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9 *Attorneys for Plaintiffs*

10 UNITED STATES DISTRICT COURT  
11 FOR THE DISTRICT OF COLUMBIA

12 KEITH GUINDON,  
13 3414 Cemetery Rd  
Santa Fe, TX 77517

No.

14 KATIE'S SEAFOOD MARKET, LLC.  
15 1902 Wharf Rd.  
Galveston, TX 77550

COMPLAINT FOR DECLARATORY  
AND INJUNCTIVE RELIEF

16 WAYNE WERNER  
17 16731 NW 173<sup>rd</sup> Terrace  
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18 DONALD A. WATERS  
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Pensacola, FL 32507

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23 419 Mountain Dr.  
Destin, FL 32541

24 F/V DREAMCATCHER, INC.  
25 509 Benning Dr.  
Destin, FL 32541

- 1 RUSSELL UNDERWOOD  
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2 Lynn Haven, FL 32444
- 3 GLENHART BROOKS III  
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4 Bradenton, FL 34280
- 5 JOHN ANDERSON  
6707 N. Lagoon Dr.  
6 Panama City, FL 32408
- 7 BUCCANEER FISH CO., INC.  
6707 N. Lagoon Dr.  
8 Panama City, FL 32408
- 9 JAMES M. CLEMENTS  
604 Gulf Ave.  
10 Carrabelle, FL 32322
- 11 BARTHOLOMEW NIQUET  
401 Florida Ave.  
12 Lynn Haven, FL 32444
- 13 CHRISTOPHER NIQUET  
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14 Lynn Haven, FL 32444
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16 Galveston, TX 77550
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1210 Georgia Ave.  
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- 19 LEWIS T. BESSINGER  
654 Warsaw St.  
20 Bayou Vista, TX 77563
- 21 BLUE DOLPHIN FISHING, INC.  
654 Warsaw St.  
22 Bayou Vista, TX 77563
- 23 LINDA BOVAIRD  
654 Warsaw St.  
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25

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3 WALKER FISHING FLEET, INC.

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11 KENNETH GUINDON

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13 MARTIN ARNOLD

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14 Wewahitchka, FL 32465

15 FISH FOR AMERICA, LLC

111 Gentian Road

16 Saint Augustine, FL 32086

17 GULF FISHERMEN'S ASSOCIATION, INC.

1336 Bayview Dr.

18 Clearwater, FL 33756

19 and

20 GULF OF MEXICO REEF FISH

SHAREHOLDER'S ALLIANCE

21 111 Gentian Road

22 Saint Augustine, FL 32086

Plaintiffs,

23 v.

24 PENNY SUE PRITZKER, in her official

capacity as Secretary of the United States

25 Department of Commerce

Office of the Secretary

1 Room 5858  
2 14th St. and Constitution Ave., NW  
3 Washington, DC 20230

4 NATIONAL OCEANIC AND  
5 ATMOSPHERIC ADMINISTRATION  
6 Department of Commerce  
7 Room 5128  
8 14th St. and Constitution Ave., NW  
9 Washington, DC 20230

10 and

11 NATIONAL MARINE FISHERIES  
12 SERVICE  
13 Department of Commerce  
14 Room 14636  
15 1315 East-West Highway  
16 Silver Spring, MD 20910

17 Defendants.

## 18 I. INTRODUCTION

19 1. This case is a challenge to the ongoing mismanagement of the Gulf of Mexico  
20 red snapper fishery. Defendants' failure to effectively manage the red snapper fishery has  
21 resulted in chronic overharvesting by the recreational fishing sector. Overharvesting by the  
22 recreational sector undermines the conservation goal of rebuilding the red snapper stock and  
23 harms all stakeholders in the fishery.

24 2. The plaintiffs are commercial fishermen and related business and associations  
25 ("Plaintiffs") that are harmed by the ongoing mismanagement of the red snapper fishery by  
the defendants, the Secretary of Commerce acting through the National Oceanic and  
Atmospheric Administration and the National Marine Fisheries Service (collectively,  
"NMFS"). Plaintiffs challenge regulatory actions by NMFS setting the recreational fishing  
season for 2013 because these actions, which fail to include any effective management or

1 accountability measures to control overharvesting by the recreational sector, will invariably  
2 prove ineffective like all prior actions that failed to include such measures. Plaintiffs seek  
3 declaratory and such other relief as the Court deems appropriate because NMFS's failure to  
4 effectively manage the red snapper fishery violates the Magnuson-Stevens Fishery  
5 Conservation and Management Act, the Administrative Procedure Act, and the National  
6 Environmental Policy Act.  
7

## 8 II. JURISDICTION AND VENUE

9 3. This action arises under the Magnuson-Stevens Fishery Conservation and  
10 Management Act ("MSA"), 16 U.S.C. §§ 1801-1884; the Administrative Procedure Act  
11 ("APA"), 5 U.S.C. §§ 701-706, and the National Environmental Policy Act of 1969 as  
12 amended ("NEPA"), 43 U.S.C. §§ 4321 *et seq.*  
13

14 4. This Court has jurisdiction over this action pursuant to the MSA, which  
15 provides that "[t]he district courts of the United States shall have exclusive jurisdiction over  
16 any case or controversy arising under" the MSA. 16 U.S.C. § 1861(d). The MSA also  
17 provides that actions taken by NMFS under regulations implementing a fishery management  
18 plan ("FMP") shall be subject to judicial review "if a petition for such review is filed within  
19 30 days after the date on which the regulations are promulgated or the action is published in  
20 the Federal Register, as applicable." 16 U.S.C. § 1855(f). The Plaintiffs are challenging a  
21 final rule published by NMFS in the Federal Register on May 29, 2013, 78 Fed. Reg. 32179  
22 (May 29, 2013) ("Final Rule"), as well as a temporary rule published by NMFS in the Federal  
23 Register on June 10, 2013, 78 Fed. Reg. 34586 (June 10, 2013) ("Temporary Rule") that  
24  
25

1 modified the Final Rule. Plaintiffs filed this Complaint within thirty (30) days after  
2 publication in the Federal Register of the Final Rule and the Temporary Rule.

3 5. This Court further has jurisdiction over this action pursuant to the APA, which  
4 provides that final agency action for which there is no other adequate remedy in a court is  
5 subject to judicial review. 5 U.S.C. §§ 701-706.

6  
7 6. This Court also has jurisdiction over this action pursuant to 28 U.S.C. § 1331  
8 (federal question jurisdiction), which grants the district courts “original jurisdiction of all civil  
9 actions arising under the . . . laws . . . of the United States,” and 28 U.S.C. § 1361, which  
10 grants the district courts “original jurisdiction of any action in the nature of mandamus to  
11 compel an officer or employee of the United States or any agency thereof to perform a duty  
12 owed to the plaintiff.”

13  
14 7. This Court has the authority to grant declaratory relief pursuant to the  
15 Declaratory Judgment Act, 28 U.S.C. §§ 2201–2202, and may grant relief pursuant to the  
16 MSA, 16 U.S.C. §§ 1861(d) and 1855(f), as well as the APA, 5 U.S.C. § 706.

17 8. Venue is properly vested in this judicial district under 28 U.S.C. § 1391(b) and  
18 (e), because the defendants are officers or employees of the United States and are located in  
19 this district and because a substantial part of the events and omissions which gave rise to this  
20 action occurred in this district.

21  
22 **III. PARTIES**

23 9. Plaintiff Keith Guindon (“Guindon”) is a commercial fisherman residing in  
24 Santa Fe, Texas. Guindon holds Individual Fishing Quota (“IFQ”) shares for Gulf of Mexico  
25

1 red snapper (“red snapper”). Guindon owns and operates the fishing vessels Falcon, Katie  
2 Marie, Avenger, Voyager, and Kathleen M.

3 10. Plaintiff Katie’s Seafood Market, LLC (“Katie’s Seafood”) is a limited liability  
4 company organized under the laws of the State of Texas and located in Galveston, Texas.  
5 Katie’s Seafood is a commercial fish and seafood market. Plaintiff Guindon is the owner and  
6 president of Katie’s Seafood.  
7

8 11. Plaintiff Wayne Werner (“Werner”) is a commercial fisherman residing in  
9 Alachua, Florida. Werner holds IFQ shares for red snapper. Werner owns and operates the  
10 fishing vessel Sea Quest.

11 12. Plaintiff Donald A. Waters (“Waters”) is a commercial fisherman residing in  
12 Pensacola, Florida. Waters holds IFQ shares for red snapper. Waters owns and operates the  
13 fishing vessels Hustler and Barely Legal. Waters is the owner and managing member of  
14 Waters Fishing, LLC which holds IFQ shares for red snapper.  
15

16 13. Plaintiff David Krebs (“Krebs”) is a commercial fisherman residing in Destin,  
17 Florida. Krebs holds IFQ shares for red snapper. Krebs owns and operates the fishing vessel  
18 Wanda.

19 14. Plaintiff Ariel Seafoods of Florida, Inc. (“Ariel Seafoods”) is a corporation  
20 organized under the laws of the State of Florida and located in Destin, Florida. Ariel Seafood  
21 is a commercial fish and seafood business. Plaintiff Krebs is the owner and president of Ariel  
22 Seafoods.  
23

24 15. Plaintiff F/V Dreamcatcher, Inc. (“Dreamcatcher”) is a corporation organized  
25 under the laws of the State of Florida and located in Destin, Florida. Dreamcatcher holds IFQ

1 shares for red snapper. Dreamcatcher owns and operates the fishing vessel Nan Baldwin.  
2 Plaintiff Krebs is the owner and president of Dreamcatcher.

3 16. Plaintiff Russell Underwood (“Underwood”) is a commercial fisherman  
4 residing in Lynn Haven, Florida. Underwood holds IFQ shares for red snapper. Underwood  
5 owns and operates the fishing vessels Last Time, Connie Marie, Malcolm B., Laura Ann,  
6 Char-Ma-Ann, Norman B., and Carolina Princess.

7  
8 17. Plaintiff Glenhart Brooks III (“Brooks”) is a commercial fisherman residing in  
9 Bradenton, Florida. Brooks holds IFQ Shares for red snapper. Brooks owns and operates the  
10 fishing vessels Miss Gail, Miss Donna, and Neptune I.

11 18. Plaintiff John Anderson (“John”) is a commercial fisherman residing in  
12 Panama City, Florida. John holds IFQ shares for red snapper. John owns and operates the  
13 fishing vessel Pisces.

14  
15 19. Plaintiff Buccaneer Fish Company, Inc. (“Buccaneer Fish”) is a corporation  
16 organized under the laws of the State of Florida and located in Panama City, Florida.  
17 Buccaneer Fish is a commercial fish and seafood business. Plaintiff John is the owner and  
18 president of Buccaneer Fish.

19 20. Plaintiff James M. Clements (“Clements”) is a commercial fisherman residing  
20 in Carrabelle, Florida. Clements is the owner and president of Captain Jim’s Charters, Inc.,  
21 which holds IFQ shares for red snapper.

22  
23 21. Plaintiff Bartholomew Niquet (“B. Niquet”) is a commercial fisherman  
24 residing in Lynn Haven, Florida. B. Niquet holds IFQ shares for red snapper. B. Niquet  
25 owns and operates the fishing vessel Galilean and operates the fishing vessel Nina.



1           22. Plaintiff Christopher Niquet (“C. Niquet”) is a commercial fisherman residing  
2 in Lynn Haven, Florida. C. Niquet leases annual IFQ allocation to engage in the commercial  
3 red snapper fishery in the Gulf of Mexico and operates the fishing vessel Nina.

4           23. Plaintiff William Cochrane (“Cochrane”) is a commercial fisherman residing  
5 in Galveston, Texas. Cochrane holds IFQ shares for red snapper. Cochrane owns and  
6 operates the fishing vessel Chelsea Ann.

7           24. Plaintiff James M. Whitfield (“Whitfield”) is a commercial fisherman residing  
8 in Lynn Haven, Florida. Whitfield owns IFQ shares for red snapper.

9           25. Plaintiff Lewis T. Bessinger (“Bessinger”) is a commercial fisherman residing  
10 in Bayou Vista, Texas. Bessinger operates the fishing vessel Ironsides.

11           26. Plaintiff Linda Bovaird (“Bovaird”) is the owner and sole shareholder of Blue  
12 Dolphin Fishing, Inc. and resides in Bayou Vista, Texas.

13           27. Plaintiff Blue Dolphin Fishing, Inc. (“Blue Dolphin”) is a corporation  
14 organized under the laws of the State of Florida and located in Bayou Vista, Texas. Blue  
15 Dolphin holds IFQ shares for red snapper. Blue Dolphin is a commercial fishing business that  
16 owns and operates the fishing vessel Ironsides. Plaintiff Bovaird is the corporate secretary  
17 and treasurer of Blue Dolphin and Plaintiff Bessinger is the president of Blue Dolphin.

18           28. Plaintiff David Walker (“Walker”) is a commercial fisherman residing in  
19 Andalusia, Alabama.

20           29. Plaintiff Walker Fishing Fleet, Inc. (“Walker Fishing”) is a corporation  
21 organized under the laws of the State of Florida with its principal place of business in  
22 Niceville, Florida. Walker Fishing is a commercial fishing business that owns and operates  
23  
24  
25

1 the fishing vessel June Sue. Walker Fishing holds IFQ shares for red snapper. Plaintiff  
2 Walker is the owner and president of Walker Fishing.

3 30. Plaintiff William Wright (“Wright”) is a commercial fisherman residing in  
4 Galveston, Texas. Wright holds IFQ shares for red snapper.

5 31. Plaintiff A&B Seafood, Inc. (“A&B Seafood”) is a corporation organized  
6 under the laws of the State of Texas and located in Galveston, Texas. A&B Seafood is a  
7 commercial fishing business which holds IFQ shares for red snapper. A&B Seafood owns the  
8 fishing vessel Alice Mae. Plaintiff Wright is the owner and president of A&B Seafood.

9 32. Plaintiff Quality American Seafood, LLC (“Quality American”) is a limited  
10 liability company organized under the laws of the State of Texas and located in Galveston,  
11 Texas. Quality American is a commercial fishing business. Plaintiff Wright is an owner and  
12 member of Quality American.

13 33. Plaintiff Kenneth Guindon (“Kenneth”) is a commercial fisherman residing in  
14 Texas City, Texas. Kenneth leases annual IFQ allocation to engage in the commercial red  
15 snapper fishery.

16 34. Plaintiff Martin Arnold (“Arnold”) is a commercial fisherman residing in  
17 Wewahitchka, Florida. Arnold owns and operates the fishing vessels Sea Breeze, Sir Martin  
18 E, Wolf, K.D.S., Bout Time and Wayward Wind. Arnold is the owner of Fishing Vessel  
19 Bouttime, LLC and Seminole Wind Fishing, Inc., which holds IFQ shares for red snapper and  
20 owns the fishing vessel Seminole Wind.

21 35. Plaintiff Fish for America, LLC (“Fish for America”) is a limited liability  
22 corporation organized under the laws of the State of Florida and located in St. Augustine,  
23

1 Florida. Fish for America advocates on behalf of commercial fishermen in the Gulf of  
2 Mexico and seafood consumers nationwide.

3 36. Plaintiff Gulf Fishermen's Association, Inc. ("GFA") is a nonprofit corporation  
4 organized under the laws of the State of Florida and located in Clearwater, Florida. GFA  
5 represents offshore fishermen in the southeastern United States.  
6

7 37. Plaintiff Gulf of Mexico Reef Fish Shareholders' Alliance ("GMRFSA") is a  
8 nonprofit corporation organized under the laws of the State of Texas and located in Galveston,  
9 Texas. GMRFSA is a trade organization representing commercial fishermen in the Gulf of  
10 Mexico.

11 38. Defendant Penny Sue Pritzker is the Secretary of the U.S. Department of  
12 Commerce. She is sued in her official capacity as the Secretary of Commerce and as the chief  
13 officer of the National Oceanic and Atmospheric Administration.  
14

15 39. Defendant National Oceanic and Atmospheric Administration ("NOAA") is an  
16 agency of the U.S. Department of Commerce with supervisory responsibility for the National  
17 Marine Fisheries Service. The Secretary of Commerce has delegated responsibility for  
18 managing U.S. marine fisheries to NOAA, which in turn has further delegated that  
19 responsibility to the National Marine Fisheries Service.  
20

21 40. Defendant National Marine Fisheries Service is an agency of the U.S.  
22 Department of Commerce that has been delegated the primary responsibility to manage  
23 United States marine fisheries through its approval of fishery plans, plan amendments, and  
24 regulations implementing those plans and plan amendments. This lawsuit concerns actions of  
25 the Southeast Regional Office of NMFS.

#### IV. FACTUAL BACKGROUND

##### A. Statutory Framework

41. The MSA governs the management of marine fisheries in the U.S. Exclusive Economic Zone (“federal waters”). Under the MSA, the country is divided into eight regions, with each region having a regional fishery management council that is charged with managing the marine fisheries in its respective jurisdiction. *See* 16 U.S.C. § 1852. The Secretary of Commerce (“Secretary”) appoints most members of the regional councils from among lists of nominees submitted by the governors of coastal states. *Id.* § 1852(b)(2)(C). The Secretary must ensure a fair and balanced apportionment among competing interests. *Id.* §§ 1852(b)(2)(B). Membership on the regional councils also includes officials of state and federal agencies with authority to manage fisheries who serve *ex officio*. *Id.* § 1852(b)(1).

42. The regional fishery management councils develop measures to manage stocks of fish under their respective jurisdictions and propose those management measures to the Secretary. *Id.* § 1852(h). The Secretary, acting through NOAA and its subagency, NMFS, must approve the proposed measures if consistent with the MSA and other laws and, where appropriate, promulgate the necessary federal regulations. *Id.* § 1854.

43. The numerous species of reef fish in the Gulf of Mexico are managed as a complex by the Gulf of Mexico Fishery Management Council (“Gulf Council”). 16 U.S.C. § 1802(a)(1)(E); *see also* 50 C.F.R. § 622, Appendix A, Table 3 (listing Gulf of Mexico reef fish species). The Gulf Council originally implemented a fishery management plan for reef fish (the “Reef Fish FMP”) in 1981. The Reef Fish FMP has been amended several times.

1 The Reef Fish FMP as amended and all implementing regulations were developed and  
2 approved under the authority of the MSA and must comply with the MSA's provisions.

3 **B. Management of Red Snapper in the Gulf of Mexico**

4 44. Gulf of Mexico red snapper are managed under the Reef Fish FMP. The Reef  
5 Fish FMP and its implementing regulations establish measures to regulate commercial and  
6 recreational fishing activities that target red snapper.  
7

8 45. NMFS designated red snapper as overfished in 1988. A stock of fish is  
9 considered overfished when its biomass has declined below a level that jeopardizes the  
10 capacity of the stock to produce the maximum sustainable yield ("MSY") on a continuing  
11 basis. *See* 16 U.S.C. § 1802(34); 50 C.F.R. § 600.310(e)(2)(i)(E).

12 46. In 2004, the Gulf Council approved Amendment 22 to the Reef Fish FMP,  
13 which established a rebuilding plan for red snapper that was projected to end overfishing by  
14 2010 and to rebuild the stock by 2032.  
15

16 47. In 2012 NMFS determined that the red snapper stock was no longer subject to  
17 overfishing. Overfishing occurs when a stock of fish is subject to a level of fishing mortality  
18 or annual catch that jeopardizes the capacity of the stock or stock complex to produce MSY  
19 on a continuing basis. *See* 50 C.F.R. § 600.310(e)(2)(i)(B). Although overfishing of the red  
20 snapper stock has ended and the stock is rebuilding, NMFS still considers the stock to be  
21 overfished and projects it will not be fully rebuilt until 2032 pursuant to the rebuilding plan  
22 implemented in 2004.  
23

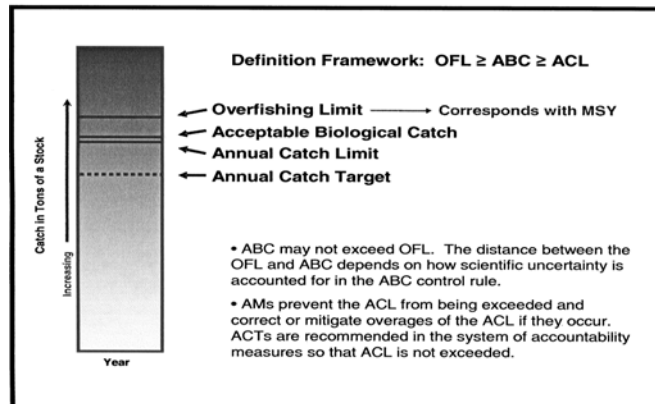
24 48. In order to prevent overfishing and achieve rebuilding as required by the MSA,  
25 the Gulf Council develops, and NMFS approves, annual catch limits ("ACLs") for the red

1 snapper fishery. *See* 16 U.S.C. § 1853(a)(15) (FMPs shall “establish a mechanism for  
2 specifying annual catch limits”).

3 49. The red snapper ACL is divided into commercial and recreational sector  
4 ACLs. The FMP provides that 51 percent of the ACL will be allocated to the commercial  
5 sector ACL. The FMP provides that the remaining 49 percent of the ACL will be allocated to  
6 the recreational sector ACL. The allocation between the commercial and recreational sectors  
7 was established by Amendment 1 to the Reef Fish FMP in 1990 and is still controlling today.  
8

9 50. In order to set the red snapper commercial and recreational sector ACLs, the  
10 Gulf Council’s Scientific and Statistical Committee (“SSC”) first establishes the Overfishing  
11 Limit (“OFL”). The OFL is a scientific estimate of the catch above which overfishing is  
12 occurring. *See* 50 C.F.R. § 600.310(e)(2)(i)(D). The SSC then recommends where the Gulf  
13 Council should set the Acceptable Biological Catch (“ABC”), which is the level of annual  
14 catch that accounts for scientific uncertainty in the estimate of OFL. *See id.* §  
15 600.310(f)(2)(ii). ABC must not exceed the OFL, but can be reduced from OFL to create a  
16 buffer to account for scientific uncertainty. *Id.* § 600.310(f)(3). In the case of red snapper,  
17 there has been a substantial buffer of 25 percent between the OFL and the ABC. Once the  
18 Gulf Council establishes the ABC, the Gulf Council must then set the ACL. “ACL cannot  
19 exceed the ABC but may be divided into sector-ACLs.” *Id.* § 600.310(f)(2)(iv). The Gulf  
20 Council accordingly sets a commercial sector ACL and a recreational sector ACL that  
21 together equal the total red snapper ACL. The Gulf Council and NMFS have declined to  
22 implement a buffer between the commercial or recreational sector ACLs and the ABC to  
23 account for management uncertainty.  
24  
25

FIG. 1 – RELATIONSHIP BETWEEN OFL, ABC, AND ACL



Source: 74 Fed. Reg. 3178, 3180 (Jan. 16, 2009).

51. The MSA requires all fishery management plans to contain “measures to ensure accountability” with ACLs. 16 U.S.C. § 1853(a)(15). NMFS guidelines provide that if “the management measures for different sectors differ in the degree of management uncertainty, then sector ACLs may be necessary so that appropriate [accountability measures] can be developed for each sector.” 50 C.F.R. § 600.310(f)(5)(ii).

52. In addition to the requirement to set ACLs and accountability measures under the MSA, Section 407(d)(1) of the MSA, 16 U.S.C. § 1883(d)(1), provides that “any fishery management plan, plan amendment, or regulation submitted by the Gulf Council for the red snapper fishery...shall contain conservation and management measures that...establish separate quotas for recreational fishing...and commercial fishing that, when reached, result in a prohibition on the retention of fish caught during recreational and commercial fishing, respectively, for the remainder of the fishing year.” Section 407(d)(2) of the MSA, 16 U.S.C. § 1883(d)(2), provides that these conservation and management measures must “ensure that such quotas reflect allocations among such sectors and do not reflect any harvests in excess of such allocations.”

1           53.     In February 2013 the Gulf Council approved the Framework Action to Set the  
2 2013 Red Snapper Commercial and Recreational Quotas and Modify the Recreational Bag  
3 Limit, which included an Environmental Assessment, Regulatory Impact Review and  
4 Regulatory Flexibility Act Analysis (the “2013 Framework Action”). The 2013 Framework  
5 Action approved the Gulf Council SSC’s recommended ABC for 2013 of 8.46 million pounds  
6 of red snapper and, pursuant to the current commercial and recreational allocations (51  
7 percent commercial and 49 percent recreational), set the commercial sector ACL at 4.315  
8 million pounds and the recreational sector ACL at 4.145 million pounds.

9  
10           54.     The Final Rule and the Temporary Rule being challenged in this case  
11 implement the 2013 Framework Action.

### 12 **C. Management Measures for the Commercial Red Snapper Fishery**

13  
14           55.     The commercial sector of the red snapper fishery operates under an individual  
15 fishing quota (“IFQ”) program that was implemented in 2007 (the “IFQ Program”). *See* 50  
16 C.F.R. § 622.21. Under the IFQ Program, eligible participants in the commercial fishery were  
17 issued individual allocations of IFQ shares that authorize them to harvest a fixed percentage  
18 of the commercial sector ACL. *See id.* These IFQ shares are revocable and transferable. *Id.*  
19 §§ 622.21(a), (b)(6), (b)(9). For each calendar year, NMFS determines the commercial sector  
20 ACL and then issues to each holder of red snapper IFQ shares an annual IFQ allocation of fish  
21 expressed in pounds, specifying the quantity of fish that can be brought to shore for sale  
22 during that calendar year. *Id.* §§ 622.21(a)(4), (b)(10).

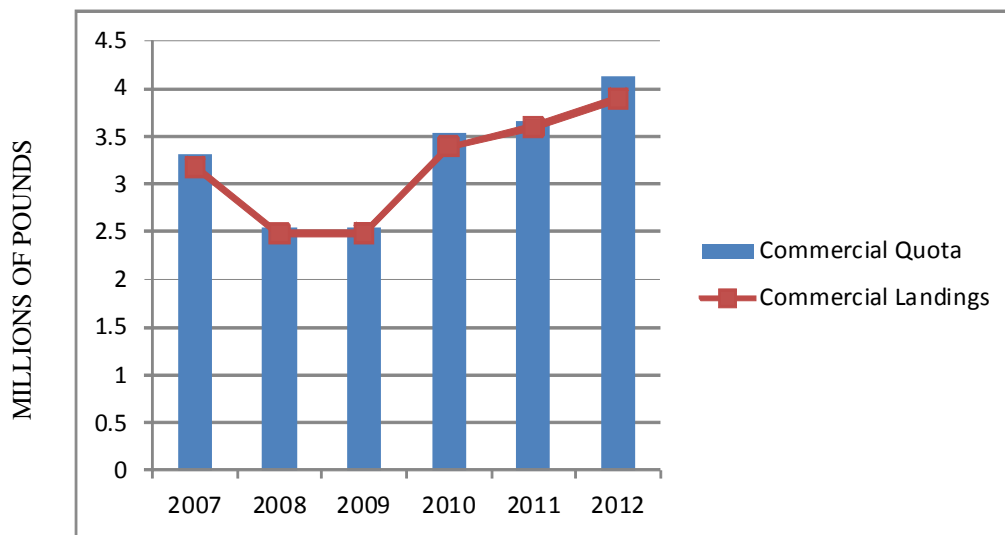
23  
24           56.     The commercial sector is subject to strict monitoring requirements to ensure  
25 that all catches are accurately reported. Each commercial vessel participating in the red



1 snapper fishery must install and maintain a vessel monitoring system which allows NMFS to  
 2 track vessel movements. Each commercial vessel must give notice to NMFS prior to each  
 3 fishing trip, and before returning to port. All red snapper must be offloaded at an authorized  
 4 fish dealer who is required to account for each pound of fish offloaded and to report landings  
 5 information to NMFS. This information allows NMFS to manage the commercial sector of  
 6 the red snapper fishery in close to real time.  
 7

8 57. Since the commercial IFQ Program was implemented in 2007, the commercial  
 9 sector has complied with its catch limit every year.

10 **FIG. 2 - COMMERCIAL SECTOR RED SNAPPER QUOTAS AND LANDINGS**  
 11 **2007-2012**



12 Source: 2013 Framework Action, Table 1.2

13 58. Because the IFQ Program provides effective accountability measures for the  
 14 commercial sector, the 2013 Framework Action concluded that the “commercial sector has  
 15 not exceeded its quota since the inception of the IFQ program, and therefore there is no buffer  
 16 [to account for management uncertainty].... The commercial quota is equal to the commercial  
 17 ABC.”  
 18  
 19  
 20  
 21  
 22  
 23  
 24  
 25

1 59. Implementation of the commercial IFQ program has produced other economic  
2 and conservation benefits for the red snapper fishery. It has reversed overcapitalization of the  
3 fishery, slowed the pace of the commercial fishery, thus reducing loss of life and property at  
4 sea from fishing in dangerous conditions, and reduced bycatch of other species, among other  
5 benefits.

6  
7 60. The commercial IFQ program also has resulted in a steady supply of red  
8 snapper available throughout the year, which has allowed new markets to be developed to  
9 serve American consumers. Public demand for red snapper caught by the commercial sector  
10 is increasing.

11 **D. Management Measures for the Recreational Red Snapper Fishery**

12 61. Management measures for the recreational sector are different and more  
13 limited. *See* 50 C.F.R. §§ 622.34 to 622.39. The recreational sector of the red snapper fishery  
14 in federal waters is regulated by NMFS using a limit on the number of fish a recreational  
15 participant can bring to shore, known as bag limits; a minimum size of the fish a recreational  
16 participant can bring to shore, known as size limits; and a defined period of time for  
17 recreational fishing in federal waters, known as the recreational red snapper season. *See id.*  
18 §§ 622.38(b)(3), 622.37(a)(1), 622.34(b), 622.39(c).

19  
20  
21 62. Because recreational anglers are permitted to continue to fish in federal and  
22 state waters for other species before and after the recreational red snapper season they  
23 continue to catch red snapper out of season.

24 63. Federal management measures for the recreational fishery are often  
25 undermined by inconsistent state laws. Florida, Alabama, Mississippi, Louisiana and Texas

1 regulate recreational fishing for red snapper in their respective state waters. Several states  
2 have established measures to regulate recreational fishing for red snapper in state waters that  
3 are inconsistent with measures established by NMFS to regulate fishing in federal waters. In  
4 2013, for example, Texas, Louisiana, and Florida established fishing seasons for red snapper  
5 in their respective state waters that were considerably longer than the fishing season for red  
6 snapper established by NMFS in federal waters.  
7

8 64. NMFS has acknowledged that “[i]f states do not comply [with federal  
9 measures], then projected reductions in harvest and fishing mortality may not occur,  
10 compromising NMFS’ ability to end overfishing and rebuild overfished stocks, which is  
11 required by the [MSA]. Additionally, inconsistent regulations in state waters complicate law  
12 enforcement and may provide fishermen an incentive to harvest greater amounts of fish,  
13 regardless of where such fish are caught, which could result in harvest overages.” 74 Fed.  
14 Reg. 17603, 17606 (Apr. 16, 2009).  
15

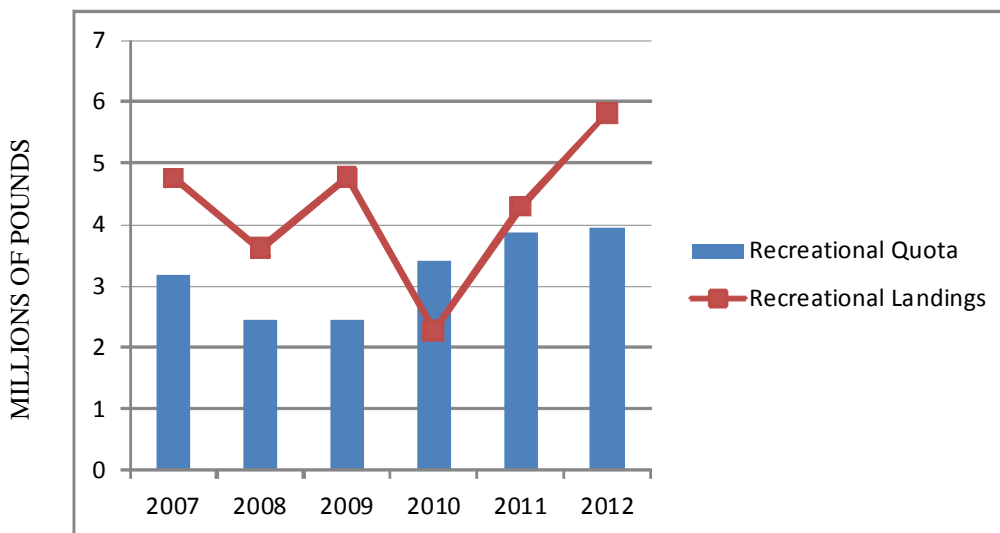
16 65. NMFS has failed to adopt effective management actions to address the  
17 problem of continued overharvesting of red snapper by the recreational sector. The only  
18 accountability measure used by NMFS to ensure that the recreational sector complies with  
19 Section 407(d) of the MSA and adheres to its sector ACL is the closure of the red snapper  
20 season in federal waters once it learns that the recreational sector ACL will be or already has  
21 been met. But this accountability measure has proven to be ineffective. The recreational  
22 sector routinely exceeds its sector ACL. Because NMFS is not actively managing the  
23 recreational sector with tools that provide real-time assessments of fishing activity, the  
24  
25

1 closures often occur after significant overharvesting by the recreational sector has already  
 2 occurred.

3 66. Section 407(d) was added to the MSA in October, 1996. In the 16 year period  
 4 between 1997 and 2012, the recreational sector exceeded its catch limit nine times.  
 5

6 67. Congress further amended the MSA effective in 2007 to require accountability  
 7 measures to ensure that ACLs are adhered to under 16 U.S.C. § 1853(a)(15). The recreational  
 8 sector has exceeded its catch limit every year since 2007 but one, 2010, when the Deepwater  
 9 Horizon oil spill shut down large portions of the Gulf of Mexico to recreational fishing.  
 10 These annual overages have been substantial. In 2012, for example, the recreational sector  
 11 ACL was 3.989 million pounds of red snapper, but the recreational sector caught 5.823  
 12 million pounds of red snapper, an overage of 1.834 million pounds or 46 percent.  
 13

14 **FIG. 3 - RECREATIONAL SECTOR RED SNAPPER QUOTAS AND LANDINGS**  
 15 **2007-2012**



16 Source: Gulf Council/NMFS, Scoping Document, Improving Private Recreational Red Snapper Fisheries Data  
 17 (June 2013) at 3, Table 1.1.1  
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1           68. In the 2013 Framework Action, NMFS acknowledges this persistent  
2 management failure, noting that “the recreational quota has regularly been exceeded” and  
3 specifically that “the recreational sector has exceeded its ABC in four of the last five years, by  
4 52% in 2008, 89% in 2009, 18% in 2011 (or by 7% if the 345,000 lb supplemental allocation  
5 is included), and 46% based on the preliminary landings for 2012.” Notwithstanding this  
6 record of noncompliance, NMFS has failed to adopt more effective management and  
7 accountability tools to prevent overharvesting by the recreational sector in the future.  
8

9           69. As part of the 2013 Framework Action, a 20 percent buffer between the ABC  
10 and the recreational sector ACL was considered as a mechanism to absorb foreseeable  
11 overages. The 2013 Framework Action explains that implementing such a buffer is called for  
12 under the control rules adopted by the Gulf Council for ensuring compliance with ACLs. But  
13 NMFS failed to adopt the proposed buffer.  
14

15           70. The 2013 Framework Action reflects NMFS’s willingness to tolerate a higher  
16 risk of exceeding the recreational sector ACL in order to maximize economic benefits through  
17 higher catches by the recreational sector. The 2013 Framework Action states that while  
18 “Preferred Alternative 2 [with no buffer] is not as biologically conservative as Alternative 3  
19 [with a 20% buffer], the Council has managed the recreational red snapper sector based on the  
20 ABC for several years to maintain the socioeconomic benefits and optimal yield in  
21 accordance with the FMP and Red Snapper Rebuilding Plan.” (emphasis added).  
22

23           71. On this issue the 2013 Framework Action is internally inconsistent. It explains  
24 that there is no buffer between the commercial sector ACL and ABC to account for  
25 management uncertainty because the “commercial sector has not exceeded its quota since the

1 inception of the IFQ program.” The recreational sector, by contrast, has exceeded its quota in  
2 every year but one over the same period. Yet the buffer for the recreational sector was  
3 rejected in order to “maintain socioeconomic benefits.”

4 72. NMFS’s Federal Register notice proposing and soliciting public comment on  
5 measures to implement the 2013 Framework Action compounded this substantive flaw with a  
6 procedural error. *See* 78 Fed. Reg. 20292 (Apr. 4, 2013). In its notice, NMFS failed to notify  
7 the public that the Gulf Council had considered but rejected an option to implement a buffer  
8 for the recreational sector as called for by the Gulf Council’s control rules. NMFS also failed  
9 to explain why it did not believe such a buffer was appropriate to ensure that the recreational  
10 sector adhered to its catch limit.

11 73. In March 2013, NMFS issued an Emergency Rule for the recreational fishery  
12 that proposed different federal fishing seasons in federal waters off various Gulf states  
13 depending on the length of the fishing seasons established by different states in state waters.  
14 *See* 78 Fed. Reg. 17882 (Mar. 23, 2013). The Emergency Rule was challenged and held  
15 invalid. *See Texas v. Crabtree*, No. 1:13-cv-70, Mem. Op. and Order, Dkt. # 47 (S.D. Tex.  
16 May 31, 2013). NMFS then issued the Temporary Rule setting a 28-day recreational red  
17 snapper season across federal waters of the Gulf of Mexico. That season opened on June 1  
18 and closes at 12:01 A.M. on June 29, 2013.

19 74. Due to the lack of effective accountability measures for the recreational fishing  
20 sector, the 28-day season in 2013 is likely to result in catch overages similar to those observed  
21 in prior years.

1 75. Continued catch overages by the recreational fishing sector are causing the red  
 2 snapper stock to rebuild more slowly than it would without such catch overages. Slower  
 3 rebuilding of the stock results in lower ACLs than would otherwise be allowed. Lower ACLs  
 4 negatively affect all stakeholders in the fishery, including the commercial fishing sector by  
 5 reducing the amount of fish that participants in that sector, including some of the Plaintiffs,  
 6 are allowed to catch on an annual basis.

8 76. Continued catch overages by the recreational fishing sector and the lack of  
 9 effective accountability measures create undue risk that the red snapper stock will again be  
 10 subject to overfishing.

11 77. Annual, foreseeable catch overages by the recreational fishing sector result in a  
 12 de facto reallocation among the recreational and commercial sectors. This de facto  
 13 reallocation contravenes the requirement of the Reef Fish FMP that 51 percent of the quota is  
 14 reserved for the commercial sector and 49 percent is reserved for the recreational sector.  
 15

16 **FIG. 4 - RED SNAPPER COMMERCIAL AND RECREATIONAL LANDINGS**

Year	Commercial		Recreational	
	Pounds (millions)	Percent	Pounds (millions)	Percent
2007	3.183	41.8%	4.44	58.2%
2008	2.484	40.1%	3.712	59.9%
2009	2.484	34.9%	4.625	65.1%
2010	3.392	60.2%	2.239	39.8%
2011	3.594	43.8%	4.603	56.2%
2012	3.893	40.0%	5.823	60.0%

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23 Source: 2013 Framework Action; Gulf Council/NMFS, Draft Options Paper for Am. 28 to the Reef Fish FMP  
(June 2013) at 8, Table 2.1.1

1           78. Through the continued catch overages by the recreational fishing sector NMFS  
2 has effectively reallocated the quota between the commercial and recreational fishing sectors  
3 without the public processes and analyses required under law.

4           79. NMFS failed to adopt a buffer in the recreational sector where overharvesting  
5 is prevalent, but it arbitrarily set a large buffer between the OFL and the ABC which has the  
6 effect of reducing overall catch limits for both the recreational and commercial fishing  
7 sectors. The ostensible purpose of this cross-sectional buffer under NMFS guidelines is to  
8 address scientific uncertainty with respect to the health of the red snapper stock. The  
9 functional purpose of this buffer, however, is to absorb the repeated catch overages by the  
10 recreational fishing sector. Instead of following its own guidelines to set a buffer applicable  
11 only to the recreational sector ACL to address management uncertainty with respect to that  
12 sector's catches, NMFS instead arbitrarily reduces the commercial sector catch limit to absorb  
13 part of the overages by the recreational fishing sector.  
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16           **V. FIRST CAUSE OF ACTION – VIOLATION OF MSA SECTION 407(d)**

17           80. Paragraphs 1 through 79 are hereby incorporated by reference.

18           81. Section 407(d) of the MSA requires that the Reef Fish FMP and implementing  
19 regulations governing the red snapper fishery contain conservation and management measures  
20 that “establish separate quotas for recreational fishing . . . and commercial fishing that, when  
21 reached, result in a prohibition on the retention of fish caught during recreational fishing and  
22 commercial fishing, respectively, for the remainder of the fishing year.” 16 U.S.C. §  
23 1883(d)(1).  
24  
25



1 82. Notwithstanding this requirement, the recreational sector has consistently  
2 exceeded its annual catch limit.

3 83. NMFS's failure to effectively manage the recreational sector has allowed the  
4 recreational sector to regularly exceed its catch limits and the failure to adopt effective  
5 management and accountability measures will result in future overharvesting of red snapper  
6 by the recreational sector.

7  
8 84. The Reef Fish FMP, the Final Rule and the Temporary Rule violate Section  
9 407(d) of the MSA.

10 **VI. SECOND CAUSE OF ACTION – VIOLATION OF MSA SECTION 303(a)(15)**

11 85. Paragraphs 1 through 84 are hereby incorporated by reference.

12 86. Section 303(a)(15) of the MSA requires NMFS to implement “measures to  
13 ensure accountability” with annual catch limits. 16 U.S.C. § 1853(a)(15).  
14

15 87. Notwithstanding this requirement, the recreational sector has consistently  
16 exceeded its annual catch limit.

17 88. NMFS's failure to effectively manage the recreational sector has allowed the  
18 recreational sector to regularly exceed its catch limits and the failure to adopt effective  
19 management and accountability measures will result in future overharvesting of red snapper  
20 by the recreational sector.

21  
22 89. The Reef Fish FMP, the Final Rule and the Temporary Rule violate Section  
23 303(a)(15) of the MSA.

24 **VII. THIRD CAUSE OF ACTION – VIOLATION OF MSA SECTION 304(b)(1)**

25 90. Paragraphs 1 through 89 are hereby incorporated by reference.

1           91. Under Section 304(b)(1) of the MSA, conservation and management measures  
2 must be consistent with the governing FMP. 16 U.S.C. § 1854(b)(1) (NMFS shall determine  
3 if implementing regulations are consistent with FMP and return them to the appropriate  
4 fishery management council if inconsistent).

5           92. The Reef Fish FMP divides the total red snapper ACL into sector ACLs. The  
6 commercial sector ACL constitutes 51 percent of the total red snapper ACL. The recreational  
7 sector ACL constitutes 49 percent of the total red snapper ACL. Yet in 2007, 2008, 2009,  
8 2011, and 2012, the recreational sector accounted for 58.2 percent, 59.9 percent, 65.1 percent,  
9 56.2 percent, and 60.0%, respectively, of total red snapper landings.

10           93. NMFS's failure to effectively manage the recreational sector has allowed the  
11 recreational sector to regularly exceed its catch limits and the failure to adopt effective  
12 management and accountability measures will result in future overharvests of red snapper by  
13 management and accountability measures will result in future overharvests of red snapper by  
14 the recreational sector.

15           94. The Final Rule and the Temporary Rule are inconsistent with the Reef Fish  
16 FMP and therefore violate Section 304(b)(1) of the MSA.

17 **VIII. FOURTH CAUSE OF ACTION – VIOLATION OF NATIONAL STANDARD 4**

18           95. Paragraphs 1 through 94 are hereby incorporated by reference.

19           96. The MSA provides that “[i]f it becomes necessary to allocate or assign fishing  
20 privileges among various United States fishermen, such allocation shall be (A) fair and  
21 equitable to all such fishermen; [and] (B) reasonably calculated to promote conservation . . . .”  
22 16 U.S.C. § 1851(a)(4) (“National Standard 4”).  
23  
24  
25

1 97. NMFS has promulgated guidelines to implement National Standard 4. Those  
2 guidelines provide that “[a]n allocation scheme may promote conservation by encouraging a  
3 rational, more easily managed use of the resource.” 50 C.F.R. § 325(c)(3).

4 98. The current conservation and management measures governing the commercial  
5 sector of the red snapper fishery, i.e., the IFQ Program, make it a more easily managed use of  
6 the resource.

7 99. NMFS’s failure to adopt effective management and accountability measures  
8 has resulted and will continue to result in overharvesting of red snapper by the recreational  
9 sector. This has resulted in a de facto allocation among the commercial and recreational  
10 sectors.

11 100. Such reallocation does not comply with National Standard 4 as interpreted by  
12 NMFS in the implementing guidelines, and it is neither fair, equitable, nor reasonably  
13 calculated to promote conservation.

14 101. The Reef Fish FMP, the Final Rule and the Temporary Rule violate National  
15 Standard 4.

16 **IX. FIFTH CAUSE OF ACTION – VIOLATION OF NATIONAL STANDARD 5**

17 102. Paragraphs 1 through 101 are hereby incorporated by reference.

18 103. The MSA requires that “[c]onservation and management measures shall, where  
19 practicable, consider efficiency in the utilization of fishery resources, except that no such  
20 measure shall have economic allocation as its sole purpose.” 16 U.S.C. § 1851(a)(5)  
21 (“National Standard 5”).  
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1           104. The stated rationale in the 2013 Framework Action for rejecting a buffer in the  
2 recreational sector to manage chronic overharvesting of the sector was to “maintain  
3 socioeconomic benefits” of the recreational fishery. Thus the decision by the Gulf Council  
4 and NMFS to forgo a buffer between the ABC and the recreational sector ACL when  
5 developing and promulgating the Final Rule and the Temporary Rule had economic allocation  
6 as its sole purpose.  
7

8           105. The Final Rule and the Temporary Rule violate National Standard 5.

9 **X. SIXTH CAUSE OF ACTION – VIOLATION OF MSA SECTIONS 301(a)(1)**  
10 **and 303(a)(1)(A)**

11           106. Paragraphs 1 through 105 are hereby incorporated by reference.

12           107. Sections 301(a)(1) and 303(a)(1)(A) of the MSA require that all conservation  
13 and management measures prevent overfishing and achieve rebuilding. *See* 16 U.S.C. §§  
14 1851(a)(1), 1853(a)(1)(A).

15           108. NMFS’s failure to adopt effective management and accountability measures  
16 has resulted and will continue to result in overharvesting of red snapper by the recreational  
17 sector. These overages slow the rebuilding of the red snapper stock and pose an unreasonable  
18 risk of causing overfishing and preventing rebuilding.  
19

20           109. The Reef Fish FMP, the Final Rule and the Temporary Rule violate Sections  
21 301(a)(1) and 303(a)(1)(A) of the MSA.

22 **XI. SEVENTH CAUSE OF ACTION –VIOLATION OF THE ADMINISTRATIVE**  
23 **PROCEDURE ACT**

24           110. Paragraphs 1 through 109 are hereby incorporated by reference.  
25

1 111. In promulgating the Final Rule and the Temporary Rule, NMFS acted  
2 arbitrarily and capriciously and in violation of law in violation of the APA.

3 112. NMFS adopted a management alternative that set the recreational sector ACL  
4 at 4.145 million pounds of red snapper instead of implementing a 20 percent buffer between  
5 the ABC and the recreational sector ACL as called for by the Gulf Council's control rules.  
6 The stated justification for not implementing a buffer between the ABC and the commercial  
7 ACL was because the commercial sector has not exceeded its quota since implementation of  
8 the IFQ Program in 2007. That rationale does not apply to the recreational sector because it  
9 has exceeded its quota every year but one since 2007. In light of the repeated catch overages  
10 by the recreational sector, the decision to forgo a buffer was arbitrary and capricious.  
11

12 113. In addition, NMFS arbitrarily adopted a large buffer between the OFL and the  
13 ABC, which reduces the catch limits for both the recreational and commercial fishing sectors.  
14 The practical purpose of this large buffer is not to address scientific uncertainty but to absorb  
15 repeated catch overages by the recreational sector. Instead of following its own guidelines to  
16 set a buffer applicable only to the recreational sector ACL to address management uncertainty  
17 with respect to that sector's catches and repeated overages, NMFS instead arbitrarily reduced  
18 the commercial sector catch limit to absorb part of the overages by the recreational fishing  
19 sector.  
20

21 114. Defendants failed to make a rational connection between the facts found and  
22 the choices made and failed to adequately explain their actions in violation of the APA.  
23

24 115. The Reef Fish FMP, the Final Rule and the Temporary Rule violate the APA.  
25

1 **XII. EIGHTH CAUSE OF ACTION – VIOLATION OF THE NATIONAL**  
2 **ENVIRONMENTAL POLICY ACT**

3 116. Paragraphs 1 through 115 are hereby incorporated by reference.

4 117. NEPA requires that a federal agency assess the environmental consequences of  
5 its actions, including evaluating a reasonable suite of alternatives and collecting and analyzing  
6 information as appropriate. *See* 42 U.S.C. § 4332.

7 118. NMFS prepared an Environmental Assessment concerning the final agency  
8 action at issue in this case that does not comply with the standards established in NEPA and  
9 implementing regulations.

10 119. The Final Rule and the Temporary Rule violate NEPA.

11 **XIII. PRAYER FOR RELIEF**

12 WHEREFORE, Plaintiffs request that this Court:

- 13
- 14 1. Enter a declaratory judgment that the regulations establishing the conservation  
15 and management measures for the recreational sector of the red snapper fishery  
16 under the Reef Fish FMP, the Final Rule and the Temporary Rule are arbitrary,  
17 capricious and in violation of the Magnuson-Stevens Fishery Conservation and  
18 Management Act, the Administrative Procedure Act, and NEPA;
  - 19 2. Vacate the regulations establishing the conservation and management  
20 measures for the recreational sector of the red snapper fishery under the Reef  
21 Fish FMP, the Final Rule and the Temporary Rule and remand them to NMFS  
22 with instructions to develop, in cooperation with the Gulf of Mexico Fishery  
23 Management Council and fishery stakeholders, and implement:  
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(a) prior to June 1, 2014, revisions to the Reef Fish FMP in the form of conservation and management measures that will hold the recreational sector accountable for exceeding the recreational sector ACL;

(b) prior to June 1, 2014, revised regulations governing the recreational sector including improved accountability measures that will result in catches by the recreational sector at or below the recreational sector ACL;

(c) prior to June 1, 2014, adjustments to the recreational sector ACL with buffers that adequately reflect and account for the management uncertainty and catch overages of the recreational sector; and

(d) prior to January 1, 2014, a commercial sector ACL that is set at or near the OFL with respect to the commercial sector;

3. Award Plaintiffs their fees, expenses, and costs pursuant to Equal Access to Justice Act, 28 U.S.C. § 2412(d); and

4. Such other and further relief as this Court deems just and appropriate.

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DATED this 28th day of June, 2013.

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