of this subsection shall include charter fishing) and commercial fishing that, when reached, result in a prohibition on the retention of fish caught during recreational fishing and commercial fishing, respectively, for the remainder of the fishing year; and

[(2) ensure that such quotas reflect allocations among such sectors and do not reflect any harvests in excess of such allocations.]

(d) *CATCH LIMITS.*—Any fishery management plan, plan amendment, or regulation for the red snapper fishery that is submitted by the Gulf of Mexico Fishery Management Council after the date of the enactment of the RED SNAPPER Act shall contain conservation and management measures that—

(1) *establish separate catch limits for each of—*

(A) *private recreational fishing;*

(B) *federally permitted charter fishing; and*

(C) *commercial fishing; and*

(2) *ensure that such catch limits reflect allocations among such sectors and do not reflect any harvests in excess of such allocations.*

(e) *STATE EXCLUSIVE AUTHORITY OVER PRIVATE RECREATIONAL RED SNAPPER FISHING SEASONS IN THE GULF OF MEXICO.*—

(1) *EXCLUSIVE AUTHORITY.*—

(A) *IN GENERAL.*—Except as provided in subparagraph (B) and paragraph (5), and subject to paragraph (4) and section 306(b), each of the Gulf States shall have exclusive authority to establish for each of fishing years 2018 through 2024 the timing and duration of the fishing season for private recreational fishing of red snapper in the Gulf of Mexico in the extended red snapper management zone of such Gulf State under paragraph (2).

(B) *SPECIAL RULE FOR FLORIDA.*—With respect to the State of Florida, the exclusive authority provided under subparagraph (A) shall apply only to waters adjacent to the State of Florida in the Gulf of Mexico.

(2) *EXTENDED RED SNAPPER MANAGEMENT ZONE DESCRIBED.*—

(A) *IN GENERAL.*—For purposes of this subsection, the extended red snapper management zone of a Gulf State consists of all waters that are—

(i) *seaward of the State seaward boundary of such Gulf State;*

(ii) *not further from shore than the 25-fathom line described under subparagraph (B); and*

(iii) between the projected lines determined for that State under section 4(a)(2)(A) of the Outer Continental Shelf Lands Act (43 U.S.C. 1333(a)(2)(A)).

(B) DESCRIPTION OF LINE.—

(i) IN GENERAL.—Not later than 60 days after the date of the enactment of the RED SNAPPER Act and subject to clause (ii), the Secretary shall publish in the Federal Register and make available on the website of the Department of Commerce a description of, and map showing, a continuous line in waters of the exclusive economic zone in the Gulf of Mexico along the coasts of the Gulf States, that is comprised of points that are, on average, 25 fathoms in depth.

(ii) MINIMUM DISTANCE.—No point on such continuous line shall be less than 25 nautical miles from the shore.

(iii) CONSULTATION WITH STATES.—In determining the placement of such continuous line, the Secretary shall consult with appropriate agencies of each Gulf State.

(3) CRITERIA.—In determining a fishing season under this subsection, a Gulf State shall—

(A) to the extent practicable, ensure sustainable and responsible fishery management consistent with the national standards for fishery conservation and management in section 301; and

(B) include—

(i) the most recent stock assessment for the red snapper in the Gulf of Mexico;

(ii) surveys of red snapper in the Gulf of Mexico certified under subsection (g);

(iii) data related to red snapper in the Gulf of Mexico collected by the Gulf States Marine Fisheries Commission, nongovernmental organizations, and nongovernmental sources, including fishermen, universities, and research institutions;

(iv) consideration of the duration of the fishing seasons for red snapper within the State's seaward boundary;

(v) estimates of private recreational fishing effort and catch rates both within the State's seaward boundary and within the State's extended red snapper management zone under paragraph (2)(A); and

(vi) relevant data from independent biological surveys, including State population estimates of the biomass of red snapper within the State's seaward boundary and within the State's extended red snapper management zone under paragraph (2).

(4) LIMITATION WITH RESPECT TO CHARTER FISHING.—The authority of a State under paragraph (1) does not apply with respect to the timing or duration of the charter fishing season.

(5) SECRETARIAL ACTION TO ADDRESS ADVERSE EFFECTS OF STATE ACTIONS.—For purposes of section 306(b)(1), the extended red snapper management zone of a State under this subsection shall be treated as within the boundaries of such State.

(6) *REPORT.*—Not later than 150 days before the end of the 2024 fishing year and biannually thereafter, the Secretary shall submit a report to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Natural Resources of the House of Representatives detailing the health of the red snapper fishery in the Gulf of Mexico. The report shall—

(A) be based upon the boundaries prescribed in paragraph (2);

(B) describe the impact of the criteria listed under paragraph (3); and

(C) include results of the NOAA Fisheries Southeast Region head boat surveys.

(7) *RELATIONSHIP TO OTHER FEDERAL AUTHORITY AND REQUIREMENTS.*—Nothing in this subsection affects the authority of the Secretary under any other provision of law—

(A) to establish the acceptable biological catch and total allowable catch of red snapper in the Gulf of Mexico; or

(B) to establish any limited access privilege program for the commercial harvest of red snapper in the Gulf of Mexico.

(8) *RELATIONSHIP TO STATE AUTHORITY OVER STATE WATERS.*—Nothing in this subsection affects the authority of a Gulf State over the territorial waters of such State and fishing in such waters.

(f) *STATE SEAWARD BOUNDARY.*—Notwithstanding any other provision of law, for the purpose of management of red snapper fisheries in the Gulf of Mexico, the seaward boundary of a Gulf State is a line 9 nautical miles seaward from the baseline from which the territorial sea of the United States is measured.

(g) *ACCEPTABLE BIOLOGICAL CATCH, TOTAL ALLOWABLE CATCH, AND CERTIFIED STATE SURVEYS; ALLOCATION.*—

(1) *INCLUSION OF CERTIFIED STATE SURVEYS.*—In establishing the acceptable biological catch and total allowable catch for red snapper in the Gulf of Mexico, the Secretary shall include—

(A) Gulf State recreational fisheries surveys that are certified under subsection (h); and

(B) data related to red snapper in the Gulf of Mexico collected by the Gulf States Marine Fisheries Commission, nongovernmental organizations, and other nongovernmental sources, including universities and research institutions.

(2) *ALLOCATION AND DURATION OF COMMERCIAL AND FEDERALLY PERMITTED CHARTER SEASON.*—Beginning in fishing year 2018, the percentage of the total allowable catch of red snapper, and the duration of the red snapper fishing season in the Gulf of Mexico—

(A) for the commercial fishing sector shall be the same as such percentage and duration, respectively, that applied for the most recent fishing year, unless amended by the Secretary; and

(B) for the federally permitted charter fishing sector may not be less than the allocation and duration that applied to such sector for the most recent fishing year, unless amended by the Secretary.

(3) *FISHING BY FEDERALLY PERMITTED CHARTER SECTOR WITHIN GULF STATE SEAWARD BOUNDARIES.*—Nothing in this Act shall be construed to authorize limiting fishing for red snapper by the federally permitted charter sector within a Gulf State's seaward boundary in any period in which such fishing in the exclusive economic zone is not prohibited.

(h) *STATE SURVEYS.*—

(1) *SUBMISSION.*—A Gulf State that conducts a recreational fisheries survey in the Gulf of Mexico to make catch estimates for red snapper landed in such State may submit such survey to the Secretary for certification.

(2) *CERTIFICATION.*—

(A) *IN GENERAL.*—The Secretary shall make a certification or a denial of certification for any survey submitted under paragraph (1) not later than the end of the 6-month period beginning on the date the survey is submitted.

(B) *DEEMED CERTIFIED.*—A recreational fisheries survey is deemed to be certified effective upon the expiration of such period if the Secretary has not made a certification or denial of certification.

(3) *MODIFICATION OF SURVEYS DENIED CERTIFICATION.*—

(A) *IN GENERAL.*—If a survey of a Gulf State is denied certification under paragraph (2), the Secretary shall, not later than 60 days after the date of the denial, provide the Gulf State a proposal for modifications to the survey.

(B) *PROPOSAL.*—A proposal provided to a Gulf State for a survey under subparagraph (A)—

(i) shall be specific to the survey submitted by such Gulf State and may not be construed to apply to any other Gulf State;

(ii) shall require revision to the fewest possible provisions of the survey; and

(iii) may not unduly burden the ability of such Gulf State to revise the survey.

(C) *MODIFIED SURVEY.*—

(i) *AUTHORITY TO SUBMIT.*—If a survey of a Gulf State was denied certification under paragraph (2), the Gulf State may modify the survey and submit the modified survey to the Secretary for certification or denial of certification.

(ii) *SCHEDULE.*—The Secretary shall make a certification or denial of certification for any modified survey not later than the end of the 30-day period beginning on the date the modified survey is submitted.

(iii) *DEEMED CERTIFIED.*—A modified survey is deemed to be certified effective upon the expiration of the period described in clause (ii) if the Secretary has not made a certification or denial of certification.

(i) *REDUCTION OF BAROTRAUMA.*—Each Gulf State shall develop and promote best practices for use in the red snapper fishery in the Gulf of Mexico to reduce barotrauma.

(j) *CONSTRUCTION.*—Nothing in this section may be construed to alter—

(1) any commercial catch share program for Gulf of Mexico red snapper;

- (2) any Federal program related to charter fishing; or
- (3) the fishing gear that may be used in the red snapper fishery in the Gulf of Mexico.

(k) DEFINITIONS.—In this section:

- (1) GULF STATE.—The term “Gulf State” means each of the States of Texas, Louisiana, Mississippi, Alabama, or Florida.
- (2) RED SNAPPER.—The term “red snapper” means the species *Lutjanus campechanus*.

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DISSENTING VIEWS

At its core, H.R. 3588 is an attempt backed by a small group of well-funded and politically connected recreational fishermen to reallocate the Gulf of Mexico red snapper quota from commercial fishermen to private boat anglers. It is not based on sound science or sound economics, and would lead to significant hardship for seafood related businesses along the Gulf Coast. The bill is opposed by the National Restaurant Association and a host of chefs, businesses, commercial and recreational fishing groups, and conservation organizations.

We understand the frustrations of recreational anglers and Members of Congress who see and hear about an abundance of red snapper in the Gulf of Mexico while at the same time watching the federal waters season shrink to only a handful of days. However, while the politics of this situation are complicated, the arithmetic is not. More recreational anglers are taking more trips targeting red snapper and are catching them at a faster rate than the still-overfished stock is rebuilding. The Gulf States continue to set liberal seasons in their waters, resulting in a smaller share of the quota available to be harvested in the EEZ. And private boat anglers have been hesitant to submit catch data that can be used to accurately monitor and predict harvest from that sector.

The Trump Administration has exacerbated this problem, not solved it, by extending the private boat recreational red snapper season in the Gulf this year 15 times longer than was recommended by NOAA scientists and managers. That has led to massive overfishing and legal challenges that could hamstring the fishery for years to come. H.R. 3588 would do further damage to this economically important stock, and we cannot support it.

Instead of using creative management approaches already allowed by law to lengthen the red snapper season, H.R. 3588 would turn red snapper management over to the five Gulf States. It would allow the states to determine recreational seasons, extend their management jurisdiction over thousands of square miles of the Gulf without funding for law enforcement, and ignore science-based annual catch limits set by the Gulf of Mexico Fishery Management Council. The bill would also force NOAA and Council scientists to accept and use data from states and fishermen, even if that data has no real scientific value.

Commercial red snapper fishermen have used the fisheries management process under the Magnuson-Stevens Act to develop an economically and environmentally sustainable solution for their fishery. Charter captains have done the same, and the head boat fleet is moving in that direction. It is only private boat anglers that have resisted working through the Gulf Council, hoping instead that Congress will give them everything they want at the expense of others. This is not how our fisheries should be managed. Instead,

all of the stakeholders need to sit at the table together and develop solutions that allow them to utilize the resources in a responsible manner. Even in the few cases where fisheries in the EEZ are managed outside of Magnuson—such as Dungeness crab on the West Coast—that is what Congress has required. For those reasons, we must oppose this bill as reported.

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