AMENDMENT NO._______ Calendar No._____

Purpose: In the nature of a substitute.


S. 1520

To expand recreational fishing opportunities through enhanced marine fishery conservation and management, and for other purposes.

Referred to the Committee on _______________ and ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENT IN THE NATURE OF A SUBSTITUTE intended to be proposed by Mr. WICKER

Viz:

1. Strike all after the enacting clause and insert the following:

3. SECTION 1. SHORT TITLE; TABLE OF CONTENTS; REFERENCES.

5. (a) SHORT TITLE.—This Act may be cited as the “Modernizing Recreational Fisheries Management Act of 2018”.

(b) TABLE OF CONTENTS.—The table of contents of this Act is as follows:

Sec. 1. Short title; table of contents; references.
Sec. 2. Findings.
Sec. 3. Definitions.

TITLE I—CONSERVATION AND MANAGEMENT
Sec. 101. Process for allocation review for South Atlantic and Gulf of Mexico mixed-use fisheries.
Sec. 102. Fishery management measures.
Sec. 103. Study of limited access privilege programs for mixed-use fisheries.
Sec. 104. Rebuilding overfished fisheries.
Sec. 105. Authorization for multispecies complexes and multiyear catch limits.
Sec. 106. Exempted fishing permits.

TITLE II—RECREATION FISHERY INFORMATION, RESEARCH, AND DEVELOPMENT

Sec. 201. Cooperative data collection.

TITLE III—RULE OF CONSTRUCTION

Sec. 301. Rule of construction.

(c) REFERENCES TO THE MAGNUSON-STEvens FISHERY CONSERVATION AND MANAGEMENT ACT.—Except as otherwise expressly provided, wherever in this Act an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 et seq.).

SEC. 2. FINDINGS.

Section 2(a) (16 U.S.C. 1801(a)) is amended by adding at the end the following:

“(13) While both provide significant cultural and economic benefits to the Nation, recreational fishing and commercial fishing are different activities. Therefore, management approaches should be adapted to the characteristics of each sector.”.

SEC. 3. DEFINITIONS.

In this Act:
(1) Appropriate committees of Congress.—The term “appropriate committees of Congress” means—

(A) the Committee on Commerce, Science, and Transportation of the Senate; and

(B) the Committee on Natural Resources of the House of Representatives.


(3) Limited Access Privilege Program.—The term “limited access privilege program” means a program that meets the requirements of section 303A of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1853a).

(4) Mixed-Use Fishery.—The term “mixed-use fishery” means a Federal fishery in which 2 or more of the following occur:

(A) Recreational fishing.

(B) Charter fishing.

(C) Commercial fishing.
TITLE I—CONSERVATION AND MANAGEMENT

SEC. 101. PROCESS FOR ALLOCATION REVIEW FOR SOUTH ATLANTIC AND GULF OF MEXICO MIXED-USE FISHERIES.

(a) Study of Allocations in Mixed-use Fisheries.—Not later than 60 days after the date of enactment of this Act, the Secretary of Commerce shall enter into an arrangement with the National Academy of Sciences to conduct a study of South Atlantic and Gulf of Mexico mixed-use fisheries—

(1) to provide guidance to each applicable Council on criteria that could be used for allocating fishing privileges, including consideration of the ecological, economic, and social factors of each component of a mixed-use fishery, in the preparation of a fishery management plan;

(2) to identify sources of information that could reasonably support the use of such criteria in allocation decisions; and

(3) to develop procedures for allocation reviews and potential adjustments in allocations.

(b) Report.—Not later than 1 year after the date an arrangement is entered into under subsection (a), the National Academy of Sciences shall submit to the appro-
priate committees of Congress a report on the study conducted under that subsection.

(c) Process for Allocation Review and Establishment.—

(1) In General.—Not later than 2 years after the date of enactment of this Act, and every 5 years thereafter, an applicable Council shall perform a review of the allocations to the commercial fishing sector and the recreational fishing sector of all applicable fisheries in its jurisdiction, consistent with the provisions of this Act.

(2) Considerations.—In conducting a review under paragraph (1), an applicable Council shall consider, in each allocation decision, the ecological, economic, and social factors of—

(A) the commercial fishing sector; and

(B) the recreational fishing sector.

(d) Definition of Applicable Council.—In this section, the term “applicable Council” means—

(1) the South Atlantic Fishery Management Council; or

(2) the Gulf of Mexico Fishery Management Council.
SEC. 102. FISHERY MANAGEMENT MEASURES.

(a) Management.—Section 302(h) (16 U.S.C. 1852(h)) is amended—

(1) in paragraph (7)(C), by striking "; and"
and inserting a semicolon;

(2) by redesignating paragraph (8) as paragraph (9); and

(3) by inserting after paragraph (7) the following:

"(8) have the authority to use fishery management measures in a recreational fishery (or the recreational component of a mixed-use fishery) in developing a fishery management plan, plan amendment, or proposed regulations, such as extraction rates, fishing mortality targets, harvest control rules, or traditional or cultural practices of native communities; and”.

(b) Report.—Not later than 180 days after the date of enactment of this Act, the Secretary of Commerce shall submit to the appropriate committees of Congress a report that describes any actions pursuant to paragraph (8) of section 302(h) of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1852(h)), as added by subsection (a).

(c) Other Fisheries.—Nothing in paragraph (8) of section 302(h) of the Magnuson-Stevens Fishery Con-
servation and Management Act (16 U.S.C. 1852(h)), as added by subsection (a), shall be construed to affect management of any fishery not described in such paragraph (8).

SEC. 103. STUDY OF LIMITED ACCESS PRIVILEGE PROGRAMS FOR MIXED-USE FISHERIES.

(a) Study on Limited Access Privilege Programs.—

(1) In general.—Not later than 2 years after the date of enactment of this Act, the Ocean Studies Board of the National Academies of Sciences, Engineering, and Medicine shall—

(A) complete a study on the use of limited access privilege programs in mixed-use fisheries, including—

(i) an assessment of progress in meeting the goals of the program and this Act;

(ii) an assessment of the social, economic, and ecological effects of the program, considering each sector of a mixed-use fishery and related businesses, coastal communities, and the environment;

(iii) an assessment of any impacts to stakeholders in a mixed-use fishery caused by a limited access privilege program;
(iv) recommendations of policies to address any impacts identified under clause (iii); and

(v) identification of and recommenda-
tion of the different factors and informa-
tion that should be considered when de-
signing, establishing, or maintaining a lim-
ited access privilege program in a mixed-
use fishery to mitigate any impacts identi-
fied in clause (iii); and

(B) submit to the appropriate committees of Congress a report on the study under sub-
paragraph (A), including the recommendations under clauses (iv) and (v) of subparagraph (A).

(2) EXCLUSION.—The study described in this subsection shall not include the areas covered by the North Pacific Fishery Management Council.

(b) TEMPORARY MORATORIUM.—

(1) IN GENERAL.—Except as provided in para-
graph (2), with respect to applicable Councils, there shall be a moratorium on the submission and ap-
proval of a limited access privilege program for a mixed-used fishery for 2 years after the date of en-
actment of this Act.
(2) EXCEPTION.—Subject to paragraph (3), an applicable Council may submit, and the Secretary of Commerce may approve, for a mixed-use fishery that is managed under a limited access system, a limited access privilege program if such program was part of a pending fishery management plan or plan amendment before the date of enactment of this Act.

(3) MANDATORY REVIEW.—An applicable Council that approves a limited access privilege program under paragraph (2) shall, upon issuance of the report required under subparagraph (a), review and, to the extent practicable, revise the limited access privilege program to be consistent with the recommendations of the report or any subsequent statutory or regulatory requirements designed to implement the recommendations of the report.

(4) LIMITED ACCESS PRIVILEGE PROGRAM.—Nothing in this section may be construed to affect a limited access privilege program approved by the Secretary of Commerce before the date of enactment of this Act.

(5) APPLICABLE COUNCIL.—In this subsection, the term "applicable Council" means—

(A) the Gulf of Mexico Fishery Management Council;
(B) the South Atlantic Fishery Management Council; or

(C) the Mid-Atlantic Fishery Management Council.

SEC. 104. REBUILDING OVERFISHED FISHERIES.

Section 304(e) (16 U.S.C. 1854(e)) is amended—

(1) in paragraph (4), by amending subparagraph (A)(ii) to read as follows:

"(ii) not exceed the shortest time possible within which the stock of fish would be rebuilt without fishing occurring, plus one mean generation, unless management measures under international agreement in which the United States participates dictate otherwise;"; and

(2) in paragraph (7)—

(A) by redesignating subparagraphs (A) and (B) as clauses (i) and (ii);

(B) by striking "(7) The Secretary" and inserting the following:

"(7)(A) The Secretary";

(C) by striking "If the Secretary" and inserting the following:

"(B) If the Secretary";
(D) in subparagraph (A), as so redesignated, by striking "two years" and inserting the following: "2 years. The Secretary shall find that adequate progress toward ending overfishing and rebuilding affected fish stocks has not resulted if—

"(i) the status of the stock is not improving, such that it becomes unlikely that the stock will be rebuilt within the rebuilding time period;

"(ii) the applicable fishing mortality rate or catch limits are exceeded, and the causes and rebuilding consequences of such exceedances have not been corrected;

"(iii) the rebuilding expectations are significantly changed due to new information about the status of the stock, and the new information indicates that less progress than expected has been made toward rebuilding the stock; or

"(iv) for other reasons, as appropriate."

and

(E) by adding at the end the following:

"(C) A Council shall not adopt, and the Secretary shall not approve, a fishery management plan, plan amendment, or proposed regulation required
under this subsection for any fishery that has previously been under such a plan that did not rebuild such fishery to the biomass necessary to achieve maximum sustainable yield, as determined by the Council’s scientific and statistical committee, unless the new plan, amendment, or proposed regulation has at least a 75 percent chance of rebuilding the fishery within the time limit proposed by the Council, as calculated by the Council’s scientific and statistical committee pursuant to section 302(g)(1)(B).”.

SEC. 105. AUTHORIZATION FOR MULTISPECIES COMPLEXES AND MULTIYEAR CATCH LIMITS.

Section 302 (16 U.S.C. 1852) is amended by adding at the end the following:

“(m) AUTHORIZATION FOR MULTISPECIES COMPLEXES AND MULTIYEAR CATCH LIMITS.—For purposes of subsection (h)(6), a Council may establish—

“(1) an annual catch limit for a stock complex; or

“(2) annual catch limits for each year in any continuous period that is not more than 3 years in duration.”.
SEC. 106. EXEMPTED FISHING PERMITS.

(a) OBJECTIONS.—If the Fishery Management Council, the Interstate Marine Fisheries Commission, or the fish and wildlife agency of an affected State objects to the approval and issuance of an exempted fishing permit under section 600.745 of title 50, Code of Federal Regulations, or any successor regulation, the Regional Administrator of the National Marine Fisheries Service who issued such exempted fishing permit shall respond to such entity in writing detailing why such exempted fishing permit was issued.

(b) 12-MONTH FINDING.—At the end of the 12-month period beginning on the date the exempted fishing permit is issued under section 600.745 of title 50, Code of Federal Regulations, or any successor regulation, the Council that prepared the fishery management plan, or the Secretary in the case of a fishery management plan prepared and implemented by the Secretary, shall review the exempted fishing permit and determine whether any unintended negative impacts have occurred that would warrant the discontinuation of the permit.

(c) SAVING PROVISION.—Nothing in this section may be construed to affect an exempted fishing permit approved under section 600.745 of title 50, Code of Federal Regulations, before the date of enactment of this Act.
TITLE II—RECREATION FISHERY
INFORMATION, RESEARCH,
AND DEVELOPMENT

SEC. 201. COOPERATIVE DATA COLLECTION.

(a) IMPROVING DATA COLLECTION AND ANALYSIS.—

Section 404 (16 U.S.C. 1881e) is amended by adding at the end the following:

"(e) IMPROVING DATA COLLECTION AND ANALYSIS.—

"(1) IN GENERAL.—Not later than 1 year after the date of enactment of the Modernizing Recreational Fisheries Management Act of 2017, the Secretary shall develop, in consultation with the science and statistical committees of the Councils established under section 302(g) and the Marine Fisheries Commissions, and submit to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Natural Resources of the House of Representatives a report on facilitating greater incorporation of data, analysis, stock assessments, and surveys from State agencies and non-governmental sources described in paragraph (2), to the extent such information is consistent with section 301(a)(2), into fisheries management decisions."
"(2) CONTENT.—In developing the report under paragraph (1), the Secretary shall—

"(A) identify types of data and analysis, especially concerning recreational fishing, that can be used for purposes of this Act as the basis for establishing conservation and management measures as required by section 303(a)(1), including setting standards for the collection and use of that data and analysis in stock assessments and surveys and for other purposes;

"(B) provide specific recommendations for collecting data and performing analyses identified as necessary to reduce uncertainty in and improve the accuracy of future stock assessments, including whether such data and analysis could be provided by nongovernmental sources; and

"(C) consider the extent to which the acceptance and use of data and analyses identified in the report in fishery management decisions is practicable and compatible with the requirements of section 301(a)(2).".

(b) NAS REPORT RECOMMENDATIONS.—The Secretary of Commerce shall take into consideration and, to
the extent feasible, implement the recommendations of the National Academy of Sciences in the report entitled "Review of the Marine Recreational Information Program (2017)", and shall submit, every 2 years following the date of enactment of this Act, a report to the appropriate committees of Congress detailing progress made implementing those recommendations. Recommendations considered shall include—

(1) prioritizing the evaluation of electronic data collection, including smartphone applications, electronic diaries for prospective data collection, and an internet website option for panel members or for the public;

(2) evaluating whether the design of the Marine Recreational Information Program for the purposes of stock assessment and the determination of stock management reference points is compatible with the needs of in-season management of annual catch limits; and

(3) if the Marine Recreational Information Program is incompatible with the needs of in-season management of annual catch limits, determining an alternative method for in-season management.

SEC. 202. RECREATIONAL DATA COLLECTION.

Section 401 (16 U.S.C. 1881) is amended—
(1) in subsection (g)—

(A) by redesignating paragraph (4) as paragraph (5); and

(B) by inserting after paragraph (3) the following:

“(4) FEDERAL-STATE PARTNERSHIPS.—

“(A) ESTABLISHMENT.—The Secretary shall establish a partnership with a State to develop best practices for implementing the State program established under paragraph (2).

“(B) GUIDANCE.—The Secretary shall develop guidance, in cooperation with the States, that details best practices for administering State programs pursuant to paragraph (2), and provide such guidance to the States.

“(C) BIENNIAL REPORT.—The Secretary shall submit to the appropriate committees of Congress and publish biennial reports that include—

“(i) the estimated accuracy of—

“(I) the information provided under subparagraphs (A) and (B) of paragraph (1) for each registry program established under that paragraph; and
“(II) the information from each State program that is used to assist in completing surveys or evaluating effects of conservation and management measures under paragraph (2);
“(ii) priorities for improving recreational fishing data collection; and
“(iii) an explanation of any use of information collected by such State programs and by the Secretary.
“(D) STATES GRANT PROGRAM.—The Secretary may make grants to States to improve implementation of State programs consistent with this subsection. The Secretary shall prioritize such grants based on the ability of the grant to improve the quality and accuracy of such programs.”; and
(2) by adding at the end the following:
“(h) ACTION BY SECRETARY.—The Secretary shall—
“(1) within 90 days after the date of the enactment of the Modernizing Recreational Fisheries Management Act of 2018, enter into an agreement with the National Academy of Sciences to evaluate, in the form of a report—
“(A) how the design of the Marine Recreational Information Program, for the purposes of stock assessment and the determination of stock management reference points, can be improved to better meet the needs of in-season management of annual catch limits under section 303(a)(15); and

“(B) what actions the Secretary, Councils, and States could take to improve the accuracy and timeliness of data collection and analysis to improve the Marine Recreational Information Program and facilitate in-season management; and

“(2) within 6 months after receiving the report under paragraph (1), submit to Congress recommendations regarding—

“(A) changes to be made to the Marine Recreational Information Program to make the program better meet the needs of in-season management of annual catch limits and other requirements under such section; and

“(B) alternative management approaches that could be applied to recreational fisheries for which the Marine Recreational Information Program is not meeting the needs of in-season
management of annual catch limits, consistent
with other requirements of this Act, until such
time as the changes in subparagraph (A) are
implemented.”.

TITLE III—RULE OF
CONSTRUCTION

SEC. 301. RULE OF CONSTRUCTION.

Nothing in this Act shall be construed as modifying
the requirements of sections 301(a), 302(h)(6), or
303(a)(15) of the Magnuson-Stevens Fishery Conserva-
tion and Management Act (16 U.S.C. 1851(a);
1852(h)(6); 1853(a)(15)).