

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

A.P. BELL FISH COMPANY, INC.;  
SOUTHERN OFFSHORE FISHING  
ASSOCIATION, INC.; and GULF OF  
MEXICO REEF FISH SHAREHOLDERS'  
ALLIANCE,

Plaintiffs,

v.

GINA RAIMONDO, in her official  
capacity as Secretary of the United States  
Department of Commerce; NATIONAL  
OCEANIC AND ATMOSPHERIC;  
ADMINISTRATION and NATIONAL  
MARINE FISHERIES SERVICE,

Defendants,

and COASTAL CONSERVATION  
ASSOCIATION,

Intervenor-Defendant.

No. 1:22-cv-01260

Hon. Timothy J. Kelly

**THE STATE OF LOUISIANA'S**  
**MOTION TO INTERVENE AS**  
**A DEFENDANT AND INCORPORATED**  
**MEMORANDUM IN SUPPORT**

**INTRODUCTION AND REQUEST FOR RELIEF**

The State of Louisiana respectfully moves to intervene as of right in support of Defendants under Fed.R.Civ.P. 24(a), or alternatively, for leave to intervene under Fed.R.Civ.P. 24(b). Counsel for Louisiana has discussed this Motion with counsel for the other parties as required by Local Rule 7(m). Counsel for Plaintiffs replied that "Plaintiffs do not oppose Louisiana's motion to intervene provided the state can demonstrate Article III standing. The Plaintiffs reserve their position on that question pending review of Louisiana's filing." Counsel for Defendants replied that "Federal Defendants take no position on the State's motion to intervene." Counsel for Intervenor-Defendant Coastal Conservation Authority replied that it does not oppose this Motion.

## **FACTUAL AND PROCEDURAL BACKGROUND**

Plaintiffs are commercial fishing interests challenging the Final Rule implementing Amendment 53 to the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico (the “FMP”), 84 Fed. Reg. 25573 (May 2, 2022) (the “Final Rule”). AR 17419-17436.

An earlier rule implementing FMP Amendment 30B allocated the Gulf red grouper quota between the commercial and recreational sectors based on the sectors’ respective harvests in 1986 through 2005. 74 Fed. Reg. 17603 (April 16, 2009). Subsequently, the National Marine Fisheries Service (“NMFS”) implemented improvements to the fishing effort survey used to estimate the private angling portion of the recreational harvest. Comparison of this new survey to the one used for the Amendment 30B rule revealed that the red grouper private angling harvest was 2.1 times greater than originally estimated. Based on this “recalibration,” the Final Rule modified the allocation of the Gulf red grouper quota between the commercial and recreational sectors to reflect the allocation that would have been made in the Amendment 30B rule if the improved survey had been used.

Plaintiffs challenge the Final Rule, making several arguments that Louisiana opposes and seeking relief that Louisiana also opposes. Louisiana agrees with NMFS’s Final Rule and seeks to intervene in support thereof and in opposition to Plaintiffs’ claims and requested relief.

## ARGUMENT AND AUTHORITY

### I. LOUISIANA HAS CONSTITUTIONAL STANDING AND THE RIGHT OF INTERVENTION.

#### A. Louisiana has standing.

A party seeking to intervene must have standing under Article III of the Constitution. The analysis of standing for an intervening defendant is the same as for a plaintiff. *Crossroads Grassroots Policy Strategies v. Federal Election Comm'n*, 788 F.3d 312, 316 (D.C. Cir. 2015). “To demonstrate standing, a litigant must show that it has suffered a concrete and particularized injury that is either actual or imminent, that the injury is fairly traceable to the defendant, and that a favorable decision will likely redress that injury.” *Massachusetts v. E.P.A.*, 549 U.S. 497, 517 (2007), citing *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560 (1992).

A state’s standing interests fall into three categories: (1) proprietary interests; (2) quasi-sovereign interests; and (3) sovereign interests. *Alfred L. Snapp & Son, Inc. v. Puerto Rico, ex rel., Barez*, 458 U.S. 592, 601 (1982).

Louisiana has proprietary and quasi-sovereign interests in the red grouper in the Gulf of Mexico and the allocation of fishing privileges for these fish. Louisiana also has proprietary and quasi-sovereign interests in the arguments submitted by Plaintiffs herein, which constitute an improper and existential attack on the recreational fishing sector generally and which, if credited by the courts, would impact other federally-managed species in the Gulf in which Louisiana also has an interest.

Ownership of land and participation in a business venture are two examples of proprietary interests. *Id.* Louisiana owns the red grouper in its state waters. *See* La. C.C. arts. 450 and 3413; La. R.S. 56:3(A). These fish migrate between federal and state waters. Admittedly, most Gulf red grouper are in Florida state and federal waters. However, there are some in Louisiana waters, and some are landed in Louisiana. SEDAR 61 Stock Assessment Report (July 2019), pp. 10, 17-18;

[https://sedarweb.org/docs/sar/S61\\_Final\\_SAR.pdf](https://sedarweb.org/docs/sar/S61_Final_SAR.pdf). Louisiana through its Wildlife and Fisheries Commission sets fishing seasons for red grouper, regulates the size and number of red grouper that may be harvested or possessed in Louisiana waters, and enforces federal regulations regarding red grouper fishing in Louisiana waters. LAC 76:VII.335. All of this constitutes a proprietary interest in the red grouper. Similarly, Louisiana's interest in the tax revenues attributable to the tourism and fishing industries associated with these fish is also a proprietary interest.

More broadly, Plaintiffs seek the Court to effect reallocation of red grouper fishing privileges in the Gulf from the recreational sector to the commercial sector. Plaintiffs do so via incorrect arguments, such as that allocations originally set based on harvests in each sector cannot be corrected as better scientific information regarding these harvests becomes available, and that sector allocations can be made only on the basis of minimizing bycatch or to sectors that directly report catch and bycatch. These arguments would preclude *any* allocation to the recreational sector, even if based on better scientific information than was originally available, because the recreational sector inherently involves bycatch (since the goal of recreational fishing is the experience of *fishing* as well as the actual catching of fish) and does not directly report catch or bycatch (since this cannot practicably be done for the enormous number of private anglers). A ruling on these arguments in favor of Plaintiffs therefore would not be fair or equitable, as required by the Magnuson-Stevens Fishery Conservation and Management Act ("MSA"), 16 U.S.C. 1851(a)(4), because it would invalidate the rights of recreational fishermen under MSA to participate in the red grouper fishery. Louisiana has a proprietary interest in the allocation of fishing privileges for its fish, and the tax revenues affected thereby.

Worse, a ruling crediting Plaintiffs' arguments would apply equally to red snapper and the other federally managed reef fish species in the Gulf that are migratory between federal and state

waters, and thus would invalidate recreational fishermen's rights in those fisheries, as well. *Many* red snapper and other such species exist in Louisiana waters and are landed in Louisiana. Louisiana's ownership of red snapper and these other species in state waters, along with its interest in the tax revenues affected thereby, constitute proprietary issues.

A state also has the right to bring a *parens patriae* action in order to assert a quasi-sovereign interest. *Snapp*, 458 U.S. at 607. One such quasi-sovereign interest is in "the health and well-being - both physical and economic - of its residents in general." *Id.* While this interest must be more than that of a nominal party, *id.*, Louisiana's ownership of, control over, and duty to replenish the migratory fish and responsibility for protecting the health, safety and welfare of its residents constitute such quasi-sovereign interests. *See* La. C.C. arts. 450 and 3413; La. Const. Art. 1, § 1; La. Const. Art. 9, § 7; La. Const. Art. 9, § 1. This includes the welfare of Louisiana's recreational fishermen. Again, this applies directly to a small number of red grouper in Louisiana, but it also applies to the very large numbers of other reef fish that would be affected by a ruling herein.

**B. Louisiana has the right to intervene.**

Fed.R.Civ.P. 24(a)(2) gives Louisiana the right to intervene in this case. Intervention of right is evaluated using a four-prong test: (1) timeliness of the application to intervene; (2) a legally protected interest; (3) that the action, as a practical matter, impairs or impedes that interest; and (4) that no party to the action can adequately represent the potential intervenor's interest. *Crossroads Grassroots*, 788 F.3d at 320. Each prong is met here.

**i. This motion is timely.**

This motion is timely, as it is filed only weeks after the filing of the Plaintiffs' Motion for Summary Judgment on July 29, 2022 in accordance with the Court's scheduling order of June 24, 2022. Louisiana seeks to intervene as a defendant and to file its combined Cross-Motion for Summary Judgment and Opposition to Plaintiffs' Motion for Summary Judgment by September 2, 2022, simultaneously with the federal Defendants and Defendant-Intervenor Coastal Conservation Authority. Louisiana does not request any extension of the deadlines set forth in the scheduling order. Thus, Louisiana's intervention in the case at this time will impose no undue delay in the proceeding, nor will it prejudice existing parties.

**ii. Louisiana has significant sovereign and public interests in the red grouper and other reef fish implicated herein, and their management.**

For purposes of FMPs for reef fish in the Gulf of Mexico, which includes red grouper, red snapper, and the other reef fish that would be affected by a ruling herein, Louisiana state waters in the Gulf of Mexico extend seaward nine nautical miles from Louisiana's coast, at which point the federal waters begin. P.L. 114-113 (12/18/2015), and subsequent continuing resolutions. Wild fish within Louisiana's waters are public property owned by the state. La. C.C. arts. 450 and 3413; La. R.S. 56:3(A). The control and supervision of the wildlife of Louisiana, including aquatic life, is vested in the Louisiana Wildlife and Fisheries Commission. La. Const. Art. 9, § 7. Red grouper are migratory fish. A portion of the red grouper in federal waters in the Gulf are from or will return to Louisiana waters – they are the same fish. The federal red grouper quotas (as well as those of red snapper and the other reef fish) are reduced by the catch in state waters, in recognition of this interconnectedness. 50 C.F.R. § 622.8(a).

Louisiana has a constitutional duty to protect and conserve its natural resources, including red grouper, for the health, safety and welfare of its residents. La. Const. Art. 9, § 1. This forms

the basis of a “direct, cognizable legal interest in the subject matter of this litigation.” *Sierra Club v. City of San Antonio*, 115 F.3d 311, 315 (5<sup>th</sup> Cir. 1997). The allocation of fishing privileges directly affects Louisiana’s red grouper and other reef fish, as well as the ability of Louisiana residents to participate in fishing for these fish.

Additionally, fishing in federal waters attracts recreational fishermen to Louisiana’s coast, which is a launching point for fishermen to access the federal waters. While in Louisiana, the fishermen purchase fishing supplies and fuel for their boats, stay in hotels, and eat in restaurants. Louisiana residents purchase fishing licenses, boats, fishing camps, and other assets for and related to fishing. All of these activities increase tourism revenues for Louisiana’s residents, bolster the economy, and generate sales and other tax revenues for the state. The greater the recreational allocation, the longer the recreational fishing season, and thus the greater the direct economic benefit to Louisiana therefrom.

**iii. The relief sought by the Plaintiffs would injure Louisiana’s sovereign and public interests.**

In their Prayer for Relief and proposed Order on summary judgment, Plaintiffs request the Court to vacate and set aside the Final Rule; and also to “retain jurisdiction over this matter until December 31, 2023” or longer, if Plaintiffs so move, and to require Defendants for an unspecified time to “ensure that the recreational sector adheres to its [quota]”. The relief sought by the Plaintiffs would cause direct, imminent injury to Louisiana.

Reallocating red grouper (and by precedent, the other reef fish) from the commercial to the recreational sector will significantly impair Louisiana’s interests in its red grouper and other reef fish, and in tourism, economy, tax revenues, and the welfare of its residents. Plaintiffs also seek the federal Court, sitting in Washington, D.C., to oversee red grouper (and by precedent, other reef fish) fishery management in the Gulf of Mexico. Louisiana respectfully submits that fishery

management by the federal courts has significant implications for cooperative federalism and separation of powers. Plaintiffs' request is unprecedented – they ask a federal court to engage in continuing oversight of the federal and state executive branch agencies that manage the fishery. Judicial oversight would increase Louisiana's and other states' management costs and decrease their ability to interact with the NMFS, the Congressionally-designated fishery manager, to determine and provide input regarding rules regarding fishery management, and ultimately to implement those rules.

Such remote management by courts with no expertise regarding the reef fish in the Gulf would also affect fishing in Louisiana state waters, due to the interconnectedness of the fish in state and adjacent federal waters. Finally, Louisiana residents would be less able to comment on or be involved in the making of fishery management rules. Fishery management should be reserved to the federal and state agencies statutorily responsible for, and knowledgeable regarding, such management and the fish and fisheries in the Gulf of Mexico.

**iv. Louisiana's interests are not adequately represented.**

Louisiana's interests are not adequately represented by the existing parties. Louisiana raises important interests that it is uniquely charged with representing: (1) the ownership and conservation of Louisiana's red grouper (and by precedent, the other reef fish), (2) the interests of Louisiana residents to participate in recreational fishing, (3) the interests of Louisiana and its residents in tourism and the related businesses, (4) Louisiana's interest in sales, gasoline, lodging, and other tax revenues, and (5) protecting and conserving Louisiana's natural resources, including red grouper (and by precedent, the other reef fish), for the health, safety and welfare of its residents. The federal Defendants are not themselves owners of any of the fish, and represent the *federal* interests impacted herein. Defendant-Intervenor Coastal Conservation Authority also does not

own the fish and represents *private* recreational fishing interests. None represents the *state* interests impacted herein.

The adequacy-of-representation requirement is “not onerous,” and a movant “ordinarily should be allowed to intervene unless it is clear that the party will provide adequate representation.” *Crossroads Grassroots*, 788 F.3d at 321. This standard is clearly met here.

## **II. ALTERNATIVELY, LOUISIANA IS ENTITLED TO PERMISSIVE INTERVENTION.**

In the alternative, should the Court not grant Louisiana intervention as of right, Louisiana seeks permissive intervention. Fed.R.Civ.P. 24(b)(1) provides, in pertinent part: “On timely motion, the court may permit anyone to intervene who: . . . (B) has a claim or defense that shares with the main action a common question of law or fact.” Louisiana has raised defenses to the relief sought by the Plaintiffs because it will cause injury to Louisiana and its residents. This is a question of law or fact common with the main action. As Louisiana will comply with the existing scheduling order, the existing parties will not be prejudiced by Louisiana’s permissive intervention.

## **III. LOUISIANA CONDITIONALLY FILES ITS ANSWER TOGETHER HEREWITH.**

In compliance with Fed.R.Civ.P. 24(c), Louisiana conditionally files its Answer to Plaintiffs’ Complaint for Declaratory and Injunctive Relief together herewith.

**CONCLUSION**

For the foregoing reasons, Louisiana’s Motion to Intervene as a Defendant as of right under Fed.R.Civ.P. 24(a), or alternatively for permissive intervention under Fed.R.Civ.P. 24(b), should be granted.

DATED August 18, 2022

Respectfully submitted,

**JEFF LANDRY**  
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/s/ Elizabeth B. Murrill  
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**COUNSEL FOR THE STATE OF LOUISIANA**

**CERTIFICATE OF SERVICE**

I hereby certify that on August 18, 2022, I electronically filed the foregoing with the Clerk of Court for the United States District Court for the District of Columbia by using the CM/ECF system, which will serve a copy of the same on the counsel of record.

/s/ Elizabeth B. Murrill  
ELIZABETH B. MURRILL