

Committee on Natural Resources

Rob Bishop Chairman
Mark-Up Memorandum

December 8, 2017

To: All Natural Resources Committee Members

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

Mark-Up: **H.R. 3588 (Rep. Garret Graves R-LA)**, 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.
December 12-13, 2017; 1324 Longworth HOB

H.R. 3588 (Rep. Garret Graves), “RED SNAPPER Act”

Summary of the Bill

H.R. 3588, the RED SNAPPER Act, remedies a longstanding issue of recreational access to the red snapper fishery in the Gulf of Mexico (Gulf). 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 the recreational red snapper fishery. The House Natural Resources Committee considered and passed legislation in the 114th Congress that similarly focused on empowering states to address the problems associated with red snapper management in the Gulf.

Cosponsors

Reps. Cedric Richmond (D-LA), Bradley Byrne (R-AL), Bennie Thompson (D-MS), Randy Weber (R-TX), Wm. Lacy Clay (D-MO), Steven Palazzo (R-MS), Blake Farenthold (R-TX), Austin Scott (R-GA), Clay Higgins (R-LA), Mo Brooks (R-AL), Brian Babin (R-TX), and Mike Johnson (R-LA).

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

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

² [Id.](#)

³ [Id.](#)

According to the National Oceanic and Atmospheric Administration (NOAA), red snapper has been caught in the Gulf 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



Source: Floridasportsman.com

The Magnuson-Stevens Fishery Conservation and Management Act of 1996 (P.L. 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) for shrimp trawls in federal waters 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 (TAC).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

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.¹³ The federal recreation season is set in terms of days, with the

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](#)

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.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 This past August, 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 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 season in state waters through

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

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.

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 anglers and the five Gulf States have sought management changes as a way 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. 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. The House Natural Resources Committee considered and passed legislation in the 114th Congress²⁶ that similarly focused on empowering states to address the problems associated with red snapper management in the Gulf.

Major Provisions/Analysis of H.R. 3588

Section 2 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 whichever is further 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 establishes a process and a timeline for certification of State recreational fishery surveys and provides for their incorporation 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.

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](#)

Cost

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

Administration Position

Unknown.

Anticipated Amendments

N/A.

Effect on Current Law (Ramseyer)

See the bill's effect on current law [here](#).