

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

SOUTHEASTERN FISHERIES
ASSOCIATION, INC. *et al.*,

Plaintiffs,

v.

HOWARD LUTNICK, in his official capacity
as U.S. Secretary of Commerce, *et al.*,

Defendants.

No.: 1-26-cv-01533-RC

**UNOPPOSED MOTION OF ENVIRONMENTAL DEFENSE FUND FOR LEAVE TO
FILE *AMICUS CURIAE* BRIEF IN SUPPORT OF PLAINTIFFS' MOTION FOR
PRELIMINARY INJUNCTION OR STAY**

Pursuant to Local Civil Rule 7(o), the Environmental Defense Fund (“EDF”) moves for leave to file the attached *amicus curiae* brief in support of Plaintiffs’ motion for preliminary injunction or stay. Pursuant to Local Civil Rules 7(m) and 7(o)(2), Plaintiffs consent to this motion; Defendants take no position. Thus, the motion is unopposed.

Nature of Movant’s Interest

EDF is a leading, national not-for-profit organization representing over 3.5 million members and supporters. Since 1967, EDF has linked science, economics, law and innovative private-sector partnerships to create breakthrough solutions to the most serious environmental problems. Through its Fisheries & Oceans Program, EDF supports the implementation of creative, practical solutions to the most critical problems facing the world’s oceans.

EDF supported the implementation of the 2006 amendments to the Magnuson-Stevens Fishery Conservation and Management Act to help prevent overfishing and rebuild overfished U.S. fisheries, and has devoted significant work over the ensuing two decades to give force to

these statutory provisions. The Exempted Fishing Permits (“EFPs”) at issue in this case purport to waive those statutory provisions to allow expanded fishing seasons for red snapper that the stock cannot support, according to the best available science. The EFPs therefore directly affect EDF’s work and interests in achieving sustainable fisheries management in this country, and also set a troubling precedent in which fisheries management decisions may be made without scientific or legal support. EDF submitted comments in opposition to the EFPs. *See* EDF’s March 10, 2026 Comment Letter, *available at* <https://www.regulations.gov/comment/NOAA-NMFS-2026-0496-10964>.

EDF’s Amicus Brief is Desirable and Relevant to the Disposition of the Case

The Court has broad discretion to grant amicus participation. *See D.C. v. Potomac Elec. Power Co.*, 826 F. Supp. 2d 227, 237 (D.D.C. 2011) (granting *amicus* participation to “environmental organizations with relevant expertise and a stated concern for the issues at stake in this case” whose input may benefit the court); *Jin v. Ministry of State Sec.*, 557 F. Supp. 2d 131, 136 (D.D.C. 2008) (a unique perspective may also suffice).

As described above, EDF has a stated concern for the issues at stake in this case. EDF also respectfully submits that the Court may benefit from EDF’s longstanding involvement with U.S. fisheries management and efforts to rebuild overfished stocks, familiarity with the governing statutory and regulatory regimes, and efforts in support of prior experimental fishing permits, including to find ways of expanding fishing opportunities for recreational anglers in compliance with all statutory requirements. *See* EDF’s March 10, 2026 Comment Letter, *supra*, at 2. EDF’s interests and expertise bear directly upon the disposition of this case.

EDF’s position is not adequately represented by any party or other *amici curiae*. As a non-profit environmental organization, EDF does not share the commercial interests of the

Plaintiffs. EDF opposes the action taken by Defendants to approve the EFPs at issue.

EDF has also taken steps to ensure that its proposed filing is not duplicative of other filings and offers unique factual and legal insight on the merits of the preliminary injunction motion—focusing in particular on the lack of statutory authority for the EFPs at issue, because they do not fall within the meaning of experimental fishing permits and they purport to waive core Magnuson-Stevens Act requirements.

The accompanying amicus brief was authored entirely by *amicus curiae* and their attorneys, and not in any part by counsel for any party. No party or counsel for any party contributed money to fund preparing or submitting the accompanying *amicus* brief.

The Motion is Timely

While this proceeding is expedited due to Plaintiffs' motion for a preliminary injunction against the scheduled opening of a fishing season one week away (on May 22), EDF is filing this motion along with its proposed *amicus* brief as expeditiously as possible and prior to the date by which the Defendants' (and prospective Intervenor-Defendants') opposition briefs are due. Thus, Defendants have an opportunity to respond to EDF's arguments.

Conclusion

EDF respectfully asks the Court to exercise its discretion and accept the proposed *amicus* brief attached to this motion.

Dated: May 15, 2026.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on May 15, 2026, I electronically filed this motion for leave to file *amicus* brief with the Clerk of the Court using the CM/ECF system. Notice of this filing will be sent to all attorneys of record by operation of the Court's electronic filing system.

Dated: May 15, 2026.

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[PROPOSED] ORDER

Upon consideration of the Motion of the Environmental Defense Fund (EDF) for Leave to file an *Amicus Curiae* Brief, and there appearing good cause to grant such leave,

IT IS HEREBY ORDERED that:

1. The Motion is GRANTED, and
2. The *Amicus Curiae* Brief submitted by EDF is deemed submitted and shall be considered part of the record in this matter.

The Honorable Rudolph Contreras
United States District Court

Dated: _____, 2026

NAMES OF PERSONS TO BE SERVED WITH PROPOSED ORDER UPON ENTRY

In accordance with Local Civil Rule 7(k), listed below are the names and addresses of the attorneys and parties entitled to be notified of the Proposed Order's entry:

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**[PROPOSED] BRIEF OF ENVIRONMENTAL DEFENSE FUND
AS *AMICUS CURIAE* IN SUPPORT OF PLAINTIFFS' MOTION FOR PRELIMINARY
INJUNCTION OR STAY**

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LOCAL CIVIL RULE 26.1 CERTIFICATE

I, the undersigned, counsel of record for the Environmental Defense Fund (EDF), certify that to the best of my knowledge and belief, there are no parent companies, subsidiaries, affiliates, or companies which own at least 10% of the stock of EDF which have any outstanding securities in the hands of the public.

These representatives are made in order that judges of this Court may determine the need for recusal.

Dated: May 15, 2026.

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INTRODUCTION

Plaintiffs challenge four exempted fishing permits (“EFPs”) issued by the National Marine Fisheries Service (“Service”) to the States of Florida, Georgia, North and South Carolina, which authorize—at an unprecedented scale—expanded fishing seasons for recreational anglers to catch red snapper. The Court should enjoin these EFPs because the Service lacks statutory authority to even issue such permits, and these EFPs violate critical statutory requirements of the Magnuson-Stevens Fishery Conservation and Management Act by eliminating the annual catch limit and ignoring the Service’s core duty to prevent overfishing.

The EFPs will cause long-term damage to the red snapper stock and the fishing communities that depend upon it. As required by statute and guided by science, the Service adopted an annual red snapper catch limit in 2025 for the recreational sector to prevent overfishing. That catch limit for the South Atlantic region was only 22,797 landed fish. Last year, the Service concluded that those fish would all be landed in just two days of fishing. During the two-day fishing season that the Service authorized in 2025, recreational anglers in Florida alone exceeded the limit, landing an estimated 24,885 fish.

By contrast, under the EFPs for 2026, the Service authorized a 39-day fishing season for Florida that opens on Friday, May 22. If the pace of fishing in 2026 matches 2025, Florida will use up the entire catch limit by the end of the day on Saturday, May 23. But under the EFPs, there is no catch limit, and fishing will continue in that state for another 37 days, and then starting on July 1, 62-day seasons will open in each of the other three states.

These EFPs are unlawful on their face. As an initial matter, the Service has no statutory authority to issue exemptions of this nature at all. Congress has only authorized the Service to issue “experimental fishing” permits to allow targeted scientific study of innovative fishing gear,

practices, and the like, where they may not otherwise be permitted under existing regulations. The EFPs here involve nothing of the sort. Moreover, the EFPs are substantively invalid, because they purport to authorize exemptions from statutory requirements that the Service has no authority to sanction. Whatever authority the Service could plausibly have to issue EFPs, it plainly cannot use them to eliminate the annual catch limit altogether—a limit that the Service is required to maintain under the plain text of the Magnuson-Stevens Act. So too, the Service has exceeded its authority by issuing these permits without establishing that they will prevent overfishing—another statutory mandate that the agency has an affirmative duty to uphold.

The Service failed to offer any analysis of the effects of these vastly expanded seasons. But the available data indicate that overfishing will occur and will irrevocably delay stock rebuilding. Thus, time is of the essence. Judicial intervention is warranted to uphold the law and protect one of our nation’s most important fisheries from imminent damage.

INTERESTS OF ENVIRONMENTAL DEFENSE FUND AND AUTHORITY TO FILE

EDF is a leading, national not-for-profit organization representing over 3.5 million members and supporters. Since 1967, EDF has used science, economics, law and innovative private-sector partnerships to create breakthrough solutions for the most serious environmental problems. Through its Fisheries & Oceans Program, EDF has sought to address the most critical challenges facing the world’s oceans, including the decline of sustainable fisheries and robust ocean ecosystems.

EDF has sponsored academic research, participated in advisory panels before Congress, and partnered with fishermen, scientists, and regulators to improve the sustainable management of U.S. fisheries and align conservation and economic incentives so that our fishery resources provide the greatest benefit for the nation and fishing communities. As part of this effort, EDF

supported the implementation of amendments to the Magnuson-Stevens Act to strengthen the Act's conservation requirements to prevent overfishing and rebuild overfished stocks. Some of those statutory provisions are at issue in this case. EDF has also supported other experimental fishing permits, including to test alternative management approaches for recreational fisheries.

EDF is sympathetic to the concerns of recreational anglers and recreational fishing businesses facing short fishing seasons and agrees that experimental fishing can be a valuable tool to collect more precise catch data that could allow for more fishing opportunities within science-based limits. The EFPs at issue in this case, however, improperly authorize exemptions from the core conservation mandates of the Magnuson-Stevens Act and will harm the stock of red snapper and all those who use and enjoy it.

EDF has moved for leave of Court to file this *amicus* brief pursuant to LCR 7(o)(1).

BACKGROUND

A. The Magnuson-Stevens Act's Key Requirements for Fisheries Management

The Magnuson-Stevens Act is the Nation's primary marine fisheries law, enacted for the purpose of fishery conservation and sound management. *See* 16 U.S.C. §§ 1801, *et seq.* The Act established regional councils to develop fishery-specific management plans, which the Service then approves and codifies, in part, through regulations. *Id.* §§ 1852(h), 1854(a).

The Act requires that these management plans be consistent with ten statutory "National Standards," including that all management measures must "prevent overfishing while achieving . . . optimum yield" for the fishing industry, and that all management measures "be based upon the best scientific information available." 16 U.S.C. § 1851(a)(1)-(10). The Act also specifies certain mandatory and discretionary components of these management plans. Among the mandatory aspects, managements plans must include "a mechanism for specifying *annual catch*

limits . . . at a level such that overfishing does not occur in the fishery, including measures to ensure accountability.” Id. § 1853(a)(15) (emphasis added). As for the discretionary components, the Act permits management plans to include a host of other requirements, including prohibiting types of fishing gear, fishing equipment, or fishing vessels, and other limitations that may be appropriate for conservation and management of any given fishery. See id. § 1853(b)(4), (14). Key aspects of each fishery management plan, including the statutorily mandated annual catch limits and accountability measures, as well as any discretionary provisions, then become codified via federal regulations. See, e.g., 50 C.F.R. § Part 622 (Fisheries of the Caribbean, Gulf of America, and South Atlantic).

In addition to providing the framework that governs each management plan, the Magnuson-Stevens Act supports collaborative research between scientists, fisherman, and managers, to reduce bycatch, post-release mortality, and solve other priority issues. 16 U.S.C. § 1867. To aid these efforts, the Act provided for certain research funding, *id.* § 1867(c), as well as the issuance of experimental fishing permits for certain fishing activities, *id.* § 1867(d).

B. The South Atlantic Red Snapper Fishery

Consistent with that backdrop, the relevant management plan requirements for the South Atlantic red snapper are codified at 50 C.F.R. Part 622, Subpart I (Snapper-Grouper Fishery of the South Atlantic Region). The red snapper fishery has required years of difficult conservation and management decisions, with the stock having been under a rebuilding plan for thirty-four years. See 56 Fed. Reg. 56016 (Oct. 31, 1991); 75 Fed. Reg. 76874 (Dec. 9, 2010).

As explained in the Service’s 2025 Rule codifying the most recent requirements for this fishery, the red snapper stock had been experiencing overfishing, but could continue to rebuild given current numbers. See 90 Fed. Reg. 24527, 24528 (June 11, 2025) (noting that most “of the

red snapper fishing mortality is attributed to dead discards in the recreational sector,” i.e., fish that are caught but thrown back and die). There are recent signs of success, as stock abundance has increased. *See* Southeast Data, Assessment, and Review (SEDAR 73 Update) (Dec. 2024), at 12 (“Total estimated abundance was at its lowest value in the early 1990s, but at its highest levels near the end of the time series [2023], above or comparable to estimates in the 1950s and 1960s, but with a more truncated age structure.”), *available at*

<https://sedarweb.org/documents/sedar-73-stock-assessment-report-south-atlantic-red-snapper/>.

But continuing to rebuild the stock requires protecting younger fish so they can grow into larger, productive adults. Limiting the fishing season—and thereby limiting the amount of targeted fishing for red snapper—is presently the Service’s primary approach to limiting fishing mortality and achieving rebuilding objectives for the stock. *See id.* at 24530.

The Service codified the statutorily-mandated annual catch limits as follows:

- The annual catch limit for recreational fishing is 22,797 fish (equivalent to 263,815 lb, representing a 72% share of the total catch limit).
- The annual catch limit for commercial fishing is 102,951 lb, representing a 28% share of the total catch limit.

90 Fed. Reg. at 24529, codified at 50 C.F.R. § 622.193(y). In addition, for the mandated “accountability measure,” the Service continued using the short length (two days) of the recreational fishing season as the measure, because limiting targeted fishing effort remains the agency’s primary means of reducing fishing mortality and advancing rebuilding objectives. *Id.*

In February 2026, however, Florida, Georgia, South Carolina, and North Carolina sought exempted fishing permits that would allow recreational fishermen to harvest red snapper outside of these limits, as part of a state program that also includes a data collection effort. *See* 91 Fed. Reg. 6827, 6827-28 (Feb. 13, 2026). The proposed exempted fishing permits would replace the

existing federal requirements with state-designed harvest regimes that would significantly expand recreational fishing. 91 Fed. Reg. 6827 (Feb. 13, 2026). Of note, they would allow for a fishing season that is far longer than the two-day 2025 federal season, lasting months rather than days. *Id.* (proposing a 39-day season for Florida, and 62-day seasons for each of the other three states).

And most startlingly, the permits would entirely exempt recreational fishermen from the existing annual catch limit and provide no limit in its place. *Id.* (explaining that the state agencies have requested exemptions from: 50 C.F.R. § 622.181(c)(2) (imposing red snapper harvest limits), 50 C.F.R. § 622.183(b)(5)(i) (limiting red snapper recreational season timing), 50 C.F.R. § 622.193(y)(2) (imposing annual catch limit and accountability measures), 50 C.F.R. § 622.8(b) (imposing closure requirements if landings reach specified quota)).

That expansion matters because, for a stock still rebuilding after decades of overfishing, removing or relaxing federal guardrails increases the risk that additional targeted fishing and associated discards will slow or reverse recovery. *See* 91 Fed. Reg. at 6828-32.

The Service issued a notice and invited public comment on the proposed permits. *Id.* EDF submitted a comment opposing the proposed permits. *See* EDF's March 10, 2026 Comment Letter, *available at* <https://www.regulations.gov/comment/NOAA-NMFS-2026-0496-10964>. Without responding to this or any of the other thousands of comments, the Service granted the EFPs.

ARGUMENT

The fundamental problem with the EFPs is that the Service lacks statutory authority to issue non-experimental permits at all, and especially ones that exempt the permittee from the Magnuson-Stevens Act's core conservation requirements and will result in overfishing and harm of the red snapper stock.

“Administrative agencies are creatures of statute. They accordingly possess only the authority that Congress has provided.” *Nat’l Fed’n of Indep. Bus. v. Dep’t of Lab., Occupational Safety & Health Admin.*, 595 U.S. 109, 117 (2022); *Louisiana Pub. Serv. Comm’n v. F.C.C.*, 476 U.S. 355, 357 (1986) (“[A]n agency literally has no power to act . . . unless and until Congress confers power upon it.”). As the Supreme Court explained in *Loper Bright*, statutory silence or ambiguity is not a delegation of law-making power to agencies, and that courts must instead carefully examine a statute to determine the scope of an agency’s power. *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 395 (2024).

When the EFPs here are evaluated in light of the Magnuson-Stevens Act, where Congress has set forth a carefully crafted statutory regime to address “overfishing and the need for sound management of fishery resources,” *id.* at 369, it is evident that the Service lacked—and exceeded—statutory authority to issue them. First, there is no statutory basis for the issuance of an “exempted” fishing permit at all. The nearest reference is Congress’s provision for “experimental” fishing permits, 16 U.S.C. § 1867(d), and those permits are intended for experimental purposes only, used for targeted scientific inquiry rather than general fishing activities. The EFPs here are not for “experimental fishing” as authorized by that provision. Second, even if the Service had some general authority to issue “exempted” fishing permits (which it does not), any permitted activity must nonetheless comply with the Magnuson-Stevens Act. The Service fails that test too because its EFPs seek to waive the Act’s core limitations, by eliminating the annual catch limit and failing to prevent overfishing of the red snapper stock.

I. The Magnuson-Stevens Act does not authorize the Service to issue experimental fishing permits for general fishing activities.

As part of the 2006 amendments to the Act, Congress established a “Cooperative research and management program” to support collaborative research and management. 16 U.S.C. § 1867.

In this Section, Congress authorized the agency to issue special “experimental fishing” permits:

Experimental permitting process

Not later than 180 days after January 12, 2007, the Secretary, in consultation with the Councils, shall promulgate regulations that create an expedited, uniform, and regionally-based process to promote issuance, where practicable, of experimental fishing permits.

16 U.S.C. § 1867(d). As the agency explained in contemporaneous rulemaking, a major reason for Section 1867(d)’s “expansion in fisheries research,” was to “minimize bycatch and the mortality of bycatch,” with much of the effort focused on “studies investigating fish behavior and the development and testing of new gear technology and fishing techniques to minimize bycatch and promote the efficient harvest of target species.” 72 Fed. Reg. 72657-01, at 72657 (Dec. 21, 2007).

A. Section 1867(d) provides limited authority for experimental fishing permits targeting scientific inquiry.

Section 1867(d) does not authorize the Service to issue the EFPs here. The best reading of the statute must focus on “text, context, and structure.” *Bondi v. VanDerStok*, 145 S. Ct. 857, 876 (2025). Under those traditional tools of statutory construction, it is clear that Congress intended Section 1867(d) permits to be issued solely for experimental—not recreational—purposes.

First, Section 1867(d)’s use of the modifier “experimental” before “fishing permits” signals that the permitting authority is meant to be limited in scope. The ordinary meaning of “experimental” is something that relates to an experiment—i.e., the “process of investigating” or

“testing” something; “to test a hypothesis.” *See, e.g., Experimental, a., II, experiment, n., 1.a., 7, Oxford English Dictionary (2025).* That definition reinforces Congress’s intent that these fishing permits be for research or testing activities. Moreover, because “[a]djectives modify nouns,” they “pick out a *subset* of a category that possesses a certain quality.” *Weyerhaeuser Co. v. U.S. Fish & Wildlife Serv.*, 586 U.S. 9, 19 (2018) (emphasis added). Meaning, the agency’s ability to issue permits under Section 1867(d) is confined to permits for experimental purposes only.

Second, structure and context support this reading. In Section 1867, Congress set up a framework for a coherent program of research, directed at improving stocks, minimizing bycatch, and reducing mortality through use of new fishing gear and technologies. 16 U.S.C. § 1867(a), (c). It nestled Subsection (d) into this Section, providing for an “Experimental permitting process.” The placement of this permitting authority is no accident and only further confirms Congress’s vision as to what these permits are meant for. *See Util. Air Regul. Grp. v. EPA*, 573 U.S. 302, 320 (2014) (describing the “fundamental canon of statutory construction that the words of a statute must be read in their context and with a view to their place in the overall statutory scheme”) (internal citation omitted).

Finally, this statutory context comports with EDF’s longstanding experience with the cooperative research and management program that Congress established in Section 1867. For decades under this program, EDF has partnered with fishermen, scientists, and regulators to improve the sustainable management of U.S. fisheries. Historically, as their name implies, “experimental” permits have been issued to support this endeavor by facilitating pilot-scale scientific testing of innovative gear, monitoring approaches, and management concepts that are not otherwise permitted under those discretionary components of a management plan which may, for example, otherwise prohibit types of gear, equipment, or practice in a given fishery. EDF’s

March 10, 2026 Comment Letter discusses several examples, including an EFP issued to the Gulf Headboat Collaborative that established a specific allocation of red snapper for a limited pilot group of recreational fishing vessels to use throughout the year in lieu of a shorter fishing season imposed by regulation. *See supra*, EDF Comment Letter at 1-2. As EDF noted, these “examples share common features: limited scope, defined experimental metrics, robust monitoring, minimal risk to conservation outcomes, and compliance with MSA statutory requirements.” *Id.*; *see also* S. Wasserman, et al., *Conservation easements go fishing: The Nature Conservancy’s new legal toolbox for fisheries conservation*; available at <https://tinyurl.com/mrd4fstt> (describing experimental fishing permits that enabled a small group of fishermen to switch from trawl gear—which was otherwise required by the management plan but not statutorily mandated—to non-trawl fishing gear for west coast groundfish, resulting in significant reduction of bycatch).

The plain text, structure, and historical context demonstrate that Section 1867 permits are necessarily limited to bona fide experimental purposes, enabling a limited regulatory reprieve only for a targeted scientific inquiry.

B. The EFPs issued here exceed the Service’s statutory authority because they are for a recreational, not experimental, purpose.

Here, the Service authorized state-wide fishing permits that will exempt every recreational fisherman in four states from core statutorily-mandated requirements for the red snapper fishery—most notably, federal annual catch limits, season timing and closure restrictions, and accountability measures. 91 Fed. Reg. 6827 (requesting exemptions from 50 C.F.R. §§ 622.181(c)(2), 622.183(b)(5)(i), 622.193(y)(2), 622.8(b)).

These permits exceed the Service’s statutory authority. Although the Service purports to act under the Magnuson-Stevens Act generally and under its own “exempted fishing” regulation

(50 C.F.R. § 600.745(b)) specifically, *id.*, neither provides the necessary authority. As discussed, the Magnuson-Stevens Act provides limited authority only for “experimental” fishing permits and does not otherwise grant the agency freewheeling authority to exempt recreational fishing from the species-specific, statutorily-mandated requirements. To the extent that the Service’s “exempted fishing” regulation says otherwise, it is neither consistent with the Act, nor is it owed deference. *See Loper Bright Enters. v. Raimondo*, 603 U.S. at 395; *Ball, Ball & Brosamer, Inc. v. Reich*, 24 F.3d 1447, 1450–51 (D.C. Cir. 1994) (“An agency can neither adopt regulations contrary to statute, nor exercise powers not delegated to it by Congress.”).


To the extent that the Service claims that these four permits are authorized under Section 1867’s “experimental fishing” permit provision, the agency has overreached. These permits do not meaningfully authorize “experimental fishing.” The permitted activity is not a targeted scientific inquiry to test a hypothesis—such as whether a non-standard fishing gear or method not otherwise permitted by regulation would reduce bycatch. Instead, the permits represent a wholesale waiver of federal fishing limitations, that happens to be coupled with an electronic data-collection mechanism and voluntary smartphone app for use on each fishing trip. *See* 91 Fed. Reg. at 6828-32.

While EDF supports increased data collection, the insertion of an information collection mechanism/smartphone app into what is otherwise a systemic exemption for recreational fishing does not transform these permits into “experimental” fishing permits. The permits may provide a path for documenting these fishing efforts, but they do not change the method of fishing or alter the fishing activity; to the contrary, they merely authorize more of the same. Simply put, there is no experimental fishing going on here as contemplated by Section 1867(d).

Further, any attempt to use the data-collection mechanism to bootstrap the permit into Section 1867(d) would be contrary to law and arbitrary and capricious for at least two reasons. *First*, while the Service states that improving data quality is a justification for these permits, the agency never explains why those data improvements cannot be accomplished without suspending core statutory requirements. In other words, the agency does not connect each requested exemption (such as the exemption from any annual catch limit) to any data-collection necessity. This misalignment underscores that the legal provisions being suspended bear little relationship to the stated goal of improving data precision, and the exemptions are thus contrary to the Act and arbitrary and capricious. *See Motor Vehicle Mfrs. Assn. of United States, Inc. v. State Farm Mut. Automobile Ins. Co.*, 463 U.S. 29, 43 (1983) (agency must offer “a satisfactory explanation for its action, including a rational connection between the facts found and the choice made.”).

Second, although the agency claims that data collection is a primary goal of these permits, it explicitly acknowledges and relies on another purpose—increasing recreational fishing opportunities. 91 Fed. Reg. at 6828 (“Additional purposes of the EFPs are to provide recreational fishermen on privately owned vessels (private vessels, private anglers), and the owners or operators of charter vessels or headboats (for-hire fishermen) increased fishing opportunities Fishery managers have been challenged to satisfy fishermen’s desires for longer fishing seasons”). This goal was further amplified by the President’s post on Truth Social in conjunction with the permits’ issuance:



Donald J. Trump  
@realDonaldTrump

WE JUST DELIVERED A HUGE WIN for our Great Fishermen and Anglers in FLORIDA, GEORGIA, SOUTH CAROLINA, and NORTH CAROLINA! We have just officially approved ALL STATE PERMITS for the 2026 Red Snapper recreational season. For years, our Great Fishermen have been punished with VERY short Federal fishing seasons despite RECORD HIGH fish populations and the States begging to oversee these permits. The incompetent Biden Administration tried to SHUT DOWN THE OCEANS to our Fishermen, entirely. We love and respect our Fishermen and, unlike the Democrats, will only do good for them. To all those who fish "Red Snapper" — TRUMP and NOAA are delivering for you. ENJOY!! President DONALD J. TRUMP

Donald J. Trump (@realDonaldTrump), Truth Social (May 1, 2026, at 11:54 AM),

<https://truthsocial.com/@realDonaldTrump/posts/116500127694152404>. No mention is made of data collection.

By issuing experimental fishing permits to allow more recreational fishing opportunities, the Service exceeded its authority and acted arbitrarily and capriciously. *See Sec'y of Lab. v. Knight Hawk Coal, LLC*, 991 F.3d 1297, 1304 (D.C. Cir. 2021) (explaining that agency action is arbitrary and capricious "if the agency has relied on factors which Congress has not intended it to consider," or "offered an explanation for its decision that runs counter to the evidence before the agency"); *Saget v. Trump*, 375 F. Supp. 3d 280, 345 (E.D.N.Y. 2019) (noting agency action was not in accordance with the law and violated the APA where it was based on a contrived rationale).

II. The Magnuson-Stevens Act does not authorize the Service to exempt fishing activities from statutory requirements.

Regardless of whether the agency purports to rely on Section 1867(d) or some other general authority for its "exempted" fishing permits, the Magnuson-Stevens Act does not authorize the Service to waive statutory requirements. Indeed, the Act's requirements—

including the duty to establish annual catch limits and prevent overfishing—are clear statutory commands that “the agency bears the primary responsibility to ensure that it complies with.” *See, e.g., Fairweather Fish, Inc. v. Pritzker*, 155 F. Supp. 3d 1136, 1141-42 (W.D. Wash. 2016) (granting summary judgment to plaintiff where agency did not meet its burden of establishing consistency with the Act’s National Standards); *Ctr. for Biological Diversity v. Ross*, No. 19-03135, 2019 WL 7020195, at *7 (N.D. Cal. Dec. 20, 2019) (setting aside the agency’s issuance of an EFP as not in accordance with law, where the EFP “violates the MSA”). In issuing the EFPs here, the Service exceeded its statutory authority by failing to comply with its duty to maintain annual catch limits and ensure that any measures it adopts prevent overfishing.

A. The Magnuson-Stevens Act requires the Service to prevent overfishing, including through mandatory annual catch limits and accountability measures.

National Standard One of the Magnuson-Stevens Act is unequivocal: management measures “shall prevent overfishing while achieving, on a continuing basis, the optimum yield from each fishery for the United States fishing industry.” 16 U.S.C. § 1851(a)(1). This Court has described National Standard One as an “unqualified directive.” *Conservation Law Foundation v. Ross*, 374 F. Supp. 3d 77, 92 (D.D.C. 2019). To ensure compliance with its directive to prevent overfishing, Congress amended the Act specifically to require that all fishery management plans “establish a mechanism for specifying annual catch limits in the plan...at a level such that overfishing does not occur in the fishery, including measures to ensure accountability.” 16 U.S.C. § 1853(a)(15); *see* Pub. L. 109-479 (Jan. 12, 2007); S. Rep. 109-229 (Apr. 4, 2006) at 6 (finding that “overfishing is still occurring in a number of fisheries, even those fisheries under a rebuilding plan” and that failure to require “routine adherence” to catch limits “has contributed to continued overfishing.”); *see also Conservation L. Found. v. Pritzker*, 37 F. Supp. 3d 254, 266 (D.D.C. 2014) (“annual catch limits were clearly important to Congress in 2006 when it drafted

this bill, and, as a result, the legislature placed strict limits on the Service and the Council’s method for setting them and on fishers’ ability to exceed them”). Annual catch limits are statutorily required contents of all fishery management plans. *See* 16 U.S.C. § 1853(a)(15) (management plans “shall” contain these elements).

The Service also has an affirmative duty to ensure that the measures it implements to prevent overfishing are likely to succeed. *See Nat. Res. Def. Council, Inc. v. Daley*, 209 F.3d 747, 754 (D.C. Cir. 2000) (“We also hold that, at the very least...to “prevent overfishing,”...the [total allowable landings of fish] must have had at least a 50% chance of attaining” the target level of fishing mortality.). In all cases, the Service must base its management measures on the “best scientific information available.” 16 U.S.C. § 1852(a)(2).

B. The EFPs are facially unlawful because they eliminate the annual catch limit.

Under the EFPs, *there is no annual catch limit* for the recreational sector. All of the EFPs expressly authorize an exemption from “50 CFR 622.193(y)(2) that specifies the annual catch limit and accountability measures applicable to the harvest of red snapper.” *See* ECF Nos. 7-2 at 2, 7-3 at 2, 7-4 at 2, 7-5 at 2. And when the Service exempted the sector from its catch limit at 50 C.F.R. § 622.193(y)(2), it did not replace it with another annual catch limit. Subject only to the season length (now expanded) and daily retention limits, catch is unlimited.

The Service has no authority to issue an exemption that eliminates the annual catch limit. As the D.C. Circuit has described it, annual catch limits are mandatory components of all fishery management plans, meaning that there must always be in place an annual numeric limit of catch. *A.P. Bell Fish Co., Inc. v. Raimondo*, 94 F.4th 60, 62, 66 (D.C. Cir. 2024); 16 U.S.C. § 1853(a)(15) (management plans “shall” contain these elements). Just as National Standard One is an “unqualified directive,” *Ross*, 374 F. Supp. 3d at 92, so too is § 1853(a)(15). By issuing the

four EFPs, the Service has left exposed the red snapper stock to no catch limit—an unprecedented action that the agency has no authority to take. The Court should enjoin and vacate the permits for this reason alone.

The Service’s departure from the law is further underscored by its own past practice. The Service previously issued an EFP to the Gulf Headboat Collaborative, a small group of for-hire recreational fishing vessels who sought to test an alternative management approach where each vessel received a specific allocation of fish to catch throughout the year, instead of being subject to the general recreational fishing seasons, which (like here) had become extremely short. *See* NOAA Fisheries, Gulf Headboat Collaborative Revised Exempted Fishing Permit (EFP) PERMIT NO.: I 3-SERO-02, available at <https://tinyurl.com/mr3hssce>. The Service granted exemptions from various regulatory requirements to allow the vessels to fish outside the season, but it expressly bound the Collaborative to a statutory provision that required all fishing to cease for one species when the overall catch limit for the recreational sector had been reached. *Id.* (“this EFP does not exempt the Collaborative’s participating vessels from Section 407(d) (16 U.S.C. 1883) of the Magnuson-Stevens Fishery Conservation and Management Act”). That permit appropriately recognized the Service’s lack of authority to exempt permittees from statutorily-mandated requirements—a boundary that the agency failed to adhere to in these EFPs.

C. The Service has failed its statutory burden of establishing that the EFPs will prevent overfishing.

The Service is required to undertake an analysis to ensure that the measures it adopts will not lead to “overfishing.” *See* 16 U.S.C. § 1851(a)(1); *see also Daley*, 209 F.3d at 754 (requiring measures to have a 50% probability of achieving the target level of fishing mortality to prevent overfishing); 50 C.F.R. § 600.745(b)(3)(iii)(B) (exempted fishing permit may be denied if, “[a]ccording to the best scientific information available, the harvest to be conducted under the

permit would detrimentally affect the well-being of the stock”). Whether a species is experiencing overfishing is determined through a combination of indicators designed to measure the total fishing pressure on the stock, including not only annual landings or catch levels, but additional sources of significant fish mortality such as bycatch and discard mortality, among other factors. *See* 90 Fed Reg. 24527-01, 24529-30.

In issuing the EFPs, the Service has not publicly explained how the permitted measures would prevent overfishing. The states’ permit applications admittedly “did not estimate” the total number of red snapper that would be harvested under the permits.¹ And if the Service made such estimates, it has so far not publicly released them. This explanatory failure itself is an Administrative Procedure Act violation that warrants the injunction. *See U.S. Lines, Inc. v. Federal Maritime Commission*, 584 F.2d 519, 534 (D.C. Cir. 1978) (an agency must disclose information relevant to its decision to parties for “adversarial comment” prior to any judicial review; “[i]ndeed, if the substance or identity of the data upon which the agency has relied is permitted to remain hidden until judicial review, the courts may well find themselves called upon to resolve novel disputes as to the truth of what the agency thought it knew, disputes which should have been resolved either in the initial hearings before the agency or on reconsideration.”).

¹ *See* NOAA Fisheries, NOAA Fisheries Seeks Comments on Four Applications for Exempted Fishing Permits to Pilot Test New Data Collection Methods and State Management Strategies for South Atlantic Red Snapper (Feb. 11, 2026), *available at* <https://www.fisheries.noaa.gov/bulletin/noaa-fisheries-seeks-comments-four-applications-exempted-fishing-permits-pilot-test> (last bullet). The states’ failure to estimate the number of red snapper that would be harvested under the permits also violated NMFS’s regulations, which expressly require permit applications to specify “the amount(s) of such harvest necessary to conduct the exempted fishing.” 50 C.F.R. § 600.745(b)(2)(v).

But even if the Service was not required to make an affirmative finding that the EFPs would not result in overfishing, the available evidence overwhelmingly demonstrates that the contrary is true. Public record information on the two critical factors in overfishing—annual catch and mortality—demonstrate that eliminating the recreational sector’s catch limit and authorizing expanded fishing seasons will allow the science-based catch limit to be exceeded multiple times over, once again derailing the rebuilding plan.

First, the annual catch limit that was previously established will clearly be exceeded. The recreational sector’s annual catch limit for red snapper adopted in 2025 is 22,797 landed fish. 50 C.F.R. § 622.193(y)(2). In 2025, the Service relied on the best available science and determined that the recreational sector would land those fish in just two days of fishing. 90 Fed. Reg. 24524, 24530 (June 11, 2025) (explained that the season length “is projected based on catch rate estimates from previous years to prevent the recreational sector ACL from being exceeded,” and setting the 2025 red snapper recreational fishing season length at two days, running from July 11 to July 13). This two-day season proved to be too long, as anglers in Florida alone landed an estimated 24,885 red snapper in 2025.² If recreational anglers in Florida alone exceeded that limit in just two days of fishing in 2025, it is inexorable that recreational anglers are more likely than not to exceed that limit in 39 days of fishing in Florida *plus* 62 days of fishing in the other three states in 2026. The Service has not explained otherwise, or how it could be possible that 39

² See ECF No. 7-11 (Ocean Conservancy comment letter dated March 10, 2026) at 4 and note 18, citing Ellie Corbett & Chloe Ramsay, Florida Fish & Wildlife Conservation Commission Report F-5573-23-F2, Recreational Effort, Catch, and Biological Sampling in Florida During the 2025 South Atlantic Red Snapper Season, at 3 (Dec. 3, 2025), available at <https://myfwc.com/media/ez0i1lof/atlantic-red-snapper-2025.pdf>. The report indicates that anglers fishing on private vessels landed “an estimated 23,734±6,743 Red Snapper” and that anglers fishing on charter vessels landed an “estimated 1,151 ± 81 Red Snapper.” Disregarding the margins of error, the sum is 24,885 estimated red snapper landed.

days of fishing in Florida in 2026 would actually result in *fewer* landed fish than two days of fishing in 2025 (as would be required to comply with the catch limit). It would be hard to do so, given that one of the stated goals of the EFPs was to allow “increased fishing opportunities for red snapper,” 91 Fed. Reg. at 6828. Indeed, one commenter, Ocean Conservancy, estimated that recreational landings could range from 170,625 fish under the most optimistic assumptions to 485,000 fish. *See* ECF No. 7-11 (Ocean Conservancy comment letter at 4-5 and note 29). Either way, the outcome is multiple times more than the recreational sector’s annual catch limit adopted in 2025.

Second, overall fishing mortality—which includes bycatch/discards—will only increase under the EFPs, resulting in overfishing of the stock in violation of National Standard One. Last year the Service adjusted the relevant benchmarks for assessing stock status and overfishing. *See* 90 Fed. Reg. at 24529. The Service determined that the level of fishing mortality observed over the years 2021-2023 is the maximum level of mortality that will maintain the existing rebuilding plan and prevent overfishing. *See id.* This determination allowed the Service to conclude that “the red snapper stock would no longer be classified as undergoing overfishing.” *Id.* But the Service’s determination also means that any increase in fishing mortality above the level observed over 2021-2023 would again subject the stock to overfishing. *See* ECF No. 7-11, at 8-10, section D. Thus, assuming all other sources of mortality remain constant—including mortality from the commercial sector’s landings and bycatch/discarding of red snapper in both the recreational and commercial sectors, all of which seems likely to remain constant, *see id.* at 9—then any increase in landed fish under the EFPs will increase overall fishing mortality and again subject the stock to overfishing. Neither the states’ permit applications nor any publicly available analysis by the Service shows otherwise. Therefore, because the available information

indicates it is more likely than not that the number of landed fish from 39- and 62-day seasons in 2026 will be more than the number of landed fish from the 2-day season in 2025 as described above, the increase in landed fish will result in overfishing under the Service's revised thresholds adopted last year.

The Service may contend that mortality of fish discarded by the recreational sector will decrease under the EFPs because, during the expanded fishing seasons, recreational anglers will be retaining red snapper instead of throwing them back as they would be required to do if the season was closed (and where an estimated 23% then die from the experience, *see supra*, SEDAR 73 Update at 21). But even if that were the case (and the Service has failed to explain as much), there is no basis to conclude that any decrease in dead discards would fully offset the increase in landed fish, meaning that the outcome would still be an overall increase in mortality and overfishing.

Finally, there is no basis to waive statutory requirements based on the states' purported lack of confidence in the data the Service collects and uses for management. *See, e.g.*, ECF No. 7-6 at 4. The Service has determined that these data reflect the best scientific information available. *See* 90 Fed. Reg. at 24533. The Service is therefore required to use these data for managing the fishery under National Standard Two, 16 U.S.C. § 1852(a)(2), including for setting season length as the Service did in 2025. 90 Fed. Reg. at 24530. The Service also continues to use its data to manage the commercial sector. *See id.* The Service's authorization of expanded fishing seasons under the EFPs is thus not based on the science that the agency has determined is the best available, and therefore also violates National Standard Two.

CONCLUSION

Because the Service lacked authority for these permits and they violate statutory requirements that are key to the recovery of the South Atlantic red snapper fishery, Plaintiffs are likely to succeed on the merits and this Court should grant the injunction or stay.

Dated: May 15, 2026.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on May 15, 2026, I electronically filed this motion for leave to file amicus brief with the Clerk of the Court using the CM/ECF system. Notice of this filing will be sent to all attorneys of record by operation of the Court's electronic filing system.

Dated: May 15, 2026.

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