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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

SOUTHEASTERN FISHERIES ASSO-  
CIATION, INC., ET AL,

*Plaintiffs,*

v.

HOWARD LUTNICK, in his official ca-  
pacity as Secretary of Commerce,

and

NATIONAL MARINE FISHERIES  
SERVICE,

*Defendants.*

Case No. 1:26-cv-1533

**BRIEF OF THE STATES OF FLORIDA, SOUTH CAROLINA,  
AND GEORGIA AS *AMICI CURIAE* IN OPPOSITION TO  
PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION**

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## **CORPORATE DISCLOSURE STATEMENT**

*Amici curiae*, the State of Florida, South Carolina, and Georgia verify that no party to this brief is a publicly held corporation, issues stock, or has a parent corporation.

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**INTEREST OF *AMICI CURIAE***

Florida’s Attorney General, on behalf of the State of the Florida and two sister States, respectfully submits this amicus brief pursuant to Local Civil Rule 7(o)(1) in opposition to Plaintiffs’ motion for preliminary injunction. NMFS lawfully issued exempted fishing permits to the States of Florida, Georgia, North Carolina, and South Carolina. *Amici* have a “long established” interest in regulating the “taking of [their] fish and wildlife resources.” *New York State Trawlers Ass’n v. Jorling*, 16 F.3d 1303, 1309–10 (2d Cir. 1994). This interest clearly extends to the States’ research of red snapper populations and Plaintiffs’ request here would profoundly undermine those interests.

## INTRODUCTION AND SUMMARY OF ARGUMENT

Plaintiffs—commercial fishermen, their companies, and their trade organization—moved for injunctive relief to maximize their economic interest in the South Atlantic red snapper fishery. Specifically, their eleventh-hour lawsuit seeks to enjoin Florida’s red snapper season, opening on May 22, 2026, along with the red snapper seasons in Georgia, South Carolina, and North Carolina, opening on July 1, 2026.

These four States received special experimental fishing permits (EFPs)<sup>1</sup> from the National Marine Fisheries Service (NMFS), approved by the Secretary of Commerce, that lengthen red snapper seasons for recreational fisherman. Compl. ¶¶ 18, 69, 112. But the EFPs do more than that. They facilitate state efforts to gather reliable, consistent data on South Atlantic red snapper populations, enabling the States and NMFS to make better informed decisions about the future of South Atlantic red snapper fishing. Plaintiffs attempt to undermine this Congressionally condoned example of cooperative federalism by voicing concerns about overfishing—namely that longer recreational seasons ultimately reduce commercial spoils. Compl. ¶¶ 113–17. But fatally, Plaintiffs lack any meaningful evidence to support those claims. To the contrary, the limited evidence available supports the opposite conclusion: the South Atlantic red snapper fishery will continue to thrive. While reliable fishery data admittedly remains scarce, the EFPs themselves present the solution to

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<sup>1</sup> Conceptually, the permits are experimental in nature and are referred to as such by statute. 16 U.S.C. § 1801. As a technical matter, they are referred to as “Exempted Fishing Permits” under NMFS regulations. 50 C.F.R. § 600.745; *see also infra* p. 7 (explaining “experimental” and “exempted” are interpreted synonymously).

this dearth of data. EFPs enable more accurate data collection and management of the South Atlantic red snapper fishery.

Without the permits—the current situation—decision-makers rely upon data generated from a far inferior source: the Marine Recreational Information Program (MRIP) and its Fishing Effort Survey (FES). The MRIP-FES is a one-size-fits-all federal system; it assesses Washington’s cold-water salmon the same way as Florida’s tropical spiny lobster—by mail surveys sent to anglers months after they’ve fished. Unsurprisingly, state-run fishery management—catering to distinct species in smaller geographic areas—has proven far more accurate in its data collection.

This is no abstraction; Florida’s management in the Gulf red snapper fishery proves the State’s ability to responsibly manage red snapper. Plaintiffs conspicuously ignore this phenomenon, entirely. Years ago, Florida received EFPs to lengthen the recreational red snapper season on its other coast in the Gulf of America. Florida Fish and Wildlife Conservation Commission, *FWC’s Gulf Red Snapper State Management Perspective* (Sept. 2025), <https://perma.cc/HR3E-89L8>. Florida managed the red snapper season under its State Reef Fish Survey (SRFS), gradually lengthening its recreational red snapper season from 3 days to 140 days. Florida Fish and Wildlife Conservation Commission, *Governor Ron DeSantis Announces Expanded 2026 Red Snapper Seasons and Applauds Federal Approval of Atlantic Red Snapper State Management* (May 11, 2026), <https://perma.cc/398R-NLBM>; Florida Fish and Wildlife Conservation Commission, *FWC’s Gulf Red Snapper State Management Perspective* (Sept. 2025), <https://perma.cc/HR3E-89L8>. The results speak for themselves: Gulf

red snapper stock continues to thrive, recreational anglers enjoy much longer seasons, and fishery data collection under Florida’s SRFS outperforms—in terms of accuracy and depth—the information gathered under the federal MRIP-FES system. National Oceanic and Atmospheric Administration, *Florida recreational fishing survey improves data collection for Gulf red snapper* (Dec. 18, 2018), <https://perma.cc/8JHK-VHWZ>.

The federal government agrees. The NMFS certified Florida’s SRFS as the “Best Scientific Information Available” (BSIA)—the gold standard of fishery management data collection. Memorandum, *United States Department of Commerce National Marine Fisheries Service* (Oct. 5, 2018), <https://perma.cc/6UAL-AX8W>; Florida Fish and Wildlife Conservation Commission, *State Reef Fish Survey in Florida* (Feb. 2, 2022), <https://perma.cc/M5DY-LLB4>. In fact, NMFS prioritizes scientific reliance on the SRFS *over* the federal MRIP-FES program in its own decision-making. *Id.* NOAA, as a result, handed Florida the keys to its own fishery management—a win for Florida, the federal government, and the Gulf of America’s fisheries. *See* 50 C.F.R. § 622.

Florida’s red snapper management in the Gulf has been an unmitigated success, so NOAA has now attempted to replicate it in the South Atlantic red snapper fishery. After careful review, NOAA granted EFPs to all four South Atlantic States. Compl. ¶112. Yet Plaintiffs—acting in their own economic interest—seek to stay this progress. They omit any discussion of the proven success in the Gulf of America and instead speculate that the permitted lengthened seasons will “reduce stock

abundance and biomass,” “result in overfishing,” “inflict a real demoralization” “on commercial fishermen,” and “damage the community fabric of the commercial fishery.” Compl. ¶¶ 31–33. As to the first two—reducing stock and overfishing—these entirely speculative fears find no support in the record and run hard against the currents of statistical fact and recent history. As to the other “harms”—*e.g.*, demoralized commercial fishermen—Florida’s Gulf fisheries and fishing communities remain intact after years of state management—no loose stitches in the “community fabric.” And in any event, the unlikely possibility of hurt feelings isn’t the type of harm courts issue preliminary injunctions to prevent. Florida’s season will begin in mere days. It will embark on a program in the Atlantic that has a proven track record in the Gulf. Plaintiffs want to stop it. To do so at this stage, they bear a heavy burden. Their inaccurate claims and inadequate factual support fail to carry that burden.

The States agree with Federal Defendant’s arguments and defenses on the merits. The States provide this brief to give context to the inaccuracy of Plaintiffs’ claims and their lack of factual support.

## ARGUMENT

### I. Background

#### A. Statutory and regulatory scheme for red snapper fishing.

Responding to overfishing, Congress enacted the Magnuson-Stevens Fishery Conservation and Management Act (MSA) in 1976 to “conserve and manage the fishery resources found off the coasts of the United States.” Pub. L. No. 94-265, 90 Stat. 331 (1976) (*codified as amended at* 16 U.S.C. §§ 1801 *et seq.*); 16 U.S.C. § 1801(b)(1). To govern distinct jurisdictional regions, the MSA established eight Regional Fishery Management Councils, one of which is the South Atlantic Fishery Management Council (SAFMC). 16 U.S.C. § 1852(a)(1)(C). The SAFMC manages fisheries in the federal waters off Florida, Georgia, South Carolina, and North Carolina. *Id.* Its primary responsibility includes preparing fishery management plans (FMPs) for each fishery, *id.* § 1852(h)(1), and recommending regulations to implement those plans, *id.* § 1853(c). Then, Defendant Secretary of Commerce reviews submitted plans, *id.* § 1854(a)–(b), and, if approved, promulgates or implements plans and regulations, *id.* §§ 1854(b)(3), 1855(d). He does so through Defendant National Marine Fisheries Service (NMFS), a wing of the National Oceanic and Atmospheric Administration (NOAA). *Id.* § 1854(a)–(b).

The MSA requires that all FMPs, plan amendments, and implementing regulations be consistent with ten “National Standards” for fishery management and conservation. *Id.* § 1851(a). The first National Standard requires, for example, that “[c]onservation and management measures shall prevent overfishing while achieving, on a continuing basis, the optimum yield” from a fishery. *Id.* § 1851 (a)(1). Other

National Standards address “science,” “costs,” “bycatch, and safety of human life at sea.” *See id.* § 1851(a)(2)–(10).

In addition to the National Standards, the MSA delegates some direct responsibilities to NMFS which typically address specifics in fishery management. Relevant here is NMFS’ mandate to establish and fund a “Cooperative Research and Management Program.” *Id.* § 1867. NMFS must also create a standardized permitting process for experimental fishing permits (EFPs). *Id.* § 1867(d).

In evaluating and issuing EFPs, NMFS interpreted Congress’ statutory use of “experimental” to be synonymous with its own regulatory term “exempted.” 74 Fed. Reg. at 42,793, *codified at* 50 C.F.R. § 600.10. The logic for this is straightforward: because NMFS is delegated responsibility for fishery management—including the research to improve management and conservation—NMFS may issue EFPs which exempt permit holders from *some* statutory and regulatory burdens in order to test new management and conservation programs and techniques. This includes authorization for limited testing of a variety of activities including data collection, exploratory fishing, and the target or incidental harvest of species managed under an FMP or regulations that would otherwise be prohibited. *See* 16 U.S.C. § 1857; 50 C.F.R. § 600.745(b). An *experimental* fishing permit, therefore, operates as an *exemption* from the normal rules.

**B. The challenged permits.**

In January 2026, all four South Atlantic States submitted applications for EFPs.<sup>2</sup> NMFS issued each of the permits in early May. Compl. ¶ 106. Florida's permit enabled a 39-day season beginning May 22, 2026. Compl. ¶ 107. Georgia, South Carolina, and North Carolina's permits enabled a 62-day open season beginning July 1, 2026. Compl. ¶ 108.

The EFPs were particularly important here given the outdated notion that the South Atlantic red snapper stock is sparse. It's not. Nearly two decades ago, the South Atlantic stock was deemed overfished and a rebuilding plan was set in place to replenish the stock by 2044. But later studies have shown record abundance and biomass. Nikhil K. Mehta, *Amendment 59 to the Fishery Management Plan for the Snapper-Grouper Fishery of the South Atlantic Region* at \*70, NOAA, (May 15, 2025), <https://perma.cc/8TFY-CCER>. NMFS agreed that South Atlantic red snapper is no

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<sup>2</sup> NMFS, *Exempted Fishing Permit to Test a State-Based Data Collection and Management System for the Recreational Harvest of Red Snapper off Florida for 2026*, Permit No. 26-SERO-01, issued to Florida Fish & Wildlife Conservation, ECF No. 7-1, ("Florida Permit"); NMFS, *Exempted Fishing Permit to Test a State-Based Data Collection and Management System for the Recreational Harvest of Red Snapper off Georgia for 2026*, Permit No. 26-SERO-02, issued to Georgia Dep't of Nat. Res. (May 5, 2026), ECF No. 7-2, ("Georgia Permit"); NMFS, *Exempted Fishing Permit to Test a State-Based Data Collection and Management System for the Recreational Harvest of Red Snapper off South Carolina for 2026*, Permit No. 26-SERO-03, issued to South Carolina Dep't of Nat. Res. (May 4, 2026), ECF No. 7-3, ("South Carolina Permit"); NMFS, *Exempted Fishing Permit to Test a State-Based Data Collection and Management System for the Recreational Harvest of Red Snapper off North Carolina for 2026*, Permit No. 26-SERO-04, issued to North Carolina Div. of Marine Fisheries (May 5, 2026), ECF No. 7-4, ("North Carolina Permit").

longer overfished and is ahead of the rebuilding schedule. *Id.* Yet the recreational fishing industry is still managed as if it were 2008. This paradox—a thriving fishery with highly-restricted access<sup>3</sup>—can be explained only by the current decisionmaker’s reliance on limited, dubious data. As a result, states like Florida are forced to greatly limit recreational red snapper seasons, sometimes just to a day or two per year. But these abbreviated, high-pressure seasons bring their own hosts of problems.

**First**, a limited season of mere days creates intense, concentrated pressure on the stock (referred to as “derby-style fishing”). The mad rush makes it near impossible to collect accurate stock data. Data collection occurs primarily from dockside interviews and surveys, but there are simply too many docks and too few data collectors to gather reliable data in such a compressed timeframe. This unreliable data fuels poorly informed decisions for future seasons and perpetuates the cycle of overly-abbreviated seasons.

EFPs provide a remedy to these problems by lengthening the season and relieving the concentration of fishing pressure. Florida’s EFP and associated data collection system enables better data collection, which is “essential to the effective conservation, management, and scientific understanding of the fishery resources.” 16 U.S.C. § 1801(8). Specifically, Florida’s EFP collects data in live-time on a web-based reporting app and through SRFS over monthly intervals. Florida Fish and

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<sup>3</sup> In 2025, Florida’s South Atlantic recreational red snapper season was two days long. In 2024, it was one day. Ellie Corbett & Chloe Ramsay, *Recreational Effort, Catch, and Biological Sampling in Florida During the 2025 South Atlantic Red Snapper Season*, Final Report at \*14 (Dec. 3, 2025), <https://perma.cc/28PN-SA53>.

Wildlife Conservation Commission EFP Application (“Florida Application”), (Jan. 23, 2026), <https://perma.cc/WSP3-WE9D>. This collection allows for faster analysis and longer seasons yield more and better data collection in aggregate. It is intuitive that more accurate data can be collected over a 39- or 62-day season than a 48-hour season.

By design, the federal MRIP-FES program lacks this sort of fine-tuned, real-time data gathering. It collects data in two-month intervals, not 48-hour pulses. Christopher Sweetman, *Testimony before Subcommittee on Water, Wildlife, and Fisheries, Committee on Natural Resources, U.S. House of Representatives* (Nov. 19, 2025), <https://perma.cc/TNN4-DCT9>. Worse, analysis of that data often lags more than a year. MRIP-FES has also proven error-prone. The “Percent Standard Errors” (PSE) for South Atlantic red snapper range from 40% to 100%, which MRIP admits makes such information unreliable to use. *Id.* The EFPs promise a more information-rich management of the fishery; without them, decision-makers will remain half-blind.

**Second**, compressed seasons increase red snapper waste—one of Plaintiffs’ chief concerns. Notice, *Snapper-Grouper Fishery of the South Atlantic; Requests for Exempted Fishing Permits*, NOAA (Feb. 13, 2026), <https://perma.cc/Y4V8-UHJ9>. Waste occurs because anglers unintentionally pull up red snapper when fishing for other species. But because they can’t keep red snapper out of season, they must release them. That “discard” often results in red snapper deaths. Ed Killer, *On the Conservation Front: Red Snapper Rundown*, Florida Sportsman (Mar. 4, 2025), <https://perma.cc/C9PF-SSNJ>. In fact, this discard accounts for 93% of the total red snapper “catch” per year in the South Atlantic. Final Rule, *Snapper-Grouper Fishery*

*of the South Atlantic; Amendment 59*, NOAA (Jun. 11, 2025), <https://perma.cc/R2GA-GLMZ>. The current recreational annual catch limit set by the SAFMC is 509,000 red snapper, meaning 475,000 of those were counted as dead discard. Christopher Sweetman, *Testimony before Subcommittee on Water, Wildlife, and Fisheries, Committee on Natural Resources, U.S. House of Representatives* (Nov. 19, 2025), <https://perma.cc/TNN4-DCT9>. And because NOAA removes this amount from the harvestable quota, only 22,797 red snapper remain harvestable annually by the recreational sector. *Snapper-Grouper Fishery of the South Atlantic; Amendment 59*, 90 Fed. Reg. 24529 (Jun. 11, 2025), <https://perma.cc/GJS5-KHS4>. Neither party disputes that dead discard constitutes the lion's share of red snapper catch. So by lengthening the season, the same red snapper which are reeled-in and released are landed and kept, reducing waste. The benefits are three-fold: less fishery waste, happier anglers (that take less because they keep more), and more accurate data (because dockside data collection relies on fish in boats, not discard floating offshore).

All said, the EFPs Plaintiffs seek to enjoin are the very solution to better fishery management. Under the EFPs, a longer recreational season will relieve concentrated pressure on the fishery and provide greater, more accurate data with which to manage the fishery. To fight the EFPs, Plaintiffs do little more than cry wolf over a speculative threat of overfishing; the little support they do provide demonstrates their misunderstanding of the fishery.

**II. Plaintiffs' claims lack support and ignore the proven success of fishery management through EFPs.**

Plaintiffs' arguments generally lack support in the factual record. The South Atlantic red snapper fishery, far from depletion, continues to thrive. State-managed fisheries outperform their federal counterparts, allowing for more detailed management and flexibility to regional demands, particularly in the Gulf of America. EFP programs specifically have proven the gold standard in fishery management, promoting interstate cooperation, cooperative federalism, and species conservation.

Plaintiffs misunderstand the role of EFPs in the South Atlantic red snapper fishery. They allege the fishery is overfished, but support those claims with decades-old data. Compl. ¶¶ 78–84. More recent data shows they are wrong: the fishery continues to thrive and EFPs are the best mechanism to collect data demonstrating Plaintiffs' errors. EFPs enable states to lead their own fishery management, a proven success ignored by Plaintiffs. EFPs also help facilitate coordination between state management programs, a necessary component to conserve and manage multi-state regions. While they request extraordinary relief, Plaintiffs simply ignore this wealth of information.

**A. The South Atlantic red snapper fishery is thriving.**

After a 2008 overfishing designation by NOAA, conservation and management efforts in the South Atlantic red snapper fishery have replenished the stock. NOAA

agrees, having validated that finding multiple times over multiple years.<sup>4</sup> And though the stock was expected not to be replenished until 2044, the 2024 update showed all-time highs in abundance and biomass sustained from 2017 and continuing today—rebuilding the fishery nearly 20 years ahead of schedule. Florida Application at 8.

Despite the explosion of the red snapper population, Plaintiffs still warn of impending overfishing. But they do so through a series of unsupported assertions. To start, Plaintiffs suggest that more recreational red snapper will be caught under the EFPs' longer open seasons. Compl. ¶¶ 119–122; Andrea Treece and Lincoln D. Peek, *Ocean Conservancy, Earthjustice File Amicus Brief to Prevent Red Snapper Overfishing in South Atlantic* (May 18, 2026), <https://perma.cc/C9YX-3A2G>. The logic relies upon the faulty assumption that the same concentrated recreational fishing activity currently packed into two days will remain constant across 39-day or 62-day seasons. The reality is different.

As a practical matter, a compressed two-day season forces every interested recreational angler onto the water in one weekend. To extrapolate that pressure across a 39- or 62-day season is fanciful. As a scientific matter, longer seasons actually reduce catch and fishing effort rates in the aggregate. Recent studies from the Gulf red snapper seasons under Florida and other Gulf States' management bear that out. Tara S. Topping et al., *A Comparison of Private Recreational Fishing Harvest and*

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<sup>4</sup> See SEDAR 41 Assessment (2021), <https://perma.cc/2BPN-4W8U>; see SEDAR 73 Assessment (2021), <https://perma.cc/XKU9-6FEU>; see SEDAR 73 Update Assessment (2024) <https://perma.cc/6CVE-3RZS>.

*Effort for Gulf of Mexico Red Snapper during Derby and Extended Federal Seasons and Implications for Future Management*, 39 North American Journal of Fisheries Management no. 6, (2019) 1311–1320. Though counterintuitive, extending fishing seasons consistently reduce the artificial pressure created by compressed, derby-style seasons. *Id.* That has proven true in the Gulf since Florida assumed management and expanded the recreational fishing season. This Court should not be distracted by Plaintiffs’ back-of-the-napkin math in lieu of peer-reviewed, contemporary science.

**B. State-managed fisheries have proven the better model.**

Plaintiffs also ignore that state-managed fisheries yield greater success in conservation and management than federally managed fisheries. Enjoining the EFPs frustrates conservation and management at the state level where it has been proven most effective.

**1. The Gulf experiment.**

On Florida’s Gulf Coast, the NMFS approved a similar EFP enabling Florida’s management of the Gulf red snapper fishery. When the dust settled, NMFS deemed that EFP process “foundational, paving the way for a successful state management program.” See NOAA Fisheries, *Preliminary Review Letter to South Carolina DNR* (Nov. 10, 2025) (attached as Appendix A), <https://perma.cc/FD2B-K2JD>.

Facing similar challenges as the South Atlantic, the Gulf States (Alabama, Florida, Louisiana, Mississippi, and Texas) eliminated their short derby-style seasons driven by unreliable federal data, lengthened their seasons, implemented their own management, and calibrated their systems for collective uniformity. Florida

Fish and Wildlife Conservation Commission, *FWC's Gulf Red Snapper State Management Perspective* (Sept. 2025), <https://perma.cc/2YFF-EHH8>. No evidence has revealed any resultant harm to the Gulf red snapper stock. Stuntz et al., *Estimating the Absolute Abundance of Age-2+ Red Snapper (Lutjanus campechanus) in the U.S. Gulf of Mexico* (2021), <https://perma.cc/C5YR-S7DF>. More persuasively, the Gulf Council and NMFS both agree that the states prevailed in their goal. 50 C.F.R. § 622. And since 2020, NOAA enabled the Gulf States to manage recreational red snapper harvest based on state-collected data, state-determined seasons, and state-established bag and size limits—all within federal conservation guardrails. *Id.* To be sure of its success, state-collected, NOAA-certified data is now actively considered the Best Scientific Evidence Available (BSIA) for managing the private recreational sector in the Gulf. NOAA, *Florida recreational fishing survey improves data collection for Gulf red snapper* (Dec. 18, 2018), <https://perma.cc/9HR7-2UJ6>. In fact, it would ironically violate the MSA to use anything other than state-collected data. 50 C.F.R. § 600.315(a).

The South Atlantic red snapper fishery has the advantage of taking the trail blazed by the Gulf States. Florida will use the NOAA-certified State Reef Fish Survey (SRFS), refined through the Gulf model, as the model for its Atlantic EFP. The other Atlantic States will pilot similar surveying techniques, and their EFPs call for the same interstate coordination set in the Gulf. And improving on the Gulf model, all four states implemented registration and permitting requirements for EFP participants that identify the total universe of red snapper anglers for data collection

purposes. *Supra* n.2. Further, they implement the same accountability measures as in the Gulf, *id.*, including season length, size limits, and bag limits, while Florida added an additional snapper-grouper aggregate bag limit to reduce discards across the entirety of the 55 species within the snapper-grouper complex, Florida Application at 2.

The South Atlantic states are not merely poised to repeat the success found in the Gulf, they stand ready to further improve the system by taking additional action to improve conservation and management practices. These programs should be celebrated, not enjoined.

**2. EFPs promote interstate coordination and benefit the fishery.**

Under the EFPs, all South Atlantic states coordinate their data collection methodologies. Florida Permit at 3–4. State agency staff from the four states will meet at least bi-weekly to discuss challenges presented to the EFPs, working together collaboratively. Florida Application at 18. At the end of the EFPs' first year, the state agency staff will meet at least once for an all-day, in-person meeting to discuss adaptations and refine processes for year two. *Id.* Discussions will be aimed at ensuring uniformity and calibration of data collection across the states, enabling a direct comparison of effort, landings, and angler behavior across the region. *Id.* Then, the states will meet with NMFS to assess each states' performance and challenges under the EFPs; finding solutions to known problems in year two. *Id.* Modifications to EFPs will be submitted by all states for subsequent years as they work with NOAA to refine their methodologies. *Id.* In this way, states become the laboratories of data

collection. Their refined management techniques benefit their sister states in the region as they work together to collaboratively manage their regional fishery with greater local capacity and attention to detail than federal counterparts. This multi-state coordination is essential to the success of the region—a well-accepted notion—as evidenced by the original MSA’s delegation of eight regional councils. EFPs require the states to pull in the same direction as the regional councils, adding fire-power to conservation and management efforts.

### **III. The risk of overfishing is nominal.**

Plaintiffs also contend that if the EFPs are allowed to continue, catastrophic overfishing could devastate the South Atlantic red snapper population. Not so. The EFP implementation programs instituted by the States provide sufficient safeguards to protect the red snapper population. Besides, the commercial sector might consider the log in their own eye before venturing to critique the speculative speck in their recreational neighbors’. *See Matthew 7:3*.<sup>5</sup>

#### **A. The EFP programs provide sufficient overfishing safeguards.**

Florida’s South Atlantic red snapper EFP program provides a superb example of the limits that *States* are placing on the recreational fishing sector to protect fish populations. Anglers must declare their fishing trips to Florida Fish and Wildlife Commission (“FWC”) before leaving the dock and must abide by numerous

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<sup>5</sup> In 2025, the commercial sector overharvested its red snapper quota in the South Atlantic by 141.5%, representing an overage of 42,691 pounds. NOAA, *2025 Preliminary South Atlantic Commercial Landings* (Jan. 27, 2026) <https://perma.cc/3M7X-9NBE>.

restrictions and bag limits. Florida Fish and Wildlife Conservation Commission, *Atlantic Recreational Red Snapper State Management Season*, <https://perma.cc/87GN-RDK2>. FWC sets a bag limit for red snapper at one fish per person per day, without any retained fish for for-hire captains or crewmembers. *Id.* In addition to the specific red snapper limit, FWC also mandates a ten-fish limit for reef fish generally and requires anglers to “stop bottom fishing for reef fish” once they reach that limit. *Id.* This ten-fish requirement designedly minimizes discard mortality for red snapper and other species within the snapper-grouper complex, promoting catch efficiency. Comment of Coastal Conservation Assn. and Am. Sportfishing Assn., Mar. 10, 2026 (“ASA Comment”) at 16, <https://perma.cc/6T3Q-BWV7>.

Although the majority of red snapper recreational fishing occurs off Florida’s coasts—88% of red snapper directed recreational fishing trips—other States have similar protections. Mehta at S-4; ASA Comment at 6. Georgia, South Carolina, and North Carolina all have instituted mandatory catch data. ASA Comment at 13. Plaintiffs ignore the States’ demonstrated history of protecting and managing the relevant fish population.

**B. Even if overfishing occurred, no harm would come to the commercial fishermen.**

Finally, Plaintiffs’ worst-case scenario will not come to fruition because Florida, in collaboration with NMFS, will end the EFP program early if necessary. While FWC’s best estimates indicate an overabundance of red snapper, should the new data signal otherwise, Florida will stop its EFP program. FWC has committed to regular check-in meetings with the other South Atlantic States and NOAA to discuss EFP

progress, implementation, preliminary results, and any changes necessary to the EFP. *See* Florida Permit at 3–4. Florida specifically committed to project monitoring and agreed to “revocation, suspension, or modification” of the EFP if needed. *Id.* And at any time, NOAA can revoke Florida’s EFP for “[f]ailure of FWC or any participant to comply” with the EFP’s terms. *Id.* Enforcement includes “civil or criminal penalties” under the MSA. *Id.*

While Plaintiffs point to the examples of “Florida alone,” Mot. at 24, to demonstrate that the EFPs will open the floodgates of recreational fishing, the data supports that 83.4% of South Atlantic red snapper landings already occur in Florida. Mehta at S-4. But the Court need not rely on speculative future harvest assumptions. Previous years of FWC’s Research EFP data demonstrate that FWC’s belief that the recently approved EFP would fail to reach any level of overfishing concern. Florida Fish and Wildlife Conservation Commission, *FWC Atlantic Red Snapper EFP Project: Year 1 (2025)*, <https://perma.cc/YA9M-M3XX>. Under a different Research EFP program from 2024 to 2026, Florida harvested less than half of the allowed recreational red snapper catch. *Id.* While these prior EFP programs were not identical to the current EFPs, the point remains that, historically, similar programs have not harmed red snapper populations.

\* \* \*

Plaintiffs have not offered the needed evidentiary basis to enjoin the federal government and multiple sovereign states from working together to improve the red snapper population and market. Nor could they for the reasons mentioned above.

But at minimum, this Court can and should deny any *preliminary* relief and instead require Plaintiffs to prove with evidence what they claim in their emergency papers. Until then, there is no valid basis for this Court to upend the finely tuned fishery management systems in place.

## CONCLUSION

The Court should deny Plaintiffs' motion for preliminary injunction.

May 19, 2026

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**CERTIFICATE OF COMPLIANCE**

I certify that this brief complies with the typeface and page-length requirements of Local Civil Rules 5.1(d) and 7(o)(4).

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**CERTIFICATE OF SERVICE**

I certify that on May 19, 2026, I electronically filed this document with the Clerk of Court using the Court's CM/ECF system, which will send a notice of docketing activity to all parties who are registered through CM/ECF.

/s/ David M.S. Dewhirst  
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