



November 22, 2016

The Honorable Robert Bishop
Chairman, Committee on Natural Resources
U.S. House of Representatives
Washington, D.C. 20515

Dear Chairman Bishop:

This letter provides the views of the Department of Commerce (Department) on H.R. 3094, the Gulf States Red Snapper Management Authority Act, as ordered reported by the House Natural Resources Committee on June 14, 2016. The Department strongly opposes H.R. 3094 as ordered reported. The National Oceanic and Atmospheric Administration (NOAA) Fisheries, in cooperation with the Gulf of Mexico Fishery Management Council (Council), manages red snapper in federal waters of the Gulf of Mexico on behalf of the Secretary of Commerce and under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). The bill would transfer authority for red snapper management in federal waters of the Gulf of Mexico from the Secretary of Commerce to a new, five-member decision-making body composed of the principal fisheries manager from each Gulf Coast state. By charging this body with the establishment of red snapper management plans and standards, the bill would supplant requirements to apply the conservation standards that have been the hallmark of successful management under the Magnuson-Stevens Act. H.R. 3094 would be a dangerous precedent that could undermine the long-standing, stakeholder-based regional fishery management system that is effectively ending overfishing and rebuilding overfished fisheries across the nation.

Under the Council's rebuilding plan, overfishing of red snapper has ended, the red snapper stock biomass has more than doubled in the last five years, and allowable catch levels have been raised from 5 million pounds in 2008 to nearly 14 million pounds in 2016. Fishermen report they are seeing more and larger red snapper than they have seen in their lifetime, and are able to target this popular species in new areas as the stock expands back to its historic range. Each Gulf Coast state contributed to this success through participation on the Council, including state natural resource agency leadership and Governor-nominated recreational and commercial fishermen and other stakeholders.

H.R. 3094 would jeopardize these accomplishments by discarding the successful rebuilding plan and transferring management authority to a new, untested decision-making body, with no mechanisms to ensure public accountability or opportunities for judicial review. To date, the states have not been able to reach agreement on how to allocate recreationally-caught red snapper under a Council developed regional management strategy, and it is unclear that such agreement would be reached under H.R. 3094. Absent such an agreement, H.R. 3094 would

encourage interstate conflict and jeopardize the long-term sustainability of this valuable resource as well as the commercial and recreational fisheries it supports. The expansion of state territorial waters from three to nine nautical miles would exacerbate these challenges. Preliminary data indicate anglers fishing from private vessels exceeded their catch limit this year for the first time since revised accountability measures were adopted in 2014, due in part to the temporary expansion of state territorial waters effected through the Consolidated Appropriations Act of 2016 and to state decisions to implement less restrictive, longer fishing seasons in state waters.

The Department supports regional management as a way to resolve the current challenges created by inconsistent state jurisdictions and regulations and to better manage the expectations of private anglers. The Council process is uniquely structured to resolve such challenges and to holistically manage red snapper in combination with other stocks under its jurisdiction.

The Department has the following specific concerns with the regional management strategy outlined in H.R. 3094. The proposed management strategy of the bill would:

- **Undermine Red Snapper Conservation:** As noted above, due to sustainable management practices implemented across the region since 2005 by the Council, red snapper reproductive capacity more than doubled and the Council was able to raise the combined (commercial and recreational) catch quota from 5 million pounds in 2008 to nearly 14 million pounds in 2016. Despite the success of the collaborative Council process, H.R. 3094 assigns the authority to determine red snapper conservation standards to a new, five-member decision-making body composed of the principal fisheries manager from each Gulf Coast state (the Gulf States Red Snapper Management Authority). In doing so, the bill would eliminate application of the strong Magnuson-Stevens Act conservation standards that have been instrumental to ending overfishing and rebuilding stock biomass, and would compromise the industry's hard-earned conservation achievements.
- **Establish Confusing Regulatory and Enforcement Mechanisms:** H.R. 3094 expands state territorial waters from three to nine nautical miles into waters currently subject to federal regulation. The bill also requires the Gulf Coast states to enforce regulations for red snapper throughout both state and federal waters. This would upend existing applicable state and federal regulations, and confuse fishermen who target many different species of reef fish, not just red snapper, in offshore and inshore waters in accordance with applicable state or federal regulations. Extending state jurisdiction over a single species into waters ordinarily subject to federal jurisdiction alone would also cause confusion for enforcement agents who enforce regulations for many other state- and federally-managed species.
- **Compromise Use of Sound Science in Management Decisions:** H.R. 3094 would not require red snapper regulations to meet the scientific standards of the Magnuson-Stevens Act. In addition, the bill states that any scientific data used to inform such regulations should be made available to the public prior to public hearings only *to the maximum extent practicable*. This is a significant departure from the current management system, in which state and federal agencies collaborate in data collection; stock assessments are

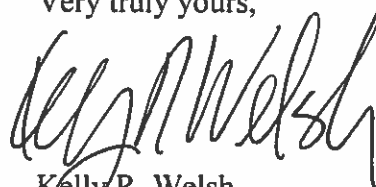
conducted through a cooperative, transparent process that involves fishermen, state and federal scientists, academic researchers, and other stakeholders, and are subject to rigorous, independent peer review requirements; catch quotas are derived from science-based fishing level recommendations; and all regulations are required by law to be informed by the best scientific information available.

- **Jeopardize Economic Viability of Commercial Fishery and Coastal Communities:** H.R. 3094 puts the highly successful commercial red snapper fishery at risk by authorizing a five-member decision-making body to reduce the commercial quota by up to 10 percent per year without identifying any objective criteria or standards to consider in determining what is fair and equitable to affected fishermen and in the best interest of the nation. Because commercial quota is allocated to individual commercial fishermen rather than to states under a catch share program, there is no clear basis for determining how any commercial quota reductions would be distributed among the states. Further, the bill requires any federal closure requested by the five-member decision-making body to apply to both the recreational and commercial sector. Applying such a closure to the commercial sector would negate the primary goal of the current catch share program, which was established to allow for a year-round red snapper fishery and continuous market availability.
- **Establish an Unnecessary, Narrowly-Focused, and Unfunded Management Process:** H.R. 3094 would establish an unnecessary, specialized management regime that precludes a holistic, ecosystem-based approach to managing reef fish and the shrimp trawl bycatch that impacts red snapper rebuilding. This new regime is not only duplicative in process, but also in costs, and imposes an unfunded mandate on the states and Federal Government. The Council would continue to incur administrative costs associated with meetings and follow-up work to address shrimp and all other reef fish species requiring conservation and management in federal waters of the Gulf of Mexico. The states would incur additional costs for the operation and administration of the Gulf States Red Snapper Management Authority, and other red snapper-related activities, including enforcement of red snapper regulations in federal waters. Also, affected fishermen and other interested stakeholders would be burdened by having to understand and engage in separate regulatory processes for red snapper and for shrimp and other reef fish species in the Gulf of Mexico.
- **Compromise Public Engagement and Management Accountability:** The existing Regional Fishery Management Council system that manages red snapper is designed to facilitate active public involvement in the development and implementation of red snapper management measures. Additionally, Magnuson-Stevens Act rulemakings are conducted in accordance with the Administrative Procedure Act, which provides for public comment opportunities as well as judicial review of agency decisions. The five-member decision-making body described in H.R. 3094 would effectively eliminate any opportunity for stakeholders to engage in and inform red snapper regulations through the Council or federal rulemaking processes or to challenge regulations that are ineffective or contrary to the public interest.

- **Tenth Amendment Commandeering**: Under the Tenth Amendment anti-commandeering principle, the “Federal Government may neither issue directives requiring the States to address particular problems, nor command the States’ officers, or those of their political subdivisions, to administer or enforce a federal regulatory program.” *Printz v. United States*, 521 U.S. 898, 935 (1997); *see also New York v. United States*, 505 U.S. 144, 162, 175 (1992) (holding that Congress may not require states “to govern according to Congress’ instructions” or “‘commandeer’ state governments into the service of federal regulatory purposes”). H.R. 3094 would “command” the Gulf Coast states “to administer [and] enforce a federal regulatory program” (1) by requiring the principal fisheries manager in each state to serve on the Gulf States Red Snapper Management Authority and (2) by directing the states to submit management plans for approval by the Authority, and if the Authority approves, to “implement and enforce” those plans. Magnuson-Stevens Act §§ 502(a)–(c), 503(b) (as added). H.R. 3094 would need to make clear that service of the principal fisheries managers on the Gulf States Red Snapper Management Authority is voluntary and that, in choosing to allow this service by their principal fisheries managers, the states would be binding themselves to comply with the directives of the bill.

We appreciate the opportunity to present these views on H.R. 3094. The Office of Management and Budget has advised that there is no objection to the transmittal of these views from the standpoint of the Administration’s program. If you have any questions, please contact me or Steve Haro, Assistant Secretary for Legislative and Intergovernmental Affairs, at 202-482-3663.

Very truly yours,



Kelly R. Welsh

cc: The Honorable Raul Grijalva
Ranking Member