

DIRECT ENHANCEMENT OF SNAPPER CONSERVATION
AND THE ECONOMY THROUGH NOVEL DEVICES ACT
OF 2020

SEPTEMBER 24, 2020.—Committed to the Committee of the Whole House on the
State of the Union and ordered to be printed

Mr. GRIJALVA, from the Committee on Natural Resources,
submitted the following

R E P O R T

[To accompany H.R. 5126]

[Including cost estimate of the Congressional Budget Office]

The Committee on Natural Resources, to whom was referred the bill (H.R. 5126) to require individuals fishing for Gulf reef fish to use certain descending devices, and for other purposes, having considered the same, reports favorably thereon with an amendment and recommends that the bill as amended do pass.

The amendment is as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the “Direct Enhancement of Snapper Conservation and the Economy through Novel Devices Act of 2020” or the “DESCEND Act of 2020”.

SEC. 2. SENSE OF CONGRESS.

It is the sense of Congress that commercial and recreational fishermen (which, for the purpose of this Act shall include charter fishing) for Gulf reef fish are expected to use a venting tool or a descending device required for possession under section 3 when releasing fish that are exhibiting signs of barotrauma. The Secretary of Commerce (referred to in this Act as the “Secretary”), in coordination with the Gulf of Mexico Fishery Management Council, should develop and disseminate to fishermen education and outreach materials related to proper use of venting tools and descending devices, and strongly encourage their use by commercial and recreational fishermen when releasing fish that are exhibiting signs of barotrauma.

SEC. 3. REQUIRED POSSESSION OF DESCENDING DEVICES.

(a) **REQUIRED GEAR IN THE GULF REEF FISH FISHERY.**—Title III of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1851 et seq.) is amended by adding at the end the following:

“SEC. 321. REQUIRED POSSESSION OF DESCENDING DEVICES.

“(a) **REQUIRE GEAR IN THE GULF REEF FISH FISHERY.**—It shall be unlawful for a person on board a commercial or recreational vessel to fish for Gulf reef fish in the Gulf of Mexico Exclusive Economic Zone without possessing on board the vessel a venting tool or a descending device that is rigged and ready for use while fishing is occurring.

“(b) **SAVINGS CLAUSE.**—No provision of this section shall be interpreted to affect any program or activity carried out by the Gulf Coast Ecosystem Restoration Council established by the Resources and Ecosystems Sustainability, Tourist Opportunities, and Revived Economies of the Gulf Coast States Act of 2012 (33 U.S.C. 1321 note), or any project contained in an approved Restoration Plan developed by any Natural Resources Damage Assessment Trustee Implementation Group to reduce post-release mortality from barotrauma in Gulf of Mexico Reef Fish Recreational Fisheries.

“(c) **DEFINITIONS.**—In this section:

“(1) **DESCENDING DEVICE.**—The term ‘descending device’ means an instrument that—

“(A) will release fish at a depth sufficient for the fish to be able to recover from the effects of barotrauma;

“(B) is a weighted hook, lip clamp, or box that will hold the fish while it is lowered to depth, or another device determined to be appropriate by the Secretary; and

“(C) is capable of—

“(i) releasing the fish automatically;

“(ii) releasing the fish by actions of the operator of the device; or

“(iii) allowing the fish to escape on its own.

“(2) **VENTING TOOL.**—The term ‘venting tool’ has the meaning given to it by the Gulf of Mexico Fishery Management Council.

“(3) **GULF REEF FISH.**—The term ‘Gulf reef fish’ means any fish chosen by the Gulf of Mexico Fishery Management Council that is in the reef Fishery Management Plan for the purposes of this Act.”

(b) **CIVIL PENALTIES.**—Section 308(a) of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1858(a)) is amended by inserting “or section 321” after “section 307”.

(c) **EFFECTIVE DATE.**—The amendments made by this Act shall take effect 1 year after the date of enactment of this Act.

(d) **CONFORMING AMENDMENT.**—Title III of the table of contents of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1851 et seq.) is amended by striking the item relating to section 305 and all that follows through the end of the items relating to such title and inserting the following:

“Sec. 305. Other requirements and authority.

“Sec. 306. State jurisdiction.

“Sec. 307. Prohibited acts.

“Sec. 308. Civil penalties and permit sanctions.

“Sec. 309. Criminal offenses.

“Sec. 310. Civil forfeitures.

“Sec. 311. Enforcement.

“Sec. 312. Transition to sustainable fisheries.

“Sec. 313. North Pacific fisheries conservation.

“Sec. 314. Northwest Atlantic Ocean fisheries reinvestment program.

“Sec. 315. Regional Coastal Disaster Assistance, Transition, and Recovery Program.

“Sec. 316. Bycatch Reduction Engineering Program.

“Sec. 317. Shark Feeding.

“Sec. 318. Cooperative Research and Management Program.

“Sec. 319. Herring Study.

“Sec. 320. Restoration Study.

“Sec. 321. Required possession of descending devices.”

(e) **SUNSET.**—Five years after the date of enactment of this Act, the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1851 et seq.) is amended—

(1) in the table of contents, by striking the item relating to section 321;

(2) in section 308(a), by striking “or section 321”; and

(3) by striking section 321.

SEC. 4. IMPROVING DISCARD MORTALITY DATA.

(a) **AGREEMENT.**—Within 60 days of the date of enactment of this Act, the Secretary shall enter into an agreement with the National Academy of Sciences to conduct a study and produce a report on discard mortality in the Gulf of Mexico reef fish fisheries. Such study shall include—

(1) assessment of gaps and biases in reporting of discards and associated discard mortality;

(2) assessment of uncertainty and likely impacts of such uncertainty in discard mortality;

(3) assessment of the effectiveness and usage rates of barotrauma-reducing devices;

(4) recommendations for future research priorities; and

(5) recommendations for standardized reporting and quantification of discards in the same metric as landings for fisheries under the Gulf of Mexico Reef Fish Fishery Management Plan.

(b) DEADLINE.—The National Academy of Sciences shall complete the study described in subsection (a) and transmit the final report to the Secretary within 2 years of the date of enactment of this Act. The Secretary shall, within 3 months of receiving such study and report, submit such study and report in (a) to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Natural Resources of the House of Representatives.

(c) PLAN.—Within 1 year of receiving the study and report in described in subsection (a), the Gulf of Mexico Fishery Management Council and the Secretary shall—

(1) develop guidance for minimum standards for quantifying and reporting discards and associated mortality in the Gulf of Mexico Reef Fish Fishery Management Plan; and

(2) develop a plan to assess and monitor the effectiveness and usage of barotrauma-reducing devices and the impact on discard mortality rates in Gulf of Mexico reef fish fisheries.

(d) FOLLOW-UP REPORT.—Within 3 years of developing minimum standards and developing the assessment and monitoring plan in subsection (c), the Secretary shall provide a detailed report on implementation to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Natural Resources of the House of Representatives.

PURPOSE OF THE BILL

The purpose of H.R. 5126 is to require individuals fishing for Gulf reef fish to use certain descending devices, and for other purposes.

BACKGROUND AND NEED FOR THE LEGISLATION

Many marine reef fish, such as snapper and grouper, regulate their buoyancy with a gas-filled swim bladder that allows them to maintain a certain depth in the water column. When a fish is brought to the surface too quickly after being caught by hook and line, gas in the swim bladder expands as the water pressure around the fish decreases, causing injury, or barotrauma, to the fish. If the swim bladders rupture, the fish are unable to regulate their buoyancy, cannot swim back down in the water column, and may die from exposure or predation near the surface.¹

Two tools can help these fish return to depth safely: venting tools and descending devices. A venting tool is a sharpened hollow instrument, such as a modified hypodermic needle, that is used to puncture the fish's body cavity and allow the gases from the ruptured swim bladder to release and internal organs to return to normal positions. Venting tools are inexpensive at approximately \$9.00 to \$17.00 and require "little or no preparation to use."² Descending devices cost between \$5.00 to \$60.00 and allow a fish to descend back to depth and recompress naturally. These may include weighted hooks, lip clamps, or boxes that hold the fish and either release automatically, allow the fish to escape on its own, or require action by the operator of the device. Surface-released fish are three times

¹A *Guide to Releasing Reef Fish Suffering from Barotrauma*, FL. SEA GRANT, <https://www.flseagrant.org/fisheries/venting/> (last visited on Sept. 8, 2020).

²GULF OF MEX. FISHERY MGMT. COUNCIL, POSSESSING VENTING TOOLS AND DESCENDING DEVICES WHEN FISHING FOR REEF FISH 6 (2017), <http://gulfcouncil.org/wp-content/uploads/E-5-September-Options-Paper-for-Venting-Tools-and-Descending-Devices.pdf>.

as likely to die as descended fish and 1.9 times as likely to die as vented fish.³

The Gulf of Mexico Fishery Management Council (Gulf Council) implemented an amendment to the reef fishery management plan in 2008 requiring reef fishers to use venting tools to reduce mortality of released fish, but the amendment did not specify when venting should be used, resulting in overuse and unnecessarily vented fish. This amendment also precluded the use of descending devices, but it was repealed in 2013.⁴

The Gulf Council currently strongly encourages the use of descending devices or venting tools as appropriate for snapper, grouper, and other reef fish, but does not require their use.⁵ In April of 2017, the Gulf Council passed a motion to instruct staff to develop an action plan to require either descending devices or venting tools on board vessels possessing reef fish to reduce discard mortality. The South Atlantic Fishery Management Council approved an amendment for review by the Secretary of Commerce in September of 2019 to require the use of descending devices on vessels that catch snapper and grouper. On June 15, 2020, the National Marine Fisheries Service (NOAA Fisheries) issued a final rule to implement the amendment, thereby requiring that descending devices be on board all commercial, charter vessels and headboats, and private recreational vessels in the South Atlantic region, but not the Gulf of Mexico region, while fishing for or possessing snapper and grouper specifically.⁶

H.R. 5126 requires every commercial or recreational vessel engaged in fishing for Gulf reef fish more generally⁷ while in the Gulf of Mexico region to have on board a venting tool or descending device that is rigged and ready for use while fishing.

COMMITTEE ACTION

H.R. 5126 was introduced on November 15, 2019, by Representative Garret Graves (R-LA). The bill was referred solely to the Committee on Natural Resources, and within the Committee to the Subcommittee on Water, Oceans, and Wildlife. On January 14, 2020, the Subcommittee held a hearing on the bill. On March 11, 2020, the Natural Resources Committee met to consider the bill. The Subcommittee was discharged by unanimous consent. Chair Raúl M. Grijalva (D-AZ) offered an amendment in the nature of a substitute. Chair Grijalva offered an amendment designated Grijalva #1 to the amendment in the nature of a substitute. The amendment was agreed to by unanimous consent. The amendment in the nature of a substitute, as amended, was agreed to by unani-

³Judson M. Curtis, Matthew W. Johnson, Sandra L. Diamond & Gregory W. Stunz, *Quantifying Delayed Mortality from Barotrauma Impairment in Discarded Red Snapper Using Acoustic Telemetry*, 7(1) MARINE & COASTAL FISHERIES 434, 440 (2015), <https://doi.org/10.1080/19425120.2015.1074968>.

⁴GULF OF MEX. FISHERY MGMT. COUNCIL, POLICY ON THE USE OF VENTING TOOLS AND DESCENDING DEVICES 2-3 (2018), <https://gulfcouncil.org/wp-content/uploads/Gulf-Council-Policy-on-the-Use-of-Venting-Tools-and-Descending-Devices.pdf>.

⁵*Id.* at 1.

⁶Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Snapper-Grouper Fishery Off the Southern Atlantic Region; Regulatory Amendment 29, 85, Fed. Reg. 36,166 (June 15, 2020) (to be codified at 50 C.F.R. § 622.188(a)(4)), <https://www.govinfo.gov/content/pkg/FR-2020-06-15/pdf/2020-11916.pdf>.

⁷See *Species Directory: Federally Managed Gulf of Mexico Reef Fish*, NOAA FISHERIES, <https://www.fisheries.noaa.gov/species/federally-managed-gulf-mexico-reef-fish> (last visited Sept. 8, 2020).

mous consent. The bill, as amended, was adopted and ordered favorably reported to the House of Representatives by unanimous consent.

HEARINGS

For the purposes of section 103(i) of H. Res. 6 of the 116th Congress—the following hearing was used to develop or consider H.R. 5126: legislative hearing by the Subcommittee on Water, Oceans, and Wildlife held on January 14, 2020.

SECTION-BY-SECTION ANALYSIS

Section 1. Short title

Section 2. Sense of Congress

This section expresses the sense of Congress that commercial and recreational fishers should use venting tools or descending devices to release fish exhibiting signs of barotrauma, and that the Secretary of Commerce and the Gulf of Mexico Fishery Management Council (Gulf Council) should develop educational materials on the proper use of such tools and outreach materials encouraging their use.

Section 3. Required possession of descending devices

This section amends the Magnuson-Stevens Fishery Conservation and Management Act (MSA) to make it unlawful for a person on a commercial or recreational vessel to fish for reef fish in the Gulf of Mexico Exclusive Economic Zone (EEZ) without possessing a venting tool or a descending device that is rigged and ready for use while fishing. This requirement takes effect one year after enactment and expires four years after that.

Section 4. Improving discard mortality data

This section directs the Secretary of Commerce to enter into an agreement with the National Academy of Sciences to conduct a study and produce a report on discard mortality in Gulf of Mexico reef fish fisheries, assessing gaps and biases in reporting of discards, uncertainty and likely impacts of such uncertainty, the effectiveness and usage rates of barotrauma-reducing devices, and providing recommendations for future research and standardization of reporting of discards. This section directs the Gulf Council and Secretary of Commerce to develop guidance for minimum standards for quantifying and reporting discards and associated mortality in the Gulf of Mexico Reef Fish Fishery Management Plan and to develop a plan to assess and monitor the effectiveness and usage of barotrauma-reducing devices.

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, June 25, 2020.

Hon. RAÚL M. GRIJALVA,
*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. 5126, the DESCEND Act of 2020.

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

Sincerely,

PHILLIP L. SWAGEL,
Director.

Enclosure.

H.R. 5126, DESCEND Act of 2020			
As ordered reported by the House Committee on Natural Resources on March 11, 2020			
By Fiscal Year, Millions of Dollars	2020	2020-2025	2020-2030
Direct Spending (Outlays)	0	0	0
Revenues	0	*	*
Increase or Decrease (-) in the Deficit	0	*	*
Spending Subject to Appropriation (Outlays)	*	*	not estimated
Statutory pay-as-you-go procedures apply?	Yes	Mandate Effects	
Increases on-budget deficits in any of the four consecutive 10-year periods beginning in 2031?	No	Contains intergovernmental mandate?	No
		Contains private-sector mandate?	Yes, Under Threshold
* = between -\$500,000 and \$500,000.			

When people are fishing they often have to discard some of the fish they catch for various regulatory and economic reasons. Improperly discarding fish can harm them by causing barotrauma (injuries related to the rapid change in water pressure on their bodies), which can lead to increased mortality for the discarded fish. H.R. 5126 would make it unlawful to fish, commercially or recreationally, for reef fish in the Gulf of Mexico without a device to safely return discarded fish to the water at a depth sufficient for the fish to recover from barotrauma. The requirement would take effect one year after enactment and would lapse five years after enactment.

H.R. 5126 would create new civil penalties for violating that requirement. Any fines collected under the bill would be recorded in the budget as revenues. CBO estimates that enacting the provision would result in an insignificant increase in revenues over the 2020–2030 period because few cases would likely be affected.

The bill also would direct the National Oceanic and Atmospheric Administration (NOAA) and the National Academies of Science to study and report to the Congress on the mortality of discarded fish in the Gulf of Mexico reef fisheries. Following that study, NOAA and the Gulf of Mexico Fishery Management Council would be required to create new guidance for collecting information and monitoring the effectiveness of barotrauma reducing devices. Using information on the cost of similar studies, CBO estimates that implementing those requirements would cost less than \$500,000 over the 2020–2025 period. Such spending would be subject to the availability of appropriated funds.

H.R. 5126 would impose a private-sector mandate as defined in the Unfunded Mandates Reform Act (UMRA) by requiring commercial and recreational boats fishing for reef fish in the Gulf of Mexico Exclusive Economic Zone to have a device to safely return discarded fish to the water at an appropriate depth for survival. CBO estimates that the cost of complying with the mandate would not exceed the annual threshold established in UMRA for private-sector mandates (\$168 million, in 2020, adjusted annually for inflation).

Using data from NOAA and industry experts, CBO estimates that roughly 30,000 fishing vessels (commercial and recreational) would be required to have the devices on board. CBO estimates that the cost of complying with the requirement would total less than \$2 million in the first year and less than that in subsequent years because only a small number of devices would probably need to be replaced in any single year.

The bill would not impose intergovernmental mandates as defined in UMRA.

The CBO staff contact for this estimate is Robert Reese (for federal costs) and Lilia Ledezma (for mandates). The estimate was reviewed by H. Samuel Papenfuss, Deputy Director of Budget Analysis.

2. *General Performance Goals and Objectives.* As required by clause 3(c)(4) of rule XIII, the general performance goals and objectives of this bill are to require individuals fishing for Gulf reef fish to use certain descending devices.

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.

UNFUNDED MANDATES REFORM ACT STATEMENT

According to CBO, H.R. 5126 would impose a private-sector mandate as defined in the Unfunded Mandates Reform Act (UMRA) by requiring commercial and recreational boats fishing for reef fish in the Gulf of Mexico EEZ to have a device to safely return discarded

fish to the water at an appropriate depth for survival. CBO estimates that the cost of complying with the mandate would not exceed the annual threshold established in UMRA for private-sector mandates (\$168 million, in 2020, adjusted annually for inflation). According to CBO, the bill would not impose intergovernmental mandates as defined in UMRA. CBO's full analysis is reproduced above.

EXISTING PROGRAMS

This bill does not establish or reauthorize a program of the federal government known to be duplicative of another program.

APPLICABILITY TO LEGISLATIVE BRANCH

The Committee finds that the legislation does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of section 102(b)(3) of the Congressional Accountability Act.

PREEMPTION OF STATE, LOCAL, OR TRIBAL LAW

Any preemptive effect of this bill over state, local, or tribal law is intended to be consistent with the bill's purposes and text and the Supremacy Clause of Article VI of the U.S. Constitution.

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 italics, and existing law in which no change is proposed is shown in roman):

MAGNUSON-STEVENS FISHERY CONSERVATION AND MANAGEMENT ACT

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Magnuson-Stevens Fishery Conservation and Management Act".

TABLE OF CONTENTS

Sec. 2. Findings, purposes, and policy.

* * * * *

TITLE III—NATIONAL FISHERY MANAGEMENT PROGRAM

Sec. 301. National standards for fishery conservation and management.

Sec. 302. Regional fishery management councils.

Sec. 303. Contents of fishery management plans.

Sec. 304. Action by the Secretary.

【Sec. 305. Implementation of fishery management plans.

【Sec. 306. State jurisdiction.

【Sec. 307. Prohibited acts.

【Sec. 308. Civil penalties and permit sanctions.

【Sec. 309. Criminal offenses.

【Sec. 310. Civil forfeitures.

【Sec. 311. Enforcement.

【Sec. 312. Effective date of certain provisions.

【Sec. 313. North Pacific fisheries research plan.

- 【Sec. 314. Northwest Atlantic Oceans Fisheries Reinvestment Program.
- 【Sec. 312. Transition to sustainable fisheries.
- 【Sec. 313. North Pacific fisheries conservation.
- 【Sec. 314. Northwest Atlantic Ocean fisheries reinvestment program.】
- Sec. 305. *Other requirements and authority.*
- Sec. 306. *State jurisdiction.*
- Sec. 307. *Prohibited acts.*
- Sec. 308. *Civil penalties and permit sanctions.*
- Sec. 309. *Criminal offenses.*
- Sec. 310. *Civil forfeitures.*
- Sec. 311. *Enforcement.*
- Sec. 312. *Transition to sustainable fisheries.*
- Sec. 313. *North Pacific fisheries conservation.*
- Sec. 314. *Northwest Atlantic Ocean fisheries reinvestment program.*
- Sec. 315. *Regional Coastal Disaster Assistance, Transition, and Recovery Program.*
- Sec. 316. *Bycatch Reduction Engineering Program.*
- Sec. 317. *Shark Feeding.*
- Sec. 318. *Cooperative Research and Management Program.*
- Sec. 319. *Herring Study.*
- Sec. 320. *Restoration Study.*
- Sec. 321. *Required possession of descending devices.*

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TITLE III—NATIONAL FISHERY MANAGEMENT PROGRAM

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SEC. 308. CIVIL PENALTIES AND PERMIT SANCTIONS.

(a) ASSESSMENT OF PENALTY.—Any person who 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 or section 321 shall be liable to the United States for a civil penalty. The amount of the civil penalty shall not exceed \$100,000 for each violation. Each day of a continuing violation shall constitute a separate offense. The amount of such civil penalty shall be assessed by the Secretary, or his designee, by written notice. In determining the amount of such penalty, the Secretary shall take into account the nature, circumstances, extent, and gravity of the prohibited acts committed and, with respect to the violator, the degree of culpability, any history of prior offenses, and such other matters as justice may require. In assessing such penalty the Secretary may also consider any information provided by the violator relating to the ability of the violator to pay. *Provided*, That the information is served on the Secretary at least 30 days prior to an administrative hearing.

(b) REVIEW OF CIVIL PENALTY.—Any person against whom a civil penalty is assessed under subsection (a) or against whom a permit sanction is imposed under subsection (g) (other than a permit suspension for nonpayment of penalty or fine) may obtain review thereof in the United States district court for the appropriate district by filing a complaint against the Secretary in such court within 30 days from the date of such order. The Secretary shall promptly file in such court a certified copy of the record upon which such violation was found or such penalty imposed, as provided in section 2112 of title 28, United States Code. The findings and order of the Secretary shall be set aside by such court if they are not found to be supported by substantial evidence, as provided in section 706(2) of title 5, United States Code.

(c) ACTION UPON FAILURE TO PAY ASSESSMENT.—If any person fails to pay an assessment of a civil penalty after it has become a final and unappealable order, or after the appropriate court has entered final judgment in favor of the Secretary, the Secretary shall refer the matter to the Attorney General of the United States, who shall recover the amount assessed in any appropriate district court of the United States. In such action, the validity and appropriateness of the final order imposing the civil penalty shall not be subject to review.

(d) IN REM JURISDICTION.—A fishing vessel (including its fishing gear, furniture, appurtenances, stores, and cargo) used in the commission of an act prohibited by section 307 shall be liable in rem for any civil penalty assessed for such violation under section 308 and may be proceeded against in any district court of the United States having jurisdiction thereof. Such penalty shall constitute a maritime lien on such vessel which may be recovered in an action in rem in the district court of the United States having jurisdiction over the vessel.

(e) COMPROMISE OR OTHER ACTION BY SECRETARY.—The Secretary may compromise, modify, or remit, with or without conditions, any civil penalty which is subject to imposition or which has been imposed under this section.

(f) SUBPENAS.—For the purposes of conducting any hearing under this section, the Secretary may issue subpoenas for the attendance and testimony of witnesses and the production of relevant papers, books, and documents, and may administer oaths. Witnesses summoned shall be paid the same fees and mileage that are paid to witnesses in the courts of the United States. In case of contempt or refusal to obey a subpoena served upon any person pursuant to this subsection, the district court of the United States for any district in which such person is found, resides, or transacts business, upon application by the United States and after notice to such person, shall have jurisdiction to issue an order requiring such person to appear and give testimony before the Secretary or to appear and produce documents before the Secretary, or both, and any failure to obey such order of the court may be punished by such court as a contempt thereof.

(g) PERMIT SANCTIONS.—(1) In any case in which (A) a vessel has been used in the commission of an act prohibited under section 307, (B) the owner or operator of a vessel or any other person who has been issued or has applied for a permit under this Act has acted in violation of section 307, (C) any amount in settlement of a civil forfeiture imposed on a vessel or other property, or any civil penalty or criminal fine imposed on a vessel or owner or operator of a vessel or any other person who has been issued or has applied for a permit under any marine resource law enforced by the Secretary has not been paid and is overdue, or (D) any payment required for observer services provided to or contracted by an owner or operator who has been issued a permit or applied for a permit under any marine resource law administered by the Secretary has not been paid and is overdue, the Secretary may—

(i) revoke any permit issued with respect to such vessel or person, with or without prejudice to the issuance of subsequent permits;

- (ii) suspend such permit for a period of time considered by the Secretary to be appropriate;
- (iii) deny such permit; or
- (iv) impose additional conditions and restrictions on any permit issued to or applied for by such vessel or person under this Act and, with respect to foreign fishing vessels, on the approved application of the foreign nation involved and on any permit issued under that application.

(2) In imposing a sanction under this subsection, the Secretary shall take into account—

(A) the nature, circumstances, extent, and gravity of the prohibited acts for which the sanction is imposed; and

(B) with respect to the violator, the degree of culpability, any history of prior offenses, and such other matters as justice may require.

(3) Transfer of ownership of a vessel, by sale or otherwise, shall not extinguish any permit sanction that is in effect or is pending at the time of transfer of ownership. Before executing the transfer of ownership of a vessel, by sale or otherwise, the owner shall disclose in writing to the prospective transferee the existence of any permit sanction that will be in effect or pending with respect to the vessel at the time of the transfer.

(4) In the case of any permit that is suspended under this subsection for nonpayment of a civil penalty or criminal fine, the Secretary shall reinstate the permit upon payment of the penalty or fine and interest thereon at the prevailing rate.

(5) No sanctions shall be imposed under this subsection unless there has been a prior opportunity for a hearing on the facts underlying the violation for which the sanction is imposed, either in conjunction with a civil penalty proceeding under this section or otherwise.

【Five years after the date of enactment of this Act, section 3(e)(2) of H.R. 5126 (as reported) provides for an amendment to section 308(a) of the Magnuson-Stevens Fishery Conservation and Management Act. On such date, section 308(a) of such Act (as so amended by subsections (b) and (e)(2) of section 3 of H.R. 5126, as reported) is amended as follows:】

SEC. 308. CIVIL PENALTIES AND PERMIT SANCTIONS.

(a) ASSESSMENT OF PENALTY.—Any person who 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 【or section 321】 shall be liable to the United States for a civil penalty. The amount of the civil penalty shall not exceed \$100,000 for each violation. Each day of a continuing violation shall constitute a separate offense. The amount of such civil penalty shall be assessed by the Secretary, or his designee, by written notice. In determining the amount of such penalty, the Secretary shall take into account the nature, circumstances, extent, and gravity of the prohibited acts committed and, with respect to the violator, the degree of culpability, any history of prior offenses, and such other matters as justice may require. In assessing such penalty the Secretary may also consider any information provided by the violator relating to the ability of the violator to pay, *Provided*, That the information is served on the Secretary at least 30 days prior to an administrative hearing.

(b) REVIEW OF CIVIL PENALTY.—Any person against whom a civil penalty is assessed under subsection (a) or against whom a permit sanction is imposed under subsection (g) (other than a permit suspension for nonpayment of penalty or fine) may obtain review thereof in the United States district court for the appropriate district by filing a complaint against the Secretary in such court within 30 days from the date of such order. The Secretary shall promptly file in such court a certified copy of the record upon which such violation was found or such penalty imposed, as provided in section 2112 of title 28, United States Code. The findings and order of the Secretary shall be set aside by such court if they are not found to be supported by substantial evidence, as provided in section 706(2) of title 5, United States Code.

(c) ACTION UPON FAILURE TO PAY ASSESSMENT.—If any person fails to pay an assessment of a civil penalty after it has become a final and unappealable order, or after the appropriate court has entered final judgment in favor of the Secretary, the Secretary shall refer the matter to the Attorney General of the United States, who shall recover the amount assessed in any appropriate district court of the United States. In such action, the validity and appropriateness of the final order imposing the civil penalty shall not be subject to review.

(d) IN REM JURISDICTION.—A fishing vessel (including its fishing gear, furniture, appurtenances, stores, and cargo) used in the commission of an act prohibited by section 307 shall be liable in rem for any civil penalty assessed for such violation under section 308 and may be proceeded against in any district court of the United States having jurisdiction thereof. Such penalty shall constitute a maritime lien on such vessel which may be recovered in an action in rem in the district court of the United States having jurisdiction over the vessel.

(e) COMPROMISE OR OTHER ACTION BY SECRETARY.—The Secretary may compromise, modify, or remit, with or without conditions, any civil penalty which is subject to imposition or which has been imposed under this section.

(f) SUBPENAS.—For the purposes of conducting any hearing under this section, the Secretary may issue subpoenas for the attendance and testimony of witnesses and the production of relevant papers, books, and documents, and may administer oaths. Witnesses summoned shall be paid the same fees and mileage that are paid to witnesses in the courts of the United States. In case of contempt or refusal to obey a subpoena served upon any person pursuant to this subsection, the district court of the United States for any district in which such person is found, resides, or transacts business, upon application by the United States and after notice to such person, shall have jurisdiction to issue an order requiring such person to appear and give testimony before the Secretary or to appear and produce documents before the Secretary, or both, and any failure to obey such order of the court may be punished by such court as a contempt thereof.

(g) PERMIT SANCTIONS.—(1) In any case in which (A) a vessel has been used in the commission of an act prohibited under section 307, (B) the owner or operator of a vessel or any other person who has been issued or has applied for a permit under this Act has acted in violation of section 307, (C) any amount in settlement of

a civil forfeiture imposed on a vessel or other property, or any civil penalty or criminal fine imposed on a vessel or owner or operator of a vessel or any other person who has been issued or has applied for a permit under any marine resource law enforced by the Secretary has not been paid and is overdue, or (D) any payment required for observer services provided to or contracted by an owner or operator who has been issued a permit or applied for a permit under any marine resource law administered by the Secretary has not been paid and is overdue, the Secretary may—

(i) revoke any permit issued with respect to such vessel or person, with or without prejudice to the issuance of subsequent permits;

(ii) suspend such permit for a period of time considered by the Secretary to be appropriate;

(iii) deny such permit; or

(iv) impose additional conditions and restrictions on any permit issued to or applied for by such vessel or person under this Act and, with respect to foreign fishing vessels, on the approved application of the foreign nation involved and on any permit issued under that application.

(2) In imposing a sanction under this subsection, the Secretary shall take into account—

(A) the nature, circumstances, extent, and gravity of the prohibited acts for which the sanction is imposed; and

(B) with respect to the violator, the degree of culpability, any history of prior offenses, and such other matters as justice may require.

(3) Transfer of ownership of a vessel, by sale or otherwise, shall not extinguish any permit sanction that is in effect or is pending at the time of transfer of ownership. Before executing the transfer of ownership of a vessel, by sale or otherwise, the owner shall disclose in writing to the prospective transferee the existence of any permit sanction that will be in effect or pending with respect to the vessel at the time of the transfer.

(4) In the case of any permit that is suspended under this subsection for nonpayment of a civil penalty or criminal fine, the Secretary shall reinstate the permit upon payment of the penalty or fine and interest thereon at the prevailing rate.

(5) No sanctions shall be imposed under this subsection unless there has been a prior opportunity for a hearing on the facts underlying the violation for which the sanction is imposed, either in conjunction with a civil penalty proceeding under this section or otherwise.

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SEC. 321. REQUIRED POSSESSION OF DESCENDING DEVICES.

(a) *REQUIRE GEAR IN THE GULF REEF FISH FISHERY.*—It shall be unlawful for a person on board a commercial or recreational vessel to fish for Gulf reef fish in the Gulf of Mexico Exclusive Economic Zone without possessing on board the vessel a venting tool or a descending device that is rigged and ready for use while fishing is occurring.

(b) *SAVINGS CLAUSE.*—No provision of this section shall be interpreted to affect any program or activity carried out by the Gulf

Coast Ecosystem Restoration Council established by the Resources and Ecosystems Sustainability, Tourist Opportunities, and Revived Economies of the Gulf Coast States Act of 2012 (33 U.S.C. 1321 note), or any project contained in an approved Restoration Plan developed by any Natural Resources Damage Assessment Trustee Implementation Group to reduce post-release mortality from barotrauma in Gulf of Mexico Reef Fish Recreational Fisheries.

(c) **DEFINITIONS.**—*In this section:*

(1) **DESCENDING DEVICE.**—*The term “descending device” means an instrument that—*

(A) will release fish at a depth sufficient for the fish to be able to recover from the effects of barotrauma;

(B) is a weighted hook, lip clamp, or box that will hold the fish while it is lowered to depth, or another device determined to be appropriate by the Secretary; and

(C) is capable of—

(i) releasing the fish automatically;

(ii) releasing the fish by actions of the operator of the device; or

(iii) allowing the fish to escape on its own.

(2) **VENTING TOOL.**—*The term “venting tool” has the meaning given to it by the Gulf of Mexico Fishery Management Council.*

(3) **GULF REEF FISH.**—*The term “Gulf reef fish” means any fish chosen by the Gulf of Mexico Fishery Management Council that is in the reef Fishery Management Plan for the purposes of this Act.*

【Section 3(a) of H.R. 5126 (as reported) provides for an amendment to add section 321 at the end of title III of the Magnuson-Stevens Fishery Conservation and Management Act (shown above in *italic*). Five years after the date of enactment of this Act, section 3(e)(1) and (3) of H.R. 5126 (as reported) provides for amendments to repeal section 321 of the Magnuson-Stevens Fishery Conservation and Management Act (and the item relating to such section in the table of contents). On such date, section 321 of such Act (as added by section 3(a) of H.R. 5126, as reported) is repealed as follows:】

【SEC. 321. REQUIRED POSSESSION OF DESCENDING DEVICES.

【(a) **REQUIRE GEAR IN THE GULF REEF FISH FISHERY.**—It shall be unlawful for a person on board a commercial or recreational vessel to fish for Gulf reef fish in the Gulf of Mexico Exclusive Economic Zone without possessing on board the vessel a venting tool or a descending device that is rigged and ready for use while fishing is occurring.

【(b) **SAVINGS CLAUSE.**—No provision of this section shall be interpreted to affect any program or activity carried out by the Gulf Coast Ecosystem Restoration Council established by the Resources and Ecosystems Sustainability, Tourist Opportunities, and Revived Economies of the Gulf Coast States Act of 2012 (33 U.S.C. 1321 note), or any project contained in an approved Restoration Plan developed by any Natural Resources Damage Assessment Trustee Implementation Group to reduce post-release mortality from barotrauma in Gulf of Mexico Reef Fish Recreational Fisheries.

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[(C) is capable of—

[(i) releasing the fish automatically;

[(ii) releasing the fish by actions of the operator of the device; or

[(iii) allowing the fish to escape on its own.

[(2) VENTING TOOL.—The term “venting tool” has the meaning given to it by the Gulf of Mexico Fishery Management Council.

[(3) GULF REEF FISH.—The term “Gulf reef fish” means any fish chosen by the Gulf of Mexico Fishery Management Council that is in the reef Fishery Management Plan for the purposes of this Act.]

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