

Testimony of Seth Atkinson on H.R. 4587

Before the U.S. House of Representatives Committee on Natural Resources,
Subcommittee on Water, Wildlife, and Fisheries

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Chairman Bentz, Ranking Member Huffman, and members of the Subcommittee, thank you for the invitation to testify today.

My name is Seth Atkinson. I am an attorney, and my practice focuses on the management of fisheries in federal and state waters. My clients include both conservation groups and commercial fishermen. I have thirteen years of experience with fishery management issues from around the country, as both a staff attorney at a nonprofit organization and as a private consultant and attorney.

I have been invited to speak today on H.R. 4587, the South Atlantic red snapper legislation before this Subcommittee. What that bill would do is prohibit the use of area management for South Atlantic snapper-grouper species until a population estimation exercise known as the “South Atlantic Great Red Snapper Count” is completed, and data from that exercise have been incorporated into a formal stock assessment.

Before I get into the substance of my testimony, I should note that I am currently representing commercial fishermen in a lawsuit that deals with this same fishery—the South Atlantic snapper-grouper fishery—and specifically the red snapper stock, although the issues and arguments focus on a somewhat different aspect of management, namely the setting of annual catch limits. That case is entitled *Slash Creek Waterworks et al. v. Raimondo*, and the case number is 23-cv-1755 in the U.S. District Court for the District of Columbia. As this is an active case, my testimony here will stay limited to H.R. 4587 and the associated management issues for South Atlantic red snapper.

1. H.R. 4587 Conflicts with the Magnuson-Stevens Act Process for Bringing Scientific Information into Management

First and most broadly, the approach proposed in H.R. 4587 is not, and should not be, how science is used in fishery management under the Magnuson-Stevens Fishery Conservation and Management Act. Specifically, managers should not pause action for several years to wait for some future scientific study that may give different results.

Under the Magnuson-Stevens Act, the Regional Fishery Management Councils and the National Marine Fisheries Service, or NOAA Fisheries, respond to the best scientific information available when managing our fishery resources, and they adapt and update fishery management as new scientific information becomes available. This approach reflects both the realities of the fisheries science process, as well as the Act's legal standard governing the use of science.

Scientific information on fish populations is gathered on a continual basis and is synthesized into stock assessments periodically. The whole process is dynamic; data are always coming in, methodologies change as new techniques are developed or assumptions are revised, and each iteration tends to represent the cutting edge of knowledge until newer science comes along. That is how the scientific process works.

The Magnuson-Stevens Act's legal standard is crafted with exactly this iterative process in mind. National Standard 2 requires the Councils and agency to use the "best scientific information available," and the key word here is "available." Information on fish populations is never perfect, and, as just noted, it changes over time. The National Standard 2 language was designed to acknowledge the evolving nature of our scientific understanding, as it requires use of what is "available" without waiting for some far-off day when perfect information arrives. NOAA Fisheries itself has acknowledged as much, stating in its regulatory guidelines interpreting National Standard 2 that "mandatory management decisions should not be delayed due to limitations in the scientific information or the promise of future data collection or analysis."¹

This is an essential part of the bargain with fishery management under the Magnuson-Stevens Act. Nearly everyone ends up frustrated with the science at some point, regardless of their priorities and views. But the National Standard 2 requirement for best available science ensures that management can actually proceed on a common factual basis, rather than getting bogged down in endless disagreements. This common factual basis is a critical part of the Magnuson-Stevens Act, and also shows up in a number of other federal natural resource and environmental laws.²

So by proposing to put management on hold for a few years while one particular scientific study is finished, H.R. 4587 goes against the fundamental process for integrating science into management that has been hammered out, agreed to, and relied upon in Magnuson-Stevens Act management for the last forty-plus years.

¹ 50 C.F.R. § 600.315(a)(6)(v).

² *See, e.g.*, 16 U.S.C. § 1533(b)(1)(A) (Endangered Species Act); 42 U.S.C. § 300g-1 (Safe Drinking Water Act); 15 U.S.C. §§ 2617, 2625 (Toxic Substances Control Act).

2. Area Management May Be an Important Tool and Should Not Be Removed from the Council and NOAA Fisheries' Toolbox

The next thing to note about the bill is that it needlessly precludes the South Atlantic Council and NOAA Fisheries from using area-based management in the snapper-grouper fishery. Area management can take many forms and be used for different purposes, and it is important for managers to be able to turn to this tool when necessary.

To understand why area-based management could be important here, it helps to step back and review the status of South Atlantic red snapper. The best available scientific information currently is from SEDAR 73, a stock assessment completed by the Southeast Fisheries Science Center in 2021.³ That assessment indicated the red snapper population is recovering, and that its abundance is at high levels. This is excellent news.

The assessment also indicated, however, that the vast majority of South Atlantic red snapper are young fish.⁴ The reproductive capacity of red snapper increases significantly as the fish get older and larger, so these young fish, while abundant, contribute relatively less to the population's productivity. In technical terms, spawning stock biomass is lagging behind abundance, and the stock is still overfished and needs to finish rebuilding. Because of this dynamic where older fish contribute more to productivity, rebuilding for South Atlantic red snapper means allowing the age structure to recover—such that a higher proportion of individuals in the population are from the older age classes. And for a species that can live over fifty years, this can take a while.

It is not just a matter of waiting for the age structure to recover, though; fishing pressure must be brought down to a level where some of today's abundant young fish can survive and get older. Which brings us to the other main finding from the SEDAR 73 assessment—that current fishing mortality rates are high enough that they are *not* allowing sufficient numbers of fish to survive and grow older, and in fact, current fishing mortality rates are so high that they constitute overfishing.

In terms of fishery sectors and catch, the commercial fishery currently only removes a small amount from the population. SEDAR 73 data shows commercial landings and discards combined amount to around 5-6% of total red snapper catch by weight in a given year.⁵ Recreational landings also are not large, at around 11% of total catch. This makes sense, because only a 2 or 3 day directed recreational season has been allowed recently. It is recreational dead discards, however, that are sizeable: around 83% of total red snapper catch in

³ Southeast Data, Assessment, and Review, SEDAR 73: South Atlantic Red Snapper (Mar. 2021).

⁴ See, e.g., *id.* Section II, at 100 (Figure 14, displaying age class contributions to total abundance).

⁵ This and subsequent percentages are terminal three-year averages from SEDAR 73 estimated landings and discards, by weight, as set forth in Tables 20 and 22. See *id.* at 64, 66.

the South Atlantic comes in the form of recreational dead discards. Recreational dead discards are high enough, on their own, to drive overfishing of this stock.

This is happening because red snapper is part of a multispecies assemblage, which includes several other popular bottomfish species. The way South Atlantic management currently works is that even when the red snapper season is “closed,” meaning red snapper cannot be landed, recreational fishermen can still go out and fish for other species in the same assemblage, they just have to throw back any red snapper that end up on their line. So with year-round open access recreational fishing—even charter licenses are unlimited—there are a tremendous number of hooks in the water, catching a huge amount of young red snapper, and these fish are then thrown back overboard. And what the stock assessment has shown is that dead discards are having enough of an impact on the population that it is struggling to replenish the older age classes.

And stepping back a bit further, this is all a reflection of the fact that recreational fishing in the Southeast has radically changed, and today’s fishery does not resemble the recreational fishery of the 1950s and 1960s. It is not a handful of people in skiffs with underpowered outboard motors, or perhaps dangling a line off the side of a sailboat. Today’s recreational fishery is comprised of a substantial portion of the coastal population in the Southeast—which itself has dramatically increased in past decades—and consists of millions of angler trips each year. In the South Atlantic alone, NOAA Fisheries estimated over 70 million angler trips were taken in 2020.⁶ And many of these involve large fiberglass vessels with multiple powerful engines that can reach deep water in a half hour, go straight to a favorite reef or rock pile using GPS navigation, and lock in position with sophisticated electronic systems that account for currents and wind. When there, anglers deploy the latest tackle, bring up bottomfish in an extremely efficient manner, and then head back to shore where they share tips and photos via social media.

To be clear, none of this is morally wrong, illegal, or otherwise. What it does mean, though, is that today’s recreational snapper-grouper fishery in the South Atlantic is at levels of capitalization and participation never seen before. There are so many people out there, and so many hooks in the water, that even when red snapper are thrown back (or released carefully), the dead discards are enough to drive overfishing.

By now it should be clear that the South Atlantic Council and NOAA Fisheries are facing a difficult management situation with red snapper. Recent council meetings have had some tough discussions on the topic, with vigorous debate over which management approaches should be pursued and how to solve the problem. Area management is one potential approach; there may be others as well. I will not offer predictions as to how the Council and agency will resolve the

⁶ National Marine Fisheries Service, Technical Memorandum NMFS-F/SPO-236: Fisheries Economics of the United States 2020, at 137 (Feb. 2023)

matter, but I can say that the regional councils are typically very hesitant to adopt area closures and only do so when absolutely necessary. And for exactly this reason, H.R. 4587 is counterproductive: if and when the Council and NOAA Fisheries need this tool, it should be there ready for use.

3. Delay Is Not the Answer and May Make Things Worse

The premise of H.R. 4587 is that an upcoming scientific exercise, the South Atlantic Great Red Snapper Count, will provide a more favorable view of the status of red snapper and will allow for higher catch levels, thereby opening up a longer directed fishing season for the recreational sector and making the rebuilding and overfishing problems go away. By waiting, the bill suggests, we may be able to avoid taking any difficult actions.

This is not a good approach, unfortunately, for the red snapper stock or the broader snapper-grouper fishery.

As an initial matter, results from the Great Red Snapper Count will not be ready for a while. By way of comparison, the Gulf of Mexico's Great Red Snapper Count kicked off in 2017, according to the Mississippi-Alabama Sea Grant Consortium,⁷ and scientists are still working to integrate its results into the Gulf red snapper stock assessment, which is expected to be released next year. Then managers will need time to review that assessment and decide on the appropriate management response. So even if the South Atlantic process is faster, H.R. 4587 still would mean waiting a significant amount of time.

And waiting means tolerating several more years of a status quo in which the vast majority of red snapper yield is wasted as dead discards, and which, as far as we can tell, is not even helping the stock rebuild its age structure. This is not good policy. Moreover, it could mean wasting our best chance to get the South Atlantic red snapper stock fully rebuilt. There is no guarantee that recent high recruitment levels will continue, and it would be a real failure to just delay and do nothing, while some of the strongest year classes in history get burned up as dead discards.

The next important thing to realize is that nobody yet knows what the results from the Great Red Snapper Count will show. In terms of rebuilding, and getting out of the current overfished status, there are a lot of scenarios in which the Great Red Snapper Count does not clearly address or solve this problem. As noted above, rebuilding South Atlantic red snapper means restoring the stock's age structure. The Great Red Snapper Count is expected to produce an absolute abundance estimate for red snapper, but it may not include region-wide age structure data. And an absolute abundance estimate alone does not dictate a conclusion that the stock is rebuilt; if

⁷ Mississippi-Alabama Sea Grant Consortium, ArcGIS Story Map: Whatever Happened with the Great Red Snapper Count? (May 25, 2023), <https://storymaps.arcgis.com/stories/d03212c07af94ac79a98c9c3a210270e>.

abundance is much higher or lower than expected, this will raise questions about productivity and whether the current reference points need to be revised. Ultimately the stock's overfished or rebuilt status will be hammered out in the assessment process and will depend on a number of reworked parameters; it is not guaranteed to come out one way or the other.

And in terms of overfishing, the same holds true. Available yield is a function of not only current biomass but also productivity, and those same productivity parameters just mentioned will need to be re-worked during the stock assessment process before anyone knows what the potential future yield will be. Even if the Great Red Snapper Count ends up concluding there are a lot of red snapper hanging out in areas of uncharacterized substrate, as was the case in the Gulf, it does not necessarily follow that those fish mean more is available to the fishery. As the Mississippi-Alabama Sea Grant Consortium notes in its explainer about the Gulf study, dramatically increasing catch levels based on abundance in unfished areas creates a risk that “too many fish would be removed from th[e]commonly fished areas.”⁸

Another view on what sustainable yield from a rebuilt red snapper stock may look like comes from the current stock assessment. Based on SEDAR 73, current catch levels are likely around, or even above, the eventual sustainable yield amounts for a fully rebuilt stock.⁹ This would mean that even when red snapper is fully rebuilt, it is not clear how much more yield will be available than is already being taken from the population today.

For these reasons, waiting and hoping the Great Red Snapper Count will solve red snapper's rebuilding status and dramatically increase available yield is not a great approach. Yield is and will be finite; the Great Red Snapper Count will not change that fact. And given trends in recreational fishery participation and capitalization, a finite amount of yield, even if modestly increased from today's levels, will require some management in order to maximize landings, minimize dead discards, and meet other management goals. The Council and NOAA Fisheries are going to have to wrestle with this and come up with solutions, as unpopular as it may be.

There is also a final pragmatic reason why it is misguided to delay at this point: red snapper is not a lone stock in isolation, and there are likely to be more problems on the way. Even if the Great Red Snapper Count were to solve all the Council's problems with red snapper, several other snapper-grouper stocks are facing similar issues and will require the same underlying management tangle to be addressed. Survey indices are stagnating or declining for several popular target stocks like gag grouper, gray triggerfish, red porgy, and black sea bass. Some of

⁸ *Id.*

⁹ See SEDAR 73, Section II at 71 (Table 27, listing reference points, including current estimate of Maximum Sustainable Yield (MSY) as approximately 404,000 pounds of landed catch per year); *id.* at 64 (Table 22, listing estimated landings by year, with terminal three-year average exceeding the MSY estimate). Note also that the calculated MSY value contains a lower assumed dead discard component than currently is occurring, so while total catch levels at MSY are not explicitly stated, they are likely lower than current total catch.

these stocks do not appear to have the resilience of red snapper, and they are struggling under the current open-access, unconstrained recreational fishery. When they do hit the overfished threshold and require rebuilding, it is going to be a substantially worse situation for the Council to work with than red snapper, because rebuilding margins will be slim and there will be a lot less to go around. It is better to deal with these management problems today, under the more generous terms of red snapper, than to ignore them and wait for a worse situation to arrive.

4. H.R. 4587 Creates a Real Fairness Problem

An additional concern here is that this bill represents Congress intervening in ordinary fishery management because one particular sector faces the possibility of management actions it views as unfavorable. Other participants in the South Atlantic snapper-grouper fishery have been subject to increasingly strict management for decades now, and there was no arbitrary suspension of the rules—nor should there have been. Commercial fishermen currently are managed under numerical catch limits, with observers and logbooks, such that they are accountable for every pound of fish they catch. And that’s a good thing, from both a conservation and a management perspective. There also are aspects of commercial management that fishermen struggle with, like extremely low trip limits that constrain their access to valuable species, a 2-for-1 permit requirement that lowers the value of their permits and continues to reduce the size of the commercial fishery past its intended goal, and others. Despite all of this, they play by the rules, they work with the Council and NOAA Fisheries, and they keep coming back to the table—which makes the kind of one-off exceptionalism presented by H.R. 4587 difficult to accept.

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In closing, I would like to reiterate that H.R. 4587 is inconsistent with the Magnuson-Stevens Act’s scientific process. The fishery in question needs management, and removing tools from the toolbox is counterproductive. Waiting for a future scientific study is the wrong approach, and the study in all likelihood is not going to solve the management issues facing this fishery. Managers should face the challenges now with red snapper, because those same challenges will keep coming up, and they will be harder to deal with in future scenarios involving other overfished species.