

J. Timothy Hobbs, Esq. (DC Bar #976470)

[Tim.Hobbs@klgates.com](mailto:Tim.Hobbs@klgates.com)

**K&L GATES LLP**

925 Fourth Avenue, Suite 2900

Seattle, WA 98104

Telephone: (206) 370-7664

Facsimile: (206) 623-7022

Michael F. Scanlon, Esq. (DC Bar #479777)

[Michael.Scanlon@klgates.com](mailto:Michael.Scanlon@klgates.com)

**K&L GATES LLP**

1601 K Street, N.W.

Washington, DC 20006

Telephone: (202) 778-9000

Facsimile: (202) 778-9100

*Attorneys for Plaintiffs*

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

A.P. BELL FISH COMPANY, INC.

4600 124th Street West

Cortez, FL 34215

SOUTHERN OFFSHORE FISHING  
ASSOCIATION, INC.

13417 Gulf Lane #B

Madeira Beach, FL 33708

and

GULF OF MEXICO REEF FISH  
SHAREHOLDERS' ALLIANCE

1902 Wharf Rd.

Galveston, TX 77550

Plaintiffs,

v.

GINA RAIMONDO, in her official capacity  
as Secretary of the United States Department  
of Commerce

Office of the Secretary

Room 5858

14th St. and Constitution Ave., NW

Washington, DC 20230

No. \_\_\_\_\_

**COMPLAINT FOR  
DECLARATORY AND  
INJUNCTIVE RELIEF**

**EXPEDITED REVIEW  
REQUESTED PURSUANT TO  
16 U.S.C. § 1855(f)(4)**

COMPLAINT FOR DECLARATORY AND INJUNCTIVE

K&L GATES LLP  
925 FOURTH AVENUE, SUITE 2900

NATIONAL OCEANIC AND  
ATMOSPHERIC ADMINISTRATION  
Department of Commerce  
Room 5128  
14th St. and Constitution Ave., NW  
Washington, DC 20230

and

NATIONAL MARINE FISHERIES  
SERVICE  
Department of Commerce  
Room 14636  
1315 East-West Highway  
Silver Spring, MD 20910

Defendants.

## I. INTRODUCTION

1. This case is about the government's allocation of fishing privileges for catching red grouper in the Gulf of Mexico between two user groups. The challenged agency action takes fish away from the commercial fishing sector, and gives them to the recreational fishing sector. But the recreational sector is wasteful, catching and throwing back millions of red grouper each year, of which hundreds of thousands die. Allocating more fish to the recreational sector will increase this waste, reduce the amount of fish available for consumption, and increase the risk of overfishing the stock. These outcomes are unlawful.

2. This case is the latest in a series of cases challenging defendants' unlawful favoritism of the recreational fishing sector in the Gulf of Mexico. In 2014 this Court ruled that defendants violated multiple provisions of law by repeatedly failing to hold the recreational sector to its catch limits designed to conserve the stock. *Guindon v. Pritzker*, 31 F. Supp. 3d 169 (D.D.C. 2014). In 2017 this Court ruled that defendants unlawfully reallocated fishing privileges to the

recreational sector and unfairly harmed the commercial sector. *Guindon v. Pritzker*, 240 F. Supp. 3d 181 (D.D.C. 2017). A third case involved defendants' egregious re-opening of a recreational fishing season that defendants admitted in the Federal Register would cause the recreational sector to "substantially exceed its annual catch limit," 82 Fed. Reg. 27777, 27779 (June 19, 2017). That case was not adjudicated on the merits, but defendants nevertheless pledged to this Court that the season re-opening was a "one-time action" they would not repeat. *See* Joint Motion to Hold Case in Abeyance, *Ocean Conservancy v. Ross*, No. 1:17-cv-1408, Dkt. # 38 (D.D.C. Dec. 19, 2017) at ¶¶ 1(a), 1(c).

3. The Court is called upon once again to review defendants' actions that unlawfully benefit the recreational fishing sector, harm the commercial fishing sector and seafood consumers, and jeopardize conservation. The action at issue is Amendment 53 to the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico ("Amendment 53"). Amendment 53 increases the recreational sector's percentage allocation of the Gulf of Mexico red grouper catch limit from 24 percent to 40.7 percent, and correspondingly decreases the commercial sector's allocation from 76 percent to 59.3 percent. But because the recreational sector catches, kills, and discards so many fish, Amendment 53 also reduces the total catch limit governing both sectors' fishing to account for the increased waste that will occur in the recreational sector. Reallocation thus reduces the total amount of fish available for consumption by all users, and unfairly forces the commercial sector to subsidize the waste in the recreational sector. And because recreational anglers are not required to report to defendants how many red grouper they keep or discard, increasing their allocation increases management uncertainty and the risk that too many fish will be caught to sustain the stock, as NMFS itself concluded in Amendment 53. These outcomes are

the opposite of what Congress intended when it adopted the Magnuson-Stevens Fishery Conservation and Management Act.

4. Amendment 53 is both substantively deficient and procedurally improper. Amendment 53 nominally takes effect on June 1, 2022; however, defendants effectuated this reallocation over two years ago, prior to undertaking any public rulemaking process. Since 2020 defendants have allocated to the recreational sector 40 percent of the total red grouper harvest, the allocation amount set by Amendment 53, even though the approved recreational sector allocation in 2020 and 2021 was only 24 percent. Amendment 53 is a results-based, post-hoc rulemaking to adopt actions defendants already implemented.

5. Amendment 53 is unlawful and the Court should strike it down.

## II. JURISDICTION AND VENUE

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

7. This Court has jurisdiction over this action pursuant to the MSA, which provides that “[t]he district courts of the United States shall have exclusive jurisdiction over any case or controversy arising under” the MSA. 16 U.S.C. § 1861(d). The MSA also provides that regulations promulgated by NMFS, and actions taken by NMFS under regulations implementing a fishery management plan (“FMP”), shall be subject to judicial review “if a petition for such review is filed within 30 days after the date on which the regulations are promulgated or the action is published in the Federal Register, as applicable.” 16 U.S.C. § 1855(f). The Plaintiffs are

challenging a final rule published in the Federal Register on May 2, 2022, that implements Amendment 53 and modifies the catch limits for the commercial and recreational sectors to reflect their new allocations. 87 Fed. Reg. 25573 (May 2, 2022) (“Amendment 53 Final Rule”). Plaintiffs filed this Complaint within thirty days after the date of the Amendment 53 Final Rule in accordance with 16 U.S.C. § 1855(f).

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

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

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

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

# Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

## Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

## Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

## Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

## API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

## LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

## FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

## E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.