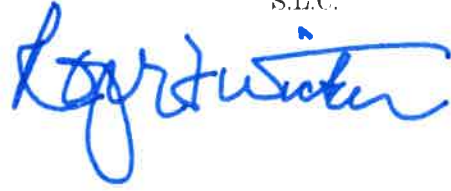


Wicker Substitute Modified

TAM18225

S.L.C.



AMENDMENT NO. _____ Calendar No. _____

Purpose: In the nature of a substitute.

IN THE SENATE OF THE UNITED STATES—115th Cong., 2d Sess.

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 fol-
2 lowing:

3 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS; REF-**
4 **ERENCES.**

5 (a) **SHORT TITLE.**—This Act may be cited as the
6 “Modernizing Recreational Fisheries Management Act of
7 2018”.

8 (b) **TABLE OF CONTENTS.**—The table of contents of
9 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.

Sec. 202. Recreational data collection.

TITLE III—RULE OF CONSTRUCTION

Sec. 301. Rule of construction.

1 (c) REFERENCES TO THE MAGNUSON-STEVENS
2 FISHERY CONSERVATION AND MANAGEMENT ACT.—Ex-
3 cept as otherwise expressly provided, wherever in this Act
4 an amendment or repeal is expressed in terms of an
5 amendment to, or repeal of, a section or other provision,
6 the reference shall be considered to be made to a section
7 or other provision of the Magnuson-Stevens Fishery Con-
8 servation and Management Act (16 U.S.C. 1801 et seq.).

9 **SEC. 2. FINDINGS.**

10 Section 2(a) (16 U.S.C. 1801(a)) is amended by add-
11 ing at the end the following:

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

17 **SEC. 3. DEFINITIONS.**

18 In this Act:

1 (1) APPROPRIATE COMMITTEES OF CON-
2 GRESS.—The term “appropriate committees of Con-
3 gress” means—

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

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

8 (2) COUNCIL.—The term “Council” means any
9 Regional Fishery Management Council established
10 under section 302 of the Magnuson-Stevens Fishery
11 Conservation and Management Act (16 U.S.C.
12 1852).

13 (3) LIMITED ACCESS PRIVILEGE PROGRAM.—
14 The term “limited access privilege program” means
15 a program that meets the requirements of section
16 303A of the Magnuson-Stevens Fishery Conserva-
17 tion and Management Act (16 U.S.C. 1853a).

18 (4) MIXED-USE FISHERY.—The term “mixed-
19 use fishery” means a Federal fishery in which 2 or
20 more of the following occur:

21 (A) Recreational fishing.

22 (B) Charter fishing.

23 (C) Commercial fishing.

1 **TITLE I—CONSERVATION AND**
2 **MANAGEMENT**

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

6 (a) STUDY OF ALLOCATIONS IN MIXED-USE FISH-
7 ERIES.—Not later than 60 days after the date of enact-
8 ment of this Act, the Secretary of Commerce shall enter
9 into an arrangement with the National Academy of
10 Sciences to conduct a study of South Atlantic and Gulf
11 of Mexico mixed-use fisheries—

12 (1) to provide guidance to each applicable
13 Council on criteria that could be used for allocating
14 fishing privileges, including consideration of the eco-
15 logical, economic, and social factors of each compo-
16 nent of a mixed-use fishery, in the preparation of a
17 fishery management plan;

18 (2) to identify sources of information that could
19 reasonably support the use of such criteria in alloca-
20 tion decisions; and

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

23 (b) REPORT.—Not later than 1 year after the date
24 an arrangement is entered into under subsection (a), the
25 National Academy of Sciences shall submit to the appro-

1 priate committees of Congress a report on the study con-
2 ducted under that subsection.

3 (c) PROCESS FOR ALLOCATION REVIEW AND ESTAB-
4 LISHMENT.—

5 (1) IN GENERAL.—Not later than 2 years after
6 the date of enactment of this Act, and every 5 years
7 thereafter, an applicable Council shall perform a re-
8 view of the allocations to the commercial fishing sec-
9 tor and the recreational fishing sector of all applica-
10 ble fisheries in its jurisdiction, consistent with the
11 provisions of this Act.

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

16 (A) the commercial fishing sector; and

17 (B) the recreational fishing sector.

18 (d) DEFINITION OF APPLICABLE COUNCIL.—In this
19 section, the term “applicable Council” means—

20 (1) the South Atlantic Fishery Management
21 Council; or

22 (2) the Gulf of Mexico Fishery Management
23 Council.

1 **SEC. 102. FISHERY MANAGEMENT MEASURES.**

2 (a) **MANAGEMENT.**—Section 302(h) (16 U.S.C.
3 1852(h)) is amended—

4 (1) in paragraph (7)(C), by striking “; and”
5 and inserting a semicolon;

6 (2) by redesignating paragraph (8) as para-
7 graph (9); and

8 (3) by inserting after paragraph (7) the fol-
9 lowing:

10 “(8) have the authority to use fishery manage-
11 ment measures in a recreational fishery (or the rec-
12 reational component of a mixed-use fishery) in devel-
13 oping a fishery management plan, plan amendment,
14 or proposed regulations, such as extraction rates,
15 fishing mortality targets, harvest control rules, or
16 traditional or cultural practices of native commu-
17 nities; and”.

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

25 (c) **OTHER FISHERIES.**—Nothing in paragraph (8) of
26 section 302(h) of the Magnuson-Stevens Fishery Con-

1 servation and Management Act (16 U.S.C. 1852(h)), as
2 added by subsection (a), shall be construed to affect man-
3 agement of any fishery not described in such paragraph
4 (8).

5 **SEC. 103. STUDY OF LIMITED ACCESS PRIVILEGE PRO-**
6 **GRAMS FOR MIXED-USE FISHERIES.**

7 (a) STUDY ON LIMITED ACCESS PRIVILEGE PRO-
8 GRAMS.—

9 (1) IN GENERAL.—Not later than 2 years after
10 the date of enactment of this Act, the Ocean Studies
11 Board of the National Academies of Sciences, Engi-
12 neering, and Medicine shall—

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

16 (i) an assessment of progress in meet-
17 ing the goals of the program and this Act;

18 (ii) an assessment of the social, eco-
19 nomic, and ecological effects of the pro-
20 gram, considering each sector of a mixed-
21 use fishery and related businesses, coastal
22 communities, and the environment;

23 (iii) an assessment of any impacts to
24 stakeholders in a mixed-use fishery caused
25 by a limited access privilege program;

1 (iv) recommendations of policies to
2 address any impacts identified under
3 clause (iii); and

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

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

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

18 (b) TEMPORARY MORATORIUM.—

19 (1) IN GENERAL.—Except as provided in para-
20 graph (2), with respect to applicable Councils, there
21 shall be a moratorium on the submission and ap-
22 proval of a limited access privilege program for a
23 mixed-used fishery for 2 years after the date of en-
24 actment of this Act.

1 (2) EXCEPTION.—Subject to paragraph (3), an
2 applicable Council may submit, and the Secretary of
3 Commerce may approve, for a mixed-use fishery that
4 is managed under a limited access system, a limited
5 access privilege program if such program was part
6 of a pending fishery management plan or plan
7 amendment before the date of enactment of this Act.

8 (3) MANDATORY REVIEW.—An applicable Coun-
9 cil that approves a limited access privilege program
10 under paragraph (2) shall, upon issuance of the re-
11 port required under subparagraph (a), review and,
12 to the extent practicable, revise the limited access
13 privilege program to be consistent with the rec-
14 ommendations of the report or any subsequent stat-
15 utory or regulatory requirements designed to imple-
16 ment the recommendations of the report.

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

22 (5) APPLICABLE COUNCIL.—In this subsection,
23 the term “applicable Council” means—

24 (A) the Gulf of Mexico Fishery Manage-
25 ment Council;

1 (B) the South Atlantic Fishery Manage-
2 ment Council; or

3 (C) the Mid-Atlantic Fishery Management
4 Council.

5 **SEC. 104. REBUILDING OVERFISHED FISHERIES.**

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

7 (1) in paragraph (4), by amending subpara-
8 graph (A)(ii) to read as follows:

9 “(ii) not exceed the shortest time possi-
10 ble within which the stock of fish would
11 be rebuilt without fishing occurring, plus
12 one mean generation, unless management
13 measures under international agreement in
14 which the United States participates dic-
15 tate otherwise;” and

16 (2) in paragraph (7)—

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

19 (B) by striking “(7) The Secretary” and
20 inserting the following:

21 “(7)(A) The Secretary”;

22 (C) by striking “If the Secretary” and in-
23 sserting the following:

24 “(B) If the Secretary”;

1 (D) in subparagraph (A), as so redesign-
2 nated, by striking “two years” and inserting the
3 following: “2 years. The Secretary shall find
4 that adequate progress toward ending over-
5 fishing and rebuilding affected fish stocks has
6 not resulted if—

7 “(i) the status of the stock is not improv-
8 ing, such that it becomes unlikely that the stock
9 will be rebuilt within the rebuilding time period;

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

14 “(iii) the rebuilding expectations are sig-
15 nificantly changed due to new information
16 about the status of the stock, and the new in-
17 formation indicates that less progress than ex-
18 pected has been made toward rebuilding the
19 stock; or

20 “(iv) for other reasons, as appropriate.”;
21 and

22 (E) by adding at the end the following:

23 “(C) A Council shall not adopt, and the Sec-
24 retary shall not approve, a fishery management plan,
25 plan amendment, or proposed regulation required

1 under this subsection for any fishery that has pre-
2 viously been under such a plan that did not rebuild
3 such fishery to the biomass necessary to achieve
4 maximum sustainable yield, as determined by the
5 Council's scientific and statistical committee, unless
6 the new plan, amendment, or proposed regulation
7 has at least a 75 percent chance of rebuilding the
8 fishery within the time limit proposed by the Coun-
9 cil, as calculated by the Council's scientific and sta-
10 tistical committee pursuant to section
11 302(g)(1)(B).”.

12 **SEC. 105. AUTHORIZATION FOR MULTISPECIES COMPLEXES**
13 **AND MULTIYEAR CATCH LIMITS.**

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

16 “(m) AUTHORIZATION FOR MULTISPECIES COM-
17 PLEXES AND MULTIYEAR CATCH LIMITS.—For purposes
18 of subsection (h)(6), a Council may establish—

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

20 or

21 “(2) annual catch limits for each year in any
22 continuous period that is not more than 3 years in
23 duration.”.

1 **SEC. 106. EXEMPTED FISHING PERMITS.**

2 (a) OBJECTIONS.—If the Fishery Management Coun-
3 cil, the Interstate Marine Fisheries Commission, or the
4 fish and wildlife agency of an affected State objects to the
5 approval and issuance of an exempted fishing permit
6 under section 600.745 of title 50, Code of Federal Regula-
7 tions, or any successor regulation, the Regional Adminis-
8 trator of the National Marine Fisheries Service who issued
9 such exempted fishing permit shall respond to such entity
10 in writing detailing why such exempted fishing permit was
11 issued.

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

22 (c) SAVINGS PROVISION.—Nothing in this section
23 may be construed to affect an exempted fishing permit ap-
24 proved under section 600.745 of title 50, Code of Federal
25 Regulations, before the date of enactment of this Act.

1 **TITLE II—RECREATION FISHERY**
2 **INFORMATION, RESEARCH,**
3 **AND DEVELOPMENT**

4 **SEC. 201. COOPERATIVE DATA COLLECTION.**

5 (a) IMPROVING DATA COLLECTION AND ANALYSIS.—

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

8 “(e) IMPROVING DATA COLLECTION AND ANAL-
9 YSIS.—

10 “(1) IN GENERAL.—Not later than 1 year after
11 the date of enactment of the Modernizing Rec-
12 reational Fisheries Management Act of 2017, the
13 Secretary shall develop, in consultation with the
14 science and statistical committees of the Councils es-
15 tablished under section 302(g) and the Marine Fish-
16 eries Commissions, and submit to the Committee on
17 Commerce, Science, and Transportation of the Sen-
18 ate and the Committee on Natural Resources of the
19 House of Representatives a report on facilitating
20 greater incorporation of data, analysis, stock assess-
21 ments, and surveys from State agencies and non-
22 governmental sources described in paragraph (2), to
23 the extent such information is consistent with sec-
24 tion 301(a)(2), into fisheries management decisions.

1 “(2) CONTENT.—In developing the report
2 under paragraph (1), the Secretary shall—

3 “(A) identify types of data and analysis,
4 especially concerning recreational fishing, that
5 can be used for purposes of this Act as the
6 basis for establishing conservation and manage-
7 ment measures as required by section
8 303(a)(1), including setting standards for the
9 collection and use of that data and analysis in
10 stock assessments and surveys and for other
11 purposes;

12 “(B) provide specific recommendations for
13 collecting data and performing analyses identi-
14 fied as necessary to reduce uncertainty in and
15 improve the accuracy of future stock assess-
16 ments, including whether such data and anal-
17 ysis could be provided by nongovernmental
18 sources; and

19 “(C) consider the extent to which the ac-
20 ceptance and use of data and analyses identi-
21 fied in the report in fishery management deci-
22 sions is practicable and compatible with the re-
23 quirements of section 301(a)(2).”.

24 (b) NAS REPORT RECOMMENDATIONS.—The Sec-
25 retary of Commerce shall take into consideration and, to

1 the extent feasible, implement the recommendations of the
2 National Academy of Sciences in the report entitled “Re-
3 view of the Marine Recreational Information Program
4 (2017)”, and shall submit, every 2 years following the date
5 of enactment of this Act, a report to the appropriate com-
6 mittees of Congress detailing progress made implementing
7 those recommendations. Recommendations considered
8 shall include—

9 (1) prioritizing the evaluation of electronic data
10 collection, including smartphone applications, elec-
11 tronic diaries for prospective data collection, and an
12 internet website option for panel members or for the
13 public;

14 (2) evaluating whether the design of the Marine
15 Recreational Information Program for the purposes
16 of stock assessment and the determination of stock
17 management reference points is compatible with the
18 needs of in-season management of annual catch lim-
19 its; and

20 (3) if the Marine Recreational Information Pro-
21 gram is incompatible with the needs of in-season
22 management of annual catch limits, determining an
23 alternative method for in-season management.

24 **SEC. 202. RECREATIONAL DATA COLLECTION.**

25 Section 401 (16 U.S.C. 1881) is amended—

1 (1) in subsection (g)—

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

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

6 “(4) FEDERAL-STATE PARTNERSHIPS.—

7 “(A) ESTABLISHMENT.—The Secretary
8 shall establish a partnership with a State to de-
9 velop best practices for implementing the State
10 program established under paragraph (2).

11 “(B) GUIDANCE.—The Secretary shall de-
12 velop guidance, in cooperation with the States,
13 that details best practices for administering
14 State programs pursuant to paragraph (2), and
15 provide such guidance to the States.

16 “(C) BIENNIAL REPORT.—The Secretary
17 shall submit to the appropriate committees of
18 Congress and publish biennial reports that in-
19 clude—

20 “(i) the estimated accuracy of—

21 “(I) the information provided
22 under subparagraphs (A) and (B) of
23 paragraph (1) for each registry pro-
24 gram established under that para-
25 graph; and

1 “(II) the information from each
2 State program that is used to assist
3 in completing surveys or evaluating
4 effects of conservation and manage-
5 ment measures under paragraph (2);

6 “(ii) priorities for improving rec-
7 reational fishing data collection; and

8 “(iii) an explanation of any use of in-
9 formation collected by such State programs
10 and by the Secretary.

11 “(D) STATES GRANT PROGRAM.—The Sec-
12 retary may make grants to States to improve
13 implementation of State programs consistent
14 with this subsection. The Secretary shall
15 prioritize such grants based on the ability of the
16 grant to improve the quality and accuracy of
17 such programs.”; and

18 (2) by adding at the end the following:

19 “(h) ACTION BY SECRETARY.—The Secretary shall—

20 “(1) within 90 days after the date of the enact-
21 ment of the Modernizing Recreational Fisheries
22 Management Act of 2018, enter into an agreement
23 with the National Academy of Sciences to evaluate,
24 in the form of a report—

1 “(A) how the design of the Marine Rec-
2 reational Information Program, for the pur-
3 poses of stock assessment and the determina-
4 tion of stock management reference points, can
5 be improved to better meet the needs of in-sea-
6 son management of annual catch limits under
7 section 303(a)(15); and

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

14 “(2) within 6 months after receiving the report
15 under paragraph (1), submit to Congress rec-
16 ommendations regarding—

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

22 “(B) alternative management approaches
23 that could be applied to recreational fisheries
24 for which the Marine Recreational Information
25 Program is not meeting the needs of in-season

1 management of annual catch limits, consistent
2 with other requirements of this Act, until such
3 time as the changes in subparagraph (A) are
4 implemented.”.

5 **TITLE III—RULE OF**
6 **CONSTRUCTION**

7 **SEC. 301. RULE OF CONSTRUCTION.**

8 Nothing in this Act shall be construed as modifying
9 the requirements of sections 301(a), 302(h)(6), or
10 303(a)(15) of the Magnuson-Stevens Fishery Conserva-
11 tion and Management Act (16 U.S.C. 1851(a);
12 1852(h)(6); 1853(a)(15)).