

# Committee on Natural Resources

Rob Bishop, Chairman  
Markup Memorandum

June 13, 2016

To: All Natural Resources Committee Members

From: Majority Committee Staff  
Subcommittee on Water, Power and Oceans (x58331)

Mark-up: H.R. 3094 (Rep. Garret Graves), To amend the Magnuson-Stevens Fishery Conservation and Management Act to transfer to the States the authority to manage red snapper fisheries in the Gulf of Mexico.  
**June 14-15, 2016; 1324 Longworth HOB**

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**H.R. 3094 (Rep. Garret Graves, R-LA), “*Gulf States Red Snapper Management Authority*”**

## **Bill Summary:**

H.R. 3094 transfers management authority of red snapper from the Gulf of Mexico Fishery Management Council (Council) to the Gulf States Red Snapper Management Authority (GSR SMA), an entity created by this bill consisting of the marine fisheries managers from each of the five Gulf of Mexico States. As introduced, the GSR SMA would approve each state’s fishery management plan, coordinate stock assessments, and distribute federal funding for management, assessments, and research.<sup>1</sup>

## **Cosponsors:**

Reps. Ralph Abraham (R-LA), Rick Allen (R-GA), Brian Babin (R-TX), Dan Benishek (R-MI), Madeline Bordallo (D-GU), Charles Boustany (R-LA), Buddy Carter (R-GA), John Carter (R-TX), Lacy Clay (D-MO), Doug Collins (R-GA), Paul Cook (R-CA), Jeff Denham (R-CA), Jeff Duncan (R-SC), Blake Farenthold (R-TX), Louie Gohmert (R-TX), Tom Graves (R-GA), Gene Green (D-TX), Jody Hice (R-GA), Ruben Hinojosa (D-TX), Raul Labrador (R-ID), Doug LaMalfa (R-CA), Darrin LaHood (R-IL), Robert Latta (R-OH), Billy Long (R-MO), Barry Loudermilk (R-GA), Cynthia Lummis (R-WY), Jeff Miller (R-FL), Alex Mooney (R-WV), Pete Olson (R-TX), Steven Palazzo (R-MS), Tom Price (R-GA), Cedric Richmond (D-LA), Austin Scott (R-GA), Glenn Thompson (R-PA), Bennie Thompson (D-MS), Timothy Walz (D-MN), Bruce Westerman (R-AR), Lynn Westmoreland (R-GA), Rob Wittman (R-VA) and Ryan Zinke (R-MT).

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<sup>1</sup> Robin Riechers, Texas Parks and Wildlife Dept.; Randy Pausina, Louisiana Dept. of Wildlife and Fisheries; Jamie Miller, Mississippi Dept. of Marine Res.; Chris Blankenship, Marine Res. Div., Alabama Dept. of Conservation and Nat. Res.; Jessica McCawley, Div. of Marine Fisheries Manag., Florida Fish and Wildlife Conservation Commission, *Gulf States Red Snapper Management Authority Letter* (March 13, 2015). Available at: [Gulf States Red Snapper Management Authority Letter](#).

## **Background:**

The red snapper is a species of fish found in the South Atlantic and the Gulf with a known range in the United States from the Carolinas to Texas.<sup>2</sup> These can be large fish, growing upwards of 40 inches and 50 pounds, and can have a lifespan of over 50 years.<sup>3</sup> Categorized as “reef fish,” typical adult red snapper habitat is on the bottom of the ocean usually near reefs, rocks, ledges and caves.<sup>4</sup>



Source: [Floridasportsman.com](http://Floridasportsman.com)

According to the National Oceanic and Atmospheric Administration (NOAA), red snapper has been caught in the Gulf since at least the mid-1800s.<sup>5</sup> 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.<sup>6</sup> An integral part of this program was new and intensive restrictions on commercial and recreational catches to help rebuild the declining stock.<sup>7</sup>

The Magnuson-Stevens Fishery Conservation and Management Act of 1996 (P.L. 94-265) contained components addressing bycatch and rebuilding overfished fisheries.<sup>8</sup> In 1998, the Council passed an amendment to require bycatch reduction devices (BRD) for shrimp trawls in federal waters that were inadvertently catching red snapper in their shrimp nets.<sup>9</sup> 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 (TAC).<sup>10</sup>

A 2005 NOAA assessment found that the stock had failed to meet certain improvement targets mandated by the rebuilding plan.<sup>11</sup> 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.<sup>12</sup> However, the quotas have increased since then, with an all-time high quota set at 14.3 million pounds for 2015.<sup>13</sup>

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<sup>2</sup> FishWatch, National Oceanic and Atmospheric Administration (NOAA): *Red Snapper*, (Feb. 28, 2014). Available at: [http://www.fishwatch.gov/seafood\\_profiles/species/snapper/species\\_pages/red\\_snapper.htm](http://www.fishwatch.gov/seafood_profiles/species/snapper/species_pages/red_snapper.htm)

<sup>3</sup> *Id* at 2.

<sup>4</sup> *Id* at 2.

<sup>5</sup> NOAA Fisheries, Southeast Regional Office: *Gulf Fisheries*, available at:

[http://sero.nmfs.noaa.gov/sustainable\\_fisheries/gulf\\_fisheries/red\\_snapper/overview/](http://sero.nmfs.noaa.gov/sustainable_fisheries/gulf_fisheries/red_snapper/overview/)

<sup>6</sup> 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.

<sup>7</sup> *Id* at 6.

<sup>8</sup> P.L. 104-297, approved October 11, 1996

<sup>9</sup> 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.

<sup>10</sup> *Coastal Conservation Ass'n v. Gutierrez*, 512 F. Supp. 2d 896, (S.D. Tex. 2007)

<sup>11</sup> NOAA Fisheries, Southeast Regional Office: *Gulf Fisheries*, available at:

[http://sero.nmfs.noaa.gov/sustainable\\_fisheries/gulf\\_fisheries/red\\_snapper/overview/](http://sero.nmfs.noaa.gov/sustainable_fisheries/gulf_fisheries/red_snapper/overview/)

<sup>12</sup> 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). Available at:

As the red snapper is a federally managed species under the Magnuson-Stevens 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.<sup>14</sup> The federal recreation season is set in terms of days, with the Council setting a recreational quota in pounds then setting a season length based on how long it would take the recreational sector to catch the quota historically.<sup>15</sup>

The federally permitted commercial sector currently receives 48.5 percent of the overall red snapper quota and the recreational/charter-for-hire sector receives 51.5 percent.<sup>16</sup>

A 2014 U.S. District Court decision in a suit filed by Mr. Keith Guindon of Kate's Seafood in Galveston, Texas<sup>17</sup> found that NOAA failed to require adequate accountability measures for the recreational industry.<sup>18</sup> 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.<sup>19</sup>

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 – allocating 42.3 percent of the recreational quota to charter-for-hire boats and 57.7 percent of the recreational quota to private anglers.<sup>20</sup> For 2016, the total quota of 13.96 million pounds was split approximately 6.77 million pounds to commercial and 7.19 million pounds to recreational/charter-for-hire.<sup>21</sup> However, in accounting for the ACT, the actual catchable quota for the charter-for-hire was only 3.04 million pounds and the recreational sector was only 4.15 million pounds for 2016.<sup>22</sup> This resulted in a 2016 recreational angler season with nine days in federal waters for private anglers, and a charter-for-

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<http://gulfcouncil.org/docs/amendments/Final%20Red%20Snapper%20Framework%20Action%20Set%202015-2017%20Quotas.pdf>.

<sup>13</sup> *Id at 12.*

<sup>14</sup> NOAA: *NOAA Catch Share Policy*, available at:

[http://www.nmfs.noaa.gov/sfa/management/catch\\_shares/about/documents/noaa\\_cs\\_policy.pdf](http://www.nmfs.noaa.gov/sfa/management/catch_shares/about/documents/noaa_cs_policy.pdf)

<sup>15</sup> *Id at 14.*

<sup>16</sup> Gulf of Mexico Fishery Management Council, *Final Amendment 28 to the Reef Fish Resources of the Gulf of Mexico*, (August 2015).

<sup>17</sup> Buddy Guindon, Gulf of Mexico Reef Fish Shareholders Alliance, available at:

<https://www.edf.org/sites/default/files/Buddy%20Guindon's%20Story.pdf>

<sup>18</sup> 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). Available at:

<http://gulfcouncil.org/docs/amendments/Final%20Red%20Snapper%20Framework%20Action%20Set%202015-2017%20Quotas.pdf>.

<sup>19</sup> *Id at 18.*

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

<sup>21</sup> [Department of Commerce, Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic: Reef Fish Fishery of the Gulf of Mexico; 1016 Recreational Fishing Season for Red Snapper in the Gulf of Mexico, 81 FR 25583, April 28, 2016.](#)

<sup>22</sup> *Id at 21.*

hire season of 46 days in federal waters.<sup>23</sup> The commercial quota is open year round under an individual fishing quota system managed under the Magnuson-Stevens Act umbrella.<sup>24</sup>

Each of the five Gulf States has the authority to manage the red snapper fishery in their respective state waters. Faced with an increasing red snapper population within state waters, recreational anglers were allotted approximately 70 days in Florida,<sup>25</sup> 30 days in Alabama,<sup>26</sup> 122 days in Mississippi,<sup>27</sup> and 204 days in Louisiana<sup>28</sup> in 2015. Texas state waters are open year-round for recreational red snapper fishing.<sup>29</sup> The states also use bag limits (amount of fish an angler can retain daily) and size limits for retained fish as management tools.

As a result 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 angling organizations and the five Gulf states have sought management changes as a way to improve recreational access.

H.R. 3094, based on a five Gulf-state agreement reached last year, is one such proposal.<sup>30</sup> The legislation specifically transfers federally sponsored red snapper management in federal waters to state-based management. In doing so, H.R. 3094 creates the Gulf States Red Snapper Management Authority (GSR SMA), consisting of the principal marine fisheries managers from each of the five Gulf States, with a rotating chair every two years.<sup>31</sup>



Management jurisdictional boundaries of each of the five states as set by H.R. 3094.

Source: [Robin Riechers, Randy Pausina, Jamie Miller, Chris Blankenship, Jessica McCawley letter March, 2015.](#)

According to the states, the GSR SMA would “allow states to use flexible management approaches to manage red snapper to meet local needs as well as Gulf-wide conservation goals.”<sup>32</sup> The GSR SMA would ultimately be charged with distributing federally appropriated funding for each state’s management needs, approving each state’s management plan and

<sup>23</sup> *Id at 21*

<sup>24</sup> <http://gulfcouncil.org/docs/amendments/Red%20Snapper%205-year%20Review%20FINAL.pdf>; at 8-9

<sup>25</sup> Florida Fish and Wildlife Conservation Commission, *Frequently Asked Questions-Red Snapper*; available at: <http://myfwc.com/fishing/saltwater/recreational/snappers/gulf-red-snapper/frequently-asked-questions/>

<sup>26</sup> Outdoor Alabama, Alabama Dept. of Conservation and Nat. Res.: *Alabama State Waters Open For Red Snapper and Triggerfish In July*; available at: <http://www.outdooralabama.com/alabama-state-waters-open-red-snapper-and-triggerfish-july>

<sup>27</sup> Mississippi Dept. of Marine Resources, *Finfish: Mississippi Red Snapper 2015*; available at: <http://www.dmr.state.ms.us/index.php/marine-fisheries/finfish/638-snapper-tails-n-scales>

<sup>28</sup> Louisiana Dept. of Wildlife and Fisheries: *Louisiana sets 2015 recreational red snapper season*; available at: <http://www.wlf.louisiana.gov/news/38981>

<sup>29</sup> Steve Lightfoot, Texas Parks and Wildlife: *Recreational Anglers Get 10-Days in Federal Waters for Red Snapper*, (May 26, 2015); available at: <http://tpwd.texas.gov/newsmedia/releases/?req=20150526a>

<sup>30</sup> Robin Riechers, Texas Parks and Wildlife Dept.; Randy Pausina, Louisiana Dept. of Wildlife and Fisheries; Jamie Miller, Mississippi Dept. of Marine Res.; Chris Blankenship, Marine Res. Div., Alabama Dept. of Conservation and Nat. Res.; Jessica McCawley, Div. of Marine Fisheries Manag., Florida Fish and Wildlife Conservation Commission, *Gulf States Red Snapper Management Authority Letter* (March 13, 2015). Available at: [Gulf States Red Snapper Management Authority Letter](#).

<sup>31</sup> *Id at 29.*

<sup>32</sup> *Id at 29.*

holding them accountable under their respective management plans, and coordinating stock assessments and research among the five states.<sup>33</sup> A more detailed description of the bill is below.

The bill's plan to take management out of the auspices of the federal Magnuson-Stevens Act structure and give management to a region of states is not without precedent. For example, the States of California, Oregon and Washington manage the Dungeness crab under existing federal law.<sup>34</sup> In addition, the Atlantic states manage striped bass along the east coast under the Atlantic Striped Bass Conservation Act (P.L. 98-613), although striped bass fishing is currently not allowed in federal waters.<sup>35</sup>

The bill has been met with support and criticism. Supporters of H.R. 3094 have stated that “[t]he GRSMA framework addresses many of the challenges of current federal management of this fishery including inadequate data and a lack of flexible, responsive management,” and that the state management framework “calls for more precise and timely recreational data collection, more frequent stock assessments, and increased collaboration among the states.”<sup>36</sup>

Other supporters of H.R. 3094 have stated that “[t]he means being employed by the federal government to manage this fishery are fundamentally at odds with how the state have managed their wild natural resources so successfully.”<sup>37</sup> However, commercial fishing interests have stressed that “[s]uch language would establish a harmful precedent and could eventually lead to the dismantling of the entire council structure.”<sup>38</sup> Commercial fishermen in the Gulf have raised concerns that “three of the five people who make up the red snapper board have the authority to reduce the commercial allocation by up to 9.9% every year without approval from any federal entity.”<sup>39</sup>

### **Major Provisions of H.R. 3094 (as introduced):**

Section 2 of H.R. 3094 amends the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801) by adding a new title: *Title V – Transfer to States of Management of Red Snapper in the Gulf of Mexico*. Specifically, the section requires that, within 60 days of enactment of the legislation, the Secretary of Commerce (Secretary) shall establish the GRSMA consisting of the principal fishery managers of each of the five Gulf States. The GRSMA would be tasked with approving each of the states' red snapper management plan, enforcing each states plan, and distributing federal funding for management, enforcement, and

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<sup>33</sup> *Id at 29.*

<sup>34</sup> P.L. 105-384. Note: Under current federal law, the U.S. Secretary of Commerce reserves the right, at any time, to implement a federal Fishery Management Plan for the Dungeness fishery covered under the Magnuson-Stevens Act, effectively allowing the Secretary to manage the crab fishery in federal waters.

<sup>35</sup> Executive Order 13449, October 20, 2007

<sup>36</sup> Louisiana Dept. of Wildlife and Fisheries, *Louisiana applauds new legislation to enable regional management of red snapper*; (July 16, 2105); available at: <http://www.wlf.louisiana.gov/news/39285>

<sup>37</sup> Coastal Conservation Association, *Coalition Letter To State Governors On Red Snapper*; (March 20, 2015); available at: <http://www.joincca.org/articles/715>

<sup>38</sup> National Fisheries Institute, *Mr. John Connelly letter to Speaker John Boehner*, (May 29,2015); available at: <https://www.scribd.com/doc/285398431/National-Fisheries-Institute-Support-of-HR-1335>

<sup>39</sup> Southeastern Fisheries Association, Inc., *Mr. Bob Jones letter to Southeastern Fisheries Association Board of Directors*, (August 6, 2015); available at: <https://www.scribd.com/doc/285398898/Southeastern-Fisheries-Association-opposition-to-GRSMA>

data collection. Prior to approving states' fishery management plans, the GSRMSA would be required to collect public comment and hold public meetings on the proposed plans.

Once the initial state fishery management plans have been approved by the GSRMSA, the Secretary would then have to publish a notice in the Federal Register removing red snapper from the Council's Reef Fish Fishery Management Plan and grant full red snapper management to the GSRMSA.

Once management has been fully transferred, the Secretary shall transfer the federally appropriated funding currently used for federal management to the states. The Secretary would be tasked with providing all federal funding to the Gulf States Marine Fisheries Commission, which would then be responsible for administering the funds to the states for management and assessments.

Should the GSRMSA find that one of the states is out of compliance with their approved management plan, the five states would vote on whether to notify the Secretary. If, by majority vote, the states determine to notify the Secretary that one of the states is out of compliance, the Secretary could then shut down all fishing for red snapper in federal waters within that state's jurisdiction (9-200 nautical miles). Fishing would be able to remain, however, in state waters of the affected state (0-9 nautical miles). Additionally, each state is required by this act to submit annual reports to the GSRMSA on that status of the fishery in the respective state. The GSRMSA is then required compile the information from the annual reports and presents that to the Secretary no less than every five years.

This section does afford some assurance that access to the fishery will remain constant for all participants in the fishery throughout the transfer of management to the states. Under H.R. 3094, should a state's management plan recommend a reduced quota of more than 10 percent, that management plan would then be subject to review and approval by the Secretary. Further, the Council would continue to manage the commercial fishery for the first three years of the management being transferred to the states. Additionally, the bill does not change the individual quota shares currently in place in the commercial sector.

While H.R. 3094 vacates the federal management plan for red snapper, there is a clause in Section 2 pertaining to shrimp bycatch measures in the Gulf of Mexico. Currently, the fishery management plan for red snapper includes strict bycatch reduction standards for the shrimp industry. As red snapper typically inhabit the bottom of the ocean, they are susceptible to being caught in shrimp nets. The language in Section 2 states that, while the federal red snapper management plan is to be fully vacated, the language within that plan pertaining to bycatch reduction technology for the shrimp industry shall remain intact.

**Cost:**

The Congressional Budget Office has yet completed a cost estimate of this bill.

**Administration Position:**

The Administration testified that it "supports regional management as a way to resolve the current challenges faced by the Gulf States and the red snapper fishery. But we continue to



believe the best way to develop an effective regional management strategy that withstands the test of time is through the (existing) Council process.<sup>40</sup>

**Anticipated Amendments:**

Amendments are expected.

**Ramseyer:**

**Current Law as Amended by H.R. 3094**

[text to be added highlighted in yellow; text deleted in brackets and highlighted in blue]

**The Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 et seq.)**

**Section 306 (16 U.S.C. 1856):**

**§1856. State jurisdiction**

**(a) In general**

(1) Except as provided in subsection (b) of this section, nothing in this chapter shall be construed as extending or diminishing the jurisdiction or authority of any State within its boundaries.

(2) For the purposes of this chapter, except as provided in subsection (b) of this section, the jurisdiction and authority of a State shall extend-

(A) to any pocket of waters that is adjacent to the State and totally enclosed by lines delimiting the territorial sea of the United States pursuant to the Geneva Convention on the Territorial Sea and Contiguous Zone or any successor convention to which the United States is a party;

(B) with respect to the body of water commonly known as Nantucket Sound, to the pocket of water west of the seventieth meridian west of Greenwich; and

(C) to the waters of southeastern Alaska (for the purpose of regulating fishing for other than any species of crab) that are-

(i) north of the line representing the international boundary at Dixon Entrance and the westward extension of that line; east of 138 degrees west longitude; and not more than three nautical miles seaward from the coast, from the lines extending from headland to headland across all bays, inlets, straits, passes, sounds, and entrances, and from any island or group of islands, including the islands of the Alexander Archipelago (except Forrester Island); or

(ii) between the islands referred to in clause (i) (except Forrester Island) and the mainland.

(3) A State may regulate a fishing vessel outside the boundaries of the State in the following circumstances:

(A) The fishing vessel is registered under the law of that State, and (i) there is no fishery management plan or other applicable Federal fishing regulations for the fishery in which the vessel is operating; or (ii) the State's laws and regulations are consistent with the fishery management plan and applicable Federal fishing regulations for the fishery in which the vessel is operating.

(B) The fishery management plan for the fishery in which the fishing vessel is operating delegates management of the fishery to a State and the State's laws and regulations are consistent with such fishery management plan. If at any time the Secretary determines that a State law or regulation applicable to a fishing vessel under this circumstance is not consistent with the fishery management

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<sup>40</sup> [http://naturalresources.house.gov/uploadedfiles/testimony\\_risenhoover.pdf](http://naturalresources.house.gov/uploadedfiles/testimony_risenhoover.pdf)

plan, the Secretary shall promptly notify the State and the appropriate Council of such determination and provide an opportunity for the State to correct any inconsistencies identified in the notification. If, after notice and opportunity for corrective action, the State does not correct the inconsistencies identified by the Secretary, the authority granted to the State under this subparagraph shall not apply until the Secretary and the appropriate Council find that the State has corrected the inconsistencies. For a fishery for which there was a fishery management plan in place on August 1, 1996 that did not delegate management of the fishery to a State as of that date, the authority provided by this subparagraph applies only if the Council approves the delegation of management of the fishery to the State by a three-quarters majority vote of the voting members of the Council.

(C) The fishing vessel is not registered under the law of the State of Alaska and is operating in a fishery in the exclusive economic zone off Alaska for which there was no fishery management plan in place on August 1, 1996, and the Secretary and the North Pacific Council find that there is a legitimate interest of the State of Alaska in the conservation and management of such fishery. The authority provided under this subparagraph shall terminate when a fishery management plan under this chapter is approved and implemented for such fishery.

**(b) Exception**

(1) If the Secretary finds, after notice and an opportunity for a hearing in accordance with section 554 of title 5, that-

(A) the fishing in a fishery, which is covered by a fishery management plan implemented under this chapter, is engaged in predominately within the exclusive economic zone and beyond such zone; and

(B) any State has taken any action, or omitted to take any action, the results of which will substantially and adversely affect the carrying out of such fishery management plan;

the Secretary shall promptly notify such State and the appropriate Council of such finding and of his intention to regulate the applicable fishery within the boundaries of such State (other than its internal waters), pursuant to such fishery management plan and the regulations promulgated to implement such plan.

(2) If the Secretary, pursuant to this subsection, assumes responsibility for the regulation of any fishery, the State involved may at any time thereafter apply to the Secretary for reinstatement of its authority over such fishery. If the Secretary finds that the reasons for which he assumed such regulation no longer prevail, he shall promptly terminate such regulation.

(3) If the State involved requests that a hearing be held pursuant to paragraph (1), the Secretary shall conduct such hearing prior to taking any action under paragraph (1).

(4) Notwithstanding section 3(11) and subsection (a) of this section, for purposes of managing fisheries in the Gulf of Mexico, the seaward boundary of a coastal State in the Gulf of Mexico is a line three marine leagues seaward from the baseline from which the territorial sea of the United States is measured.

**(c) Exception regarding foreign fish processing in internal waters**

(1) A foreign fishing vessel may engage in fish processing within the internal waters of a State if, and only if-

(A) the vessel is qualified for purposes of this paragraph pursuant to paragraph (4)(C) or has received a permit under section 1824(d) of this title;

(B) the owner or operator of the vessel applies to the Governor of the State for, and (subject to paragraph (2)) is granted, permission for the vessel to engage in such processing and the application specifies the species to be processed; and

(C) the owner or operator of the vessel submits reports on the tonnage of fish received from vessels of the United States and the locations from which such fish were harvested, in accordance with such procedures as the Secretary by regulation shall prescribe.

(2) The Governor of a State may not grant permission for a foreign fishing vessel to engage in fish processing under paragraph (1)-

(A) for a fishery which occurs in the waters of more than one State or in the exclusive economic zone, except after-



- (i) consulting with the appropriate Council and Marine Fisheries Commission, and
- (ii) considering any comments received from the Governor of any other State where the fishery occurs; and

(B) if the Governor determines that fish processors within the State have adequate capacity, and will utilize such capacity, to process all of the United States harvested fish from the fishery concerned that are landed in the State.

(3) Nothing in this subsection may be construed as relieving a foreign fishing vessel from the duty to comply with all applicable Federal and State laws while operating within the internal waters of a State incident to permission obtained under paragraph (1)(B).

(4) For purposes of this subsection-

(A) The term "fish processing" includes, in addition to processing, the performance of any other activity relating to fishing, including, but not limited to, preparation, supply, storage, refrigeration, or transportation.

(B) The phrase "internal waters of a State" means all waters within the boundaries of a State except those seaward of the baseline from which the territorial sea is measured.

(C) A foreign fishing vessel shall be treated as qualified for purposes of paragraph (1) if the foreign nation under which it is flagged will be a party to (i) a governing international fishery agreement or (ii) a treaty described in section 1821(b) of this title during the time the vessel will engage in the fish processing for which permission is sought under paragraph (1)(B).

### **Section 401(g) (16 U.S.C. 1881(g)):**

#### **(g) Recreational fisheries.**

##### **(1) Federal program**

The Secretary shall establish and implement a regionally based registry program for recreational fishermen in each of the 8 fishery management regions. The program, which shall not require a fee before January 1, 2011, shall provide for-

(A) the registration (including identification and contact information) of individuals who engage in recreational fishing-

- (i) in the Exclusive Economic Zone;
- (ii) for anadromous species; or
- (iii) for Continental Shelf fishery resources beyond the Exclusive Economic Zone; and

(B) if appropriate, the registration (including the ownership, operator, and identification of the vessel) of vessels used in such fishing.

##### **(2) State programs**

The Secretary shall exempt from registration under the program recreational fishermen and charter fishing vessels licensed, permitted, or registered under the laws of a State if the Secretary determines that information from the State program is suitable for the Secretary's use or is used to assist in completing marine recreational fisheries statistical surveys, or evaluating the effects of proposed conservation and management measures for marine recreational fisheries.

##### **(3) Data collection**

###### **(A) Improvement of the marine recreational fishery statistics survey**

Within 24 months after January 12, 2007, the Secretary, in consultation with representatives of the recreational fishing industry and experts in statistics, technology, and other appropriate fields, shall establish a program to improve the quality and accuracy of information generated by the Marine Recreational Fishery Statistics Survey, with a goal of achieving acceptable accuracy and utility for each individual fishery.

**(B) NRC report recommendations**

The program shall take into consideration and, to the extent feasible, implement the recommendations of the National Research Council in its report Review of Recreational Fisheries Survey Methods (2006), including-

- (i) redesigning the Survey to improve the effectiveness and appropriateness of sampling and estimation procedures, its applicability to various kinds of management decisions, and its usefulness for social and economic analyses; and
- (ii) providing for ongoing technical evaluation and modification as needed to meet emerging management needs.

**(C) Methodology**

Unless the Secretary determines that alternate methods will achieve this goal more efficiently and effectively, the program shall, to the extent possible, include-

- (i) an adequate number of intercepts to accurately estimate recreational catch and effort;
- (ii) use of surveys that target anglers registered or licensed at the State or Federal level to collect participation and effort data;
- (iii) collection and analysis of vessel trip report data from charter fishing vessels;
- (iv) development of a weather corrective factor that can be applied to recreational catch and effort estimates; **[and]**
- (v) an independent committee composed of recreational fishermen, academics, persons with expertise in stock assessments and survey design, and appropriate personnel from the National Marine Fisheries Service to review the collection estimates, geographic, and other variables related to dockside intercepts and to identify deficiencies in recreational data collection, and possible correction measures **[.]**; and

(vi) in the case of each fishery in the Gulf of Mexico, taking into consideration all data collection activities related to fishery effort that are undertaken by the marine resources division of each relevant State of the Gulf of Mexico Fishery Management Council.

**(D) Deadline**

The Secretary shall complete the program under this paragraph and implement the improved Marine Recreational Fishery Statistics Survey not later than January 1, 2009.

**(4) Report**

Within 24 months after establishment of the program, the Secretary shall submit a report to Congress that describes the progress made toward achieving the goals and objectives of the program.

**At the end:**

**TITLE V—TRANSFER TO STATES OF MANAGEMENT  
OF RED SNAPPER FISHERIES IN THE GULF OF  
MEXICO**

**SEC. 501. DEFINITIONS.**

**In this title:**

(1) **COASTAL WATERS.**—The term ‘coastal waters’ means all waters of the Gulf of Mexico—

(A) **shoreward of the baseline from which the territorial sea of the United States is measured; and**

(B) seaward from the baseline described in subparagraph (A) to the outer boundary of the exclusive economic zone.

(2) GULF COASTAL STATE.—The term ‘Gulf coastal State’ means each of the following States:

- (A) Alabama.
- (B) Florida.
- (C) Louisiana.
- (D) Mississippi.
- (E) Texas.

(3) GULF OF MEXICO FISHERY MANAGEMENT COUNCIL.—The term ‘Gulf of Mexico Fishery Management Council’ means the Gulf of Mexico Fishery Management Council established under section 302(a).

(4) GULF OF MEXICO RED SNAPPER.—The term ‘Gulf of Mexico red snapper’ means members of stocks or populations of the species *Lutjanus campechanus*, which ordinarily are found within the waters of the exclusive economic zone and adjacent territorial waters of the Gulf of Mexico.

(5) GULF STATES RED SNAPPER MANAGEMENT AUTHORITY.—The term ‘Gulf States Red Snapper Management Authority’ and ‘GSRMSA’, means the Gulf States Red Snapper Management Authority established under section 502(a).

(6) RED SNAPPER FISHERY MANAGEMENT PLAN.—The term ‘red snapper fishery management plan’ means a plan created by one or more Gulf coastal States to manage Gulf of Mexico red snapper in the coastal waters adjacent to such State or States, respectively.

(7) REEF FISH FEDERAL FISHERY MANAGEMENT PLAN.—The term ‘Reef Fish Federal fishery management plan’ means the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico, as amended, prepared by the Gulf of Mexico Fishery Management Council pursuant to title III and implemented under part 622 of title 50, Code of Federal Regulations (or similar successor regulation).

(8) STATE TERRITORIAL WATERS.—The term ‘State territorial waters’, with respect to a Gulf coastal State, means the waters adjacent to such State seaward to the line three marine leagues seaward from the baseline from which of the territorial sea of the United States is measured.

## **SEC. 502. MANAGEMENT OF GULF OF MEXICO RED SNAPPER.**

(a) GULF STATES RED SNAPPER MANAGEMENT AUTHORITY.—

(1) REQUIREMENT TO ESTABLISH.—Not later than 60 days after the date of the enactment of this title, the Secretary shall establish a Gulf States Red Snapper Management Authority that consists of the principal fisheries manager of each of the Gulf coastal States.

(2) DUTIES.—The duties of the GSRMSA are as follows:

(A) To review and approve red snapper fishery management plans, as set out in the Act.

(B) To provide standards for each Gulf coastal State to use in developing fishery management measures to sustainably manage Gulf of Mexico red snapper in the coastal waters adjacent to such State.

(C) To the maximum extent practicable, make scientific data, stock assessments and other scientific information upon which fishery management plans are based available to the public for inspection prior to meetings described in paragraph (c)(2).

**(b) REQUIREMENT FOR PLANS.—**

(1) **DEADLINE FOR SUBMISSION OF PLANS.—**The GSRMSA shall establish a deadline for each Gulf coastal State to submit to the GSRMSA a red snapper fishery management plan for such State.

(2) **CONSISTENCY WITH FEDERAL FISHERY MANAGEMENT PLANS.—**To the extent practicable, the Gulf Coastal States fishery management plans shall be consistent with the requirements in section 303(a) of the Fishery Conservation and Management Act of 1976 (16 U.S.C. 1853(a)).

**(c) REVIEW AND APPROVAL OF PLANS.—**

(1) **IN GENERAL.—**Not later than 1 year after the date of the enactment of this title and not more than 60 days after one or more Gulf coastal States submits a red snapper fishery management plan and annually thereafter, the GSRMSA shall review and approve by majority vote the red snapper fishery management plan if such plan meets the requirements of this title.

(2) **PUBLIC PARTICIPATION.—**Prior to approving a red snapper fishery management plan submitted by one or more Gulf coastal States, the GSRMSA shall provide an adequate opportunity for public participation, including—

(A) at least 1 public hearing held in each respective Gulf coastal State; and

(B) procedures for submitting written comments to GSRMSA on the fishery management plan.

(3) **PLAN REQUIREMENTS.—**A red snapper fishery management plan submitted by one or more Gulf coastal States shall—

(A) contain standards and procedures for the long-term sustainability of Gulf of Mexico red snapper based on the best available science;

(B) comply with the standards described in subsection (a)(2)(B); and

(C) determine quotas for the red snapper fishery in the coastal waters adjacent to such Gulf coastal State or States, respectively, based on stock assessments, and—

(i) any recommendation by the GSRMSA to reduce quota apportioned to the commercial sector by more than 10 percent shall be reviewed and approved by the Gulf of Mexico Fishery Management Council;

(ii) during the 3-year period beginning on the date of enactment of this title and consistent with subsection (d), the GSRMSA shall not determine a quota apportioned to the commercial sector; and

(iii) nothing in this Act shall be construed to change the individual quota shares currently in place in the commercial sector of the Gulf of Mexico red snapper fishery.

(4) **REVIEW AND APPROVAL.—**Not later than 60 days after the date the GSRMSA receives a red snapper fishery management plan from one or more Gulf coastal State or States, the GSRMSA shall review and approve such plan if such plan satisfies the requirements of subsection (b).

(d) CONTINUED MANAGEMENT BY THE SECRETARY.—During the 3-year period beginning on the date of the enactment of this title, the Secretary, in coordination with the Gulf of Mexico Fishery Management Council, shall continue to manage the commercial sector of the Gulf of Mexico red snapper fishery.

(e) REPORTING REQUIREMENTS.—

(1) REPORTS BY GULF COASTAL STATES.—Each Gulf coastal State shall submit to the GRSMA an annual report on the status of the Gulf of Mexico red snapper fishery in coastal waters adjacent to such State.

(2) REPORT BY THE GRSMA.—Not less often than once every 5 years, the GRSMA shall use the information submitted in the annual reports required by paragraph (1) to prepare and submit to the Secretary a report on the status of the Gulf of Mexico red snapper fishery.

(3) ANNUAL REPORT BY NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION.—The Administrator of the National Oceanic and Atmospheric Administration shall submit to Congress an annual report on the implementation of this title.

### **SEC. 503. STATE IMPLEMENTATION OF THE RED SNAPPER FISHERY MANAGEMENT PLANS.**

(a) ALLOCATION OF MANAGEMENT TO THE GULF STATES.—

(1) CERTIFICATION OF APPROVED PLANS.—The GRSMA shall certify to the Secretary that a red snapper fishery management plan is approved under section 502 for each of the Gulf coastal States.

(2) TRANSFER OF MANAGEMENT.—Upon receipt of the certification described in paragraph (1) and subject to section 502(d), the Secretary shall—

(A) publish a notice in the Federal Register revoking the regulations and portions of the Reef Fish Federal fishery management plan that are in conflict with any red snapper fishery management plan approved by the GRSMA; and

(B) transfer management of Gulf of Mexico red snapper to the GRSMA.

(b) IMPLEMENTATION.—

(1) IN GENERAL.—Upon the transfer of management described in subsection (a)(2)(B) and subject to section 502(d), each Gulf coastal State shall implement and enforce the red snapper fishery management plans approved under section 502 for the Gulf of Mexico red snapper fishery in the coastal waters adjacent to each Gulf coastal State.

(2) FAILURE TO TRANSFER MANAGEMENT.—If the certification described in subsection (a)(1) is not made the transfer of management described in subsection (a)(2)(B) may not be accomplished and the Secretary shall remain responsible for management of the Gulf of Mexico red snapper.

### **SEC. 504. OVERSIGHT OF GULF OF MEXICO RED SNAPPER MANAGEMENT.**

(a) IMPLEMENTATION AND ENFORCEMENT OF FISHERY MANAGEMENT PLANS.—Not later than December 1 of the year following the transfer of management described in section

503(a)(2), and at any other time the GSRMSA considers appropriate after that date, the GSRMSA shall determine if—

(1) each Gulf coastal State has fully adopted and implemented the red snapper fishery management plan approved under section 502 for such State;

(2) each such plan continues to be in compliance with the standards for sustainability provided by the GSRMSA pursuant to section 502(a)(2); and

(3) the enforcement of the plan by each Gulf coastal State is satisfactory to maintain the long-term sustainability and abundance of Gulf of Mexico red snapper.

(b) OVERFISHING AND REBUILDING PLANS.—

(1) CERTIFICATION.—If the Gulf of Mexico red snapper in the coastal waters adjacent to a Gulf coastal State is experiencing overfishing or is subject to a rebuilding plan, such Gulf coastal State shall submit a certification to the GSRMSA showing that such State—

(A) has implemented the necessary measures to end overfishing or rebuild the fishery; and

(B) in consultation with the National Oceanic and Atmospheric Administration, has implemented a program to provide for data collection adequate to monitor the harvest of Gulf of Mexico red snapper by such State.

(2) NOTIFICATION TO SECRETARY.—If, after such time as determined by the GSRMSA, a Gulf coastal State that submitted a certification under paragraph (1) has not implemented the measures and requirements described in subparagraphs (A) and (B) of such paragraph, the GSRMSA shall vote on whether to notify the Secretary of a recommendation of closure of the red snapper fishery in the waters adjacent to the State territorial waters of the Gulf coastal State.

(c) CLOSURE OF THE GULF OF MEXICO RED SNAPPER FISHERY.—

(1) CONDITIONS FOR CLOSURE.—Not later than 60 days after the receipt of a notice under subsection (b)(2) for a Gulf coastal State, the Secretary may declare a closure of the Gulf of Mexico red snapper fishery within the waters adjacent to the State territorial waters of the Gulf coastal State.

(2) CONSIDERATIONS.—Prior to making a declaration under paragraph (2), the Secretary shall consider the comments of such Gulf coastal State and the GSRMSA.

(3) ACTIONS PROHIBITED DURING CLOSURE.—During a closure of the Gulf of Mexico red snapper fishery under paragraph (1), it is unlawful for any person—

(A) to engage in fishing for Gulf of Mexico red snapper within the waters adjacent to the State territorial waters of the Gulf coastal State covered by the closure;

(B) to land, or attempt to land, the Gulf of Mexico red snapper in the area of the closure; or

(C) to fail to return to the water any Gulf of Mexico red snapper caught in the area of the closure that are incidental to commercial harvest or in the recreational fisheries.

(4) CONSTRUCTION.—Nothing in this subsection shall be construed to allow the Secretary to close the red snapper fishery in the State territorial waters of a Gulf coastal State.

## **SEC. 505. GULF STATES MARINE FISHERIES COMMISSION.**



(a) FUNDING TO THE GULF STATES MARINE FISHERIES COMMISSION.—The Secretary shall provide all Federal funding to the Gulf States Marine Fisheries Commission for all necessary stock assessments, research, and management for the red snapper fishery.

(b) FUNDING TO THE GULF COASTAL STATES.—The Gulf States Marine Fisheries Commission shall be responsible for administering the Federal funds referred to in paragraph (1) to each of the Gulf coastal States for proper management of the red snapper fishery.

(c) NO ADDITIONAL APPROPRIATIONS AUTHORIZED.—Nothing in this section may be construed to increase the amount of Federal funds authorized to be appropriated for Gulf of Mexico red snapper fishery management.

#### **SEC. 506. NO EFFECT ON MANAGEMENT OF SHRIMP FISHERIES IN FEDERAL WATERS.**

(a) BYCATCH REDUCTION DEVICES.—Nothing in this title may be construed to effect any requirement related to the use of Gulf of Mexico red snapper bycatch reduction devices in the course of shrimp trawl fishing activity.

(b) BYCATCH OF RED SNAPPER.—Nothing in this title shall be construed to apply to or affect in any manner the Federal management of commercial shrimp fisheries in the Gulf of Mexico, including any incidental catch of red snapper.