

**S. 39, HEARING ON THE REAUTHORIZATION OF  
THE MAGNUSON FISHERY CONSERVATION AND  
MANAGEMENT ACT**

Y 4. C 73/7: S. HRG. 104-228

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**HEARING**  
BEFORE THE  
SUBCOMMITTEE ON OCEANS AND FISHERIES  
OF THE  
COMMITTEE ON COMMERCE,  
SCIENCE, AND TRANSPORTATION  
UNITED STATES SENATE  
ONE HUNDRED FOURTH CONGRESS  
FIRST SESSION

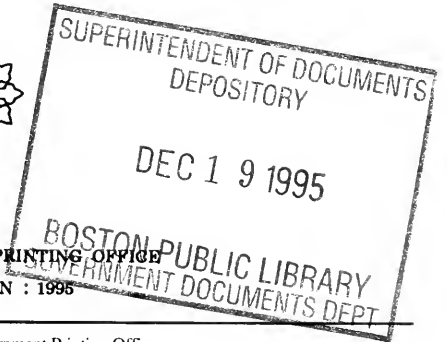
MAY 13, 1995  
NEW ORLEANS, LOUISIANA

Printed for the use of the Committee on Commerce, Science, and Transportation



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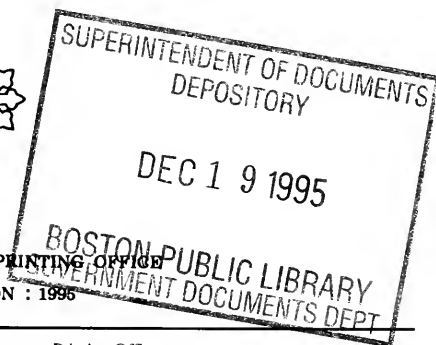
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# HEARING ON THE REAUTHORIZATION OF THE MAGNUSON FISHERY CONSERVATION AND MANAGEMENT ACT

SATURDAY, MAY 13, 1995

U.S. SENATE,  
SUBCOMMITTEE ON OCEANS AND FISHERIES  
Committee on Commerce, Science, and Transportation,  
*New Orleans, Louisiana*

The subcommittee met, pursuant to notice, at 9 a.m. in Courtroom C-501 of the U.S. Court House, 500 Camp Street, New Orleans, Louisiana. The Honorable Ted Stevens (chairman of the subcommittee) presiding.

Staff members assigned to this hearing: Thomas O. Melius, professional staff member, and John Trevor McCabe, professional staff member; and Penelope D. Dalton, minority senior professional staff member, and Lila H. Helms, minority professional staff member.

## OPENING STATEMENT OF SENATOR STEVENS

Senator STEVENS. Let me call this hearing to order and thank Senator Breaux for his hospitality here. We welcome all the witnesses and people in the audience, and I appreciate the fact that we are continuing to have the hearing despite the recent heavy flooding.

This is the fifth of six field hearings we are holding on the Magnuson Act reauthorization. We have been in Boston, Maine, Seattle and Alaska; we will finish these field hearings in South Carolina on June 17.

We have tried to work with fisheries issues in the Senate for many, many years on a bipartisan basis, and I am pleased to say that continues now. The only real change in the Senate has been the creation of our new subcommittee—this is the new Oceans and Fisheries Subcommittee—now to try to let us sharpen our focus on the issues that we have before us.

I have been pleased to work with Senator Breaux closely in the past, and I am very pleased that we continue to work on this new subcommittee.

We had hoped that Senator Lott would be here with us today, but he could not because of a conflict in his schedule. Some of the witnesses that he wanted us to hear will be here, and we will take statements for the record from the balance of them.

In preparing for this hearing, I noted that all of the nation's top fishing ports in terms of volume are in Alaska, Mississippi or Louisiana. Those are the most recent statistics from the National Ma-

rine Fisheries Service. Louisiana had five of those top fishing ports; Alaska, four; and Mississippi, one.

The fishery conservation problems that we have in our regions are most interesting, but they are not the difficult ones that have occurred in other parts of the country, such as in New England. In Alaska, we have them, however, and I know you, too, have some conservation problems that must be addressed to ensure that we do not end up like New England and other parts of the country.

The primary purpose of the hearing today is to receive suggestions on S. 39. That bill was introduced in January, and we hope it will provide the necessary improvements to the Magnuson Act to ensure our fisheries are available for generations to come.

Someone asked me last night how we happened to call this the Magnuson Act. Well, after the bill had passed, in the next Congress, I felt that the commitment Senator Magnuson made to assure the passage of the bill was so great that I asked that the Congress name the bill after Senator Magnuson. And that was the unanimous position of both the House and the Senate.

We call the proposed amendments before us the Sustainable Fisheries Act, and it is intended to reauthorize the Magnuson Act through 1999.

I hope that witnesses have been provided with copies of S. 39 and, also, statements that were made by me and by Senator Kerry of Massachusetts at the time the bill was introduced to summarize the intent of the bill. Additional copies of the bill and statements are available at the back of the room; I will not repeat that summary now.

We have incorporated some of the provisions that Senator Breaux proposed last year, including a provision to address conflict of interest concerns on fishery management councils.

And before S. 39 is presented to the full Committee, we have committed to work together—Senator Breaux, Senator Lott and I—to ensure that the concerns of the Gulf region are addressed in this legislation.

I consider S. 39 to be a work in progress, and we have not reached final conclusions on it yet; the suggestions you make today will help in the final preparation of this legislation and, hopefully, help it be approved by the full Committee. We are particularly interested in your thoughts on bycatch and the provisions in S. 39 related to bycatch; this is an important issue for people of this region, as it is in the waters off Alaska.

It is my hope that we will have this bill before the full Commerce Committee no later than July and it will be before the full Senate by the August recess.

We would ask you to understand today that we do have some time lights in the interest of time. At the end of the testimony, we will ask questions about your testimony and, if time permits, give interested members of the audience a chance to make comments. In order to keep that time for people who are in the audience who have not been scheduled to testify, we ask that you note the lights and, when the red light goes on, wind up your testimony as quickly as possible.

This record will remain open for 10 days. We will receive written testimony from anyone who wants to submit it to the Committee.



And the Committee staff will make the determination whether any attachments to written testimony will be printed in the permanent record.

Now let me call on my good friend and again thank him for his hospitality, particularly the hospitality last night. Again, I enjoyed being in that delightful New Orleans restaurant.

#### STATEMENT OF SENATOR JOHN B. BREAUX

Senator BREAUX. Thank you, very much, Mr. Chairman. I am delighted to welcome you to Louisiana.

This is a series of hearings that you have undertaken, with a great deal of time and effort put into it. You are not just sitting in Washington and listening to statements and testimony from the Washington perspective, but trying to get out into the field, Mr. Chairman, and into the regions that are directly affected by the Magnuson Act. Today we will hear from the people in the field and give them a chance to know that their Government is listening to their suggestions—and we will try and incorporate those suggestions when we can to produce a better Federal program managing what is one of the most important natural resources of this country, and that is American marine fishery resources.

I have been dealing with this issue and fisheries for almost 23 years as a member of Congress. I was deeply involved in the beginning, when these efforts were initiated to try and properly manage and conserve and utilize to the maximum extent possible the fishery resources of our country, throughout the United States.

I think that the concept of management plans is good, but that is not to say that they cannot be improved and that the way we do business cannot be made more effective. There is always room for improvement. But one of the things, Mr. Chairman, that I have noticed over the years is that fish are neither Republicans nor Democrats; fish are fish and, when they are taken, they are taken, and they do not care who takes them, either.

In the past we have always worked together in a bipartisan spirit, and we are going to continue that in this Committee. I think the Senate Commerce Committee has always been noted over the years for being bipartisan as we approach problems and concerns of fishery management.

Were it not for Louisiana and Alaska, there may not be much activity out there when it comes to fish because our regions clearly are the largest in terms of producing the volume and value of the fish that we harvest. And the problems are not necessarily unique to one part of the country; they are pretty much the same type of problems all over the United States. I think fishermen are pretty much the same as well. They are individuals trying to make a living or enjoying the resource as a recreational activity.

There are fishery conflicts all over the world, and our job is to try and make sure we have the best possible management system. We have seen what happens when we do not. The New England fisheries today are in very serious condition because of inadequate, improper attention. For those who think that we should just get out of the business of managing our resource, I would suggest that they look to see what happens when inadequate management occurs. The resource is destroyed, and that is totally unacceptable.

So, Mr. Chairman, thank you so very much for the time and effort. You have been in this business a very long time, as I have been, and you know these issues. The people in this state and around the country respect your efforts. And we thank you for being in New Orleans.

Senator STEVENS. Thank you, very much.

We have an hour scheduled for the first panel. Let's get started.

Rollie Schmitt, Assistant Administrator of Fisheries for the National Marine Fisheries Service, will be our first witness.

[Prepared Statement of Senator BreauX follows:]

#### PREPARED STATEMENT OF SENATOR BREAUX

Thank you Mr. Chairman for your consideration in holding this hearing in New Orleans.

There are many difficult fishery issues facing the Gulf today and we appreciate your attention to these critical issues as we move forward with the reauthorization of the Magnuson Act.

Fisheries have long played an incredibly important role in the coastal communities of the Gulf region and are among the most valuable in this nation. Four of this country's top ten fishing ports are located in my state of Louisiana alone.

There are a number of key national fishery issues contained in your bill—S.39—which are of critical concern to the Gulf region. Issues of bycatch management, overfishing, habitat, Council reform and increasing the role of science in fishery management and allocation decisions, are certainly key national issues. But, I expect these issues will receive a great deal of attention from today's witnesses who are here to provide the Gulf perspective.

As you know, the problems of bycatch in the Gulf are particularly acute. We have been working and making progress in this area for many years in the Gulf shrimp fishery and I want to ensure that we foster rather than hurt these efforts with our legislation.

A progressive national bycatch policy is something I think this nation needs and our industry supports. But, specific bycatch issues are as diverse as America's fisheries themselves. I want to ensure that each region, including the Gulf, maintains in this legislation the discretion and flexibility to solve these problems on the regional level—a concept at the very heart of the Magnuson Act.

I know the industry is sincere in its desire and efforts to achieve practical and effective solutions to bycatch problems and I want to work with them. I do not want to micro-manage these solutions from Washington.

Another issue of particular interest to me has been to increase the role of science in fishery management decisions. Determinations of the allowable catch in any fishery should be objective decisions based solely on science, not Council politics. Once a firm scientific determination of the allowable biological catch has been made, it is then appropriate for the Councils to decide how best to distribute the catch among the various fishing interests.

No one wants to have the tragic New England experience repeated in any other region, and I believe a stronger reliance on scientific determinations of allowable catch is the key.

I sincerely thank the Chairman for his personal attention to these matters and for his efforts to understand and appreciate the diverse fishery interests here in the Gulf and across the nation.

Mr. Chairman, I would again like to express my appreciation to you and the Committee for holding this hearing in New Orleans. I would also like to thank all of our witnesses for their excellent testimony, and the time and effort it took them to travel here from all across the Gulf region in order to provide us with a Gulf-wide perspective on these important issues. Their testimony has certainly provided us with a vast array of valuable input concerning Gulf-wide fishery issues which I can assure them will be important in our further consideration of this legislation.

I would like to assure you, Mr. Chairman, that based on the input we have received at this hearing, as well as at other hearings, we will attempt to provide you with some specific, constructive recommendations for improving S. 39 as soon as possible. I share your concern for the need to reauthorize the Magnuson Act during this Session and commit my efforts to accomplish this goal.

**STATEMENT OF ROLLAND A. SCHMITTEN, ASSISTANT ADMINISTRATOR FOR FISHERIES, NATIONAL MARINE FISHERIES SERVICE**

Mr. SCHMITTEN. Good morning, Mr. Chairman and Senator Breaux. I am Rollie Schmitt, the Assistant Administrator of Fisheries. I should indicate that I also have with me Dr. Andrew Kemmerer, the Southeast Regional Director.

It is both an honor and a pleasure to be here in the beautiful, albeit somewhat damp, of Louisiana, and that is to discuss the most significant legislation affecting the management of our living marine resources, and that is the reauthorization of the Magnuson Fisheries Conservation and Management Act.

I should just footnote the rest of the story that Senator Stevens was mentioning about the title of this act. Actually, initially, it was Senator Stevens' bill. And later in the House, it was also Mr. Studds' and Mr. Breaux's bill. And that was quite a compliment to Senator Magnuson to concur the title to Mr. Magnuson.

Senator BREAUX. In the House, it was Mr. Breaux's and Mr. Studds' bill.

Mr. SCHMITTEN. Oh. I have even learned more history.

I have submitted my prepared comments to the Committee. But in deference to the many very important speakers, I would like to just summarize my prepared text.

And let me start by saying, "Never again." Never again shall we allow mismanagement to contribute to the collapse of the significant fisheries in our nation as we have seen in New England. And, certainly, there is enough fault to go around—the states or the councils or the fishermen—but I also blame the Federal managers for failing to take the necessary steps to prevent the disaster that has affected tens of thousands of fisheries families and fishermen.

But I think our focus should not be on blame but how to avoid similar situations. For me, "Never again" is the theme and the significance of the reauthorization of the Magnuson Act.

Just a note or two on our approach—or my approach to managing the Service. Certainly, protecting marine resources are paramount. But at the same time, we seem to have lost sight that we are a public agency, that we have an obligation to serve our constituents. And I like to say that I am endeavoring to put "Service" back into National Marine Fisheries Service.

When it comes to the management of marine resources, we have to admit that the Federal agencies do not know everything, and our scientific answers and our management decisions will be made all the stronger by collaborating with industry, academic, state and conservation communities, and also, that we can be wrong, in which cases, we need to admit it, and we need to make the necessary change and get on with the management.

And a recent example of that is: Based on industry input, we have modified the trawnets part of the rule for the Emergency Response Plan for shrimpers in parts of the Gulf of Mexico.

I would like to highlight the administration's—and note the administration's support for S. 39 and, in a few cases, suggest some modest modification. Most importantly, we enthusiastically support measures that will result in the termination or prevention of overfishing. Requiring action by a regional fisheries management

council within 1 year of notification that that fishery is in overfish condition is a significant step.

Inclusions of provisions for preventing overfishing and rebuilding programs that emphasize maintaining stocks at or restoring stocks to their maximum sustainable yield on a continuing basis are absolutely critical to ensuring a long-term productivity of fisheries resources. No more New Englands.

We cannot afford to continue the current practices of permitting the Magnuson Act, by which stocks are legally allowed to be fished down to or managed at the point of which overfishing occurs. We can do better, and the Nation deserves better.

Also, we strongly support the provisions in your bill that deal with bycatch. This is a very serious threat to achieving full benefits from our living marine resources. Large bycatches of unutilized or undersized and nontargeted species have significantly reduced the populations of many of our marine fish stocks. Emphasis on bycatch through a mandatory requirement for FMPs to contain information on bycatch is well taken, and certainly essential, in our view.

In addition to the provisions of S. 39, we recommend that a new national standard be included to require all fisheries management plans to minimize bycatch. And this would ensure that the councils must take bycatch into account when developing or modifying the FMPs.

And I would provide a footnote that our Agency is currently sponsoring seven bycatch workshops around the nation, in which we are asking the constituents to help us form a national bycatch plan.

The Agency also strongly supports the concept of identifying essential fish habitat and providing for improved consultations with other agencies. Regulatory measures alone simply will not restore our fisheries; measures to increase protection of fish habitat will provide long-term foundations necessary to sustain viable commercial and recreational fishing industries. Any progress that we make in addressing the issue of overfishing and rebuilding depleted will be certainly short-lived if we do not do something to assure adequate fish habitat.

And, given the importance of this issue, we are very pleased to note that the conservation community and the fishing industry representatives have been working with us toward enhancing habitat conservation as a part of reauthorization. And we support these efforts.

We also support the inclusion of user fees with the individual harvest share programs in S. 39. And the establishment of a fee on the value of the fish allocated under these individual harvest shares would recover costs associated with this specific form of management.

And, since the benefits accrue directly to the holders of ITQs, to the exclusion often of others, it is equitable to fund these measures from fees paid by the beneficiaries of the programs, rather than from the general receipts of all taxpayers. And we suggest that such funds be used for programs important to and directly benefiting the fishing industry, not to go into the general fund.

We in general support the concept of transitioning to sustainable fisheries and to fisheries disaster relief contained in S. 39. We simply need to work closely with the staff to better understand those elements, but the essence of those elements, we support.

While we understand and concur with the tenets that our councils be made up of knowledgeable and interested members, we do support the inclusion of provisions that would address the appearance or possibility of conflict of interest on our regional management councils. While the provisions in S. 39 are a major step in the right direction, we would certainly like to work with the Committee to develop some language to even strengthen those provisions.

We strongly encourage the inclusion of a nationwide data collection program similar to the one that we had proposed in last year's Administration bill. And the purpose there—and I do not think we have well defined it for our fishing community—is to gather data in a consistent form and manner across the Nation to provide the underpinnings for the various analyses that we do that the Magnuson Act and other acts require.

It is important to note that our intent of such a program is not to increase but actually to decrease the reporting burden on our fishermen. And we would like to simplify and reduce it: for example, to standardize and reduce the number of log books that fishermen now carry. At times, our fisheries require three to five log books; we would like to see one. We would like to see one that could be used coast wide.

We would like to see the ability of the councils to talk to the states, to talk to the Federal Government, all with the same data base. That is our goal.

Well, Mr. Chairman and Senator Breaux, it is a pleasure to be here, and it is an honor that you are holding these hearings around the nation. These comments conclude my testimony. And we very much support S. 39. We look forward to working with you, your staffs, and I would be happy to answer any questions that you might have.

[The prepared statement of Mr. Schmitten follows:]

TESTIMONY OF  
ROLLAND A. SCMITTEN  
ASSISTANT ADMINISTRATOR FOR FISHERIES  
NATIONAL MARINE FISHERIES SERVICE  
NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION  
U.S. DEPARTMENT OF COMMERCE

BEFORE THE

SUBCOMMITTEE ON OCEANS AND FISHERIES  
COMMITTEE ON COMMERCE, SCIENCE AND TRANSPORTATION  
U.S. SENATE

FIELD HEARING  
NEW ORLEANS, LOUISIANA  
MAY 13, 1995

Mr. Chairman and members of the Subcommittee: I am Rollie Schmitt, the Assistant Administrator for Fisheries of the National Oceanic and Atmospheric Administration's National Marine Fisheries Service (NMFS). I appreciate the opportunity to present the views of the Department of Commerce (Department) on reauthorization of the Magnuson Fishery Conservation and Management Act (Magnuson Act) and S. 39, the Sustainable Fisheries Act.

Mr. Chairman, I would like to compliment you and Senator Kerry for introducing this legislation. S. 39 includes major steps necessary in our efforts to build sustainable fisheries and to help ensure that there will be no more fishery resource disasters in the future such as New England groundfish. What has occurred in New England with severe reductions in important groundfish species and sea scallops is creating profound economic hardships for many fishermen that must not be repeated here in the Gulf or

anywhere else. The Senate bill contains amendments to the Magnuson Act that will improve the stewardship of our Nation's marine resources.

NOAA believes that we must forge strong, even ironclad, stewardship principles for inclusion in the Magnuson Act to ensure we not only avoid future disasters but also reap the maximum benefits, consistent with conservation of the resource, from the fisheries for the Nation. By wisely managing fishery resources for the greatest long-term benefits possible, we will increase the Nation's wealth and, in turn, the quality of life for members of the recreational and commercial fishing industries and dependent communities. Additional benefits of increased jobs, increased economic activity and greater supplies of safe, wholesome seafood will also be realized.

It is our belief that NOAA should seek to achieve the goal of effective fisheries management by concentrating on two areas: (1) refocusing on developing more and better scientific information to guide policy development and fishery management policies and planning, rather than letting controversy and uncertainty drive decision-making, and (2) undertaking an aggressive approach to stewardship of our trustee resources to rebuild overfished stocks and maintain them at maximum sustainable levels, thereby avoiding the enormous economic and social consequences that accompany attempts to repair damage to

resources after it occurs. This means being conservative in the management of fisheries today to assure sustainable levels of harvests in the future. It also means the use of management approaches that discourage both wasteful fishing practices and investment in more fishing vessels than are needed to harvest the available fish.

In the first area of developing better scientific information, I am pleased to report that we have forwarded to Congress our Report on the Cooperative Research Program Addressing Finfish Bycatch in the Gulf of Mexico and South Atlantic Shrimp Fisheries. As you know, Congress, through the Magnuson Act, directed the Secretary of Commerce to conduct a research program assessing the impact of the incidental harvest by the shrimp trawl fishery on fishery resources within the authority of the South Atlantic and Gulf Councils and to establish a program to design and evaluate technological approaches to reduce the mortality of these incidentally harvested fishery resources. NMFS conducted this research and development program in cooperation with the Councils, coastal states, commercial and recreational fishing industries, and the conservation and academic communities. February 1995 marked the end of the third year of the program and our report, summarizing the progress and future plans, was submitted in April.



We have improved, and will continue to improve, our scientific data collection activities, resource surveys, biological studies, analyses and modeling of fish stocks, and advanced fishery predictions. Our proposed Fiscal Year 1996 budget includes an increase of more than \$23 million for data collection programs, making them a top priority.

Progress in the second area - our approach to stewardship and the rebuilding of overfished and depleted stocks - is equally critical and will require amendment of the Magnuson Act, coupled with a refocusing of in-house efforts, to achieve our goal of sustainable fisheries. I believe that many of the provisions in S. 39 are major steps in the effort to ensure effective stewardship. Foremost, we support strong attention to conservation issues. We enthusiastically support measures that will result in the termination or prevention of overfishing. Requiring action by a Regional Fishery Management Council within one year of notification that a fishery is in an overfished condition is a significant measure. Inclusion of provisions for preventing overfishing and rebuilding programs that emphasize maintaining stocks at, or restoring stocks to, their maximum sustainable yield on a continuing basis is critical to ensuring the long-term productivity of fishery resources. We cannot afford to continue the current practices permitted under the Magnuson Act, by which stocks are legally allowed to be fished

down to, and managed at, the point that overfishing occurs. We can do better. The Nation deserves better.

The Department supports strongly the concepts of identifying essential fish habitat and providing for improved consultations with other agencies. Regulatory measures alone will not restore our fisheries. Measures to identify and protect essential fish habitats will provide the long-term foundation necessary to sustain viable commercial and recreational fishing industries. Any progress we make in addressing the issues of overfishing and rebuilding depleted stocks will be short-lived if we do not ensure adequate fish habitat. Given the importance of this issue, we are pleased to note that conservation community and fishing industry representatives have been working together with NMFS towards enhancing habitat conservation as part of this reauthorization. We support these efforts.

We also support the provisions in the bill that deal with bycatch. Much like habitat degradation, this is a very serious threat to achieving full benefits from our living marine resources. Large bycatches of undersized and non-target species have significantly reduced the populations of many of our marine fish stocks and other marine organisms. Emphasis on bycatch through a mandatory requirement for FMPs to contain information on bycatch is well taken and essential in our view. In addition to the provisions of S. 39, we recommend that a new National

Standard be included to require all fishery management plans to minimize bycatch.

In addition to these amendments, we need to, and will, seek innovative ways to reduce bycatch. However, measures such as incentives and harvest preferences must be designed carefully to prevent "due process" problems. For example, we do not believe that such programs could prohibit some fishermen from receiving allocations of, or access to, fish stocks because of their individual bycatch levels without also providing for some sort of administrative hearing in advance of an agency decision.

While the Department supports many of the provisions in S. 39, it is opposed to section 107(h) that prohibits the Secretary from issuing permits to authorize the catching or harvesting of Atlantic mackerel or herring by foreign vessels before December 1, 1999. The provision may prevent establishment of joint ventures between the U.S. fishermen and other countries for these species, is likely to affect negatively our Governing International Fisheries Agreement (GIFA) relationships, and may affect current fishing agreements between the U.S. and other countries regarding U.S. fishing in foreign waters.

NOAA supports the concepts contained in S. 39 of transitioning to sustainable fisheries and fisheries disaster relief. These are

complex issues but we are prepared to work with the Committee to develop meaningful and lasting solutions.

NOAA strongly supports the inclusion of user fees associated with individual harvest share programs as provided for in S. 39. Establishment of an annual fee on the value of fish allocated under individual harvest share programs, such as individual transferable quota programs (ITQ), would recover costs associated with this specific form of management. Effective implementation of ITQ programs requires additional strict enforcement and other measures to ensure that the recipients of ITQs receive the benefits that are expected to accrue from such programs. Since such benefits will accrue directly to the holders of ITQs, to the exclusion of others, it is more equitable to fund such measures from fees paid by the beneficiaries of the program rather than from the general receipts of the Treasury to which all taxpayers contribute. Costs associated with administering ITQs are substantial -- \$3.5 million per year are estimated for the Alaska halibut-sablefish program alone -- and should not be borne solely by appropriated funds.

As part of its Fiscal Year 1996 budget request, the Department is asking for authority to collect a fee on the value of the fish authorized to be harvested under ITQ programs, similar to that in S. 39. We estimate that such a user fee would generate approximately \$10 million starting in Fiscal Year 1996. It is

important that these fees be dedicated to the management and conservation of marine fisheries, with a large portion of the funds going back to the region from which they were derived. Specifically, the Department suggests that such funds be used for programs important to, and directly benefiting, the fishing industry, including: collecting, processing, and analyzing scientific, social, and economic information; placing observers onboard domestic vessels; improving enforcement; and educating resource users.

The Department supports inclusion of strong provisions that would address the appearance or possibility of a conflict of interest on the regional councils. While the provision in S. 39 is a step in the right direction, we would like to work with the Committee to develop appropriate language to strengthen this provision.

We urge the inclusion of a nationwide data collection program similar to that proposed in last year's Administration bill, in addition to the provision for a commercial fishing vessel registration system contained in the bill. Current authority is limited to the voluntary submission of data to individual fishery management plan recordkeeping and reporting provisions, or to individual fishery data collection programs in advance of a plan. To improve the management of marine fisheries, there is a strong need to gather data in a consistent form and manner across the Nation to provide an underpinning for the various analyses of

impacts that the Magnuson Act and other applicable laws require. The intent with such a program is not to increase the reporting burden on fishermen; rather, it is to simplify and reduce it. One significant benefit of a nationwide program to fishermen would be to prevent requirements for various logbooks that are often redundant, complex, and duplicative of the same data in different formats. This would allow the Secretary to integrate the current data collection programs of NMFS, other Federal agencies, the states, and the fisheries commissions into a comprehensive and consistent nationwide data collection and management system.

Thank you, Mr. Chairman. This concludes my testimony. We support the reauthorization of the Magnuson Act, and we look forward to working with you and the Committee in crafting meaningful improvements to S. 39. I will be happy to answer any questions you or the other members of the Subcommittee may have.

Senator STEVENS. Thank you, very much.

Our next witness is Captain Bennett Newlin, Chief of Staff of the United States Coast Guard for this district. Captain?

**STATEMENT OF CAPTAIN C. BENNETT NEWLIN, CHIEF OF STAFF, EIGHTH DISTRICT, UNITED STATES COAST GUARD**

Captain Newlin: Good morning, Mr. Chairman, Senator Breaux. Thank you for the opportunity to represent the Coast Guard and the Eighth Coast Guard District here today. I have with me Lieutenant Commander Mark Johnson, the head of our fisheries section, and Captain Bob Powers, our chief of our operations.

I would like to summarize my remarks and ask that the printed statement that I have been included as part of the record.

Senator STEVENS. Captain, all statements of all the witnesses will be printed in the record.

Captain Newlin: Yes, sir.

Mr. Chairman, the Eighth Coast Guard District starts out with the Florida Panhandle and works its way all the way over to the Mexican border, and we have 125,000 square miles of fishing grounds that are fished by over 10,000 offshore fishing vessels. And besides that, of course, we have a vast petrochemical and shipping industry that we interface with here.

We are one of the busiest places in the Coast Guard for search and rescue, aids to navigation and marine environmental protection. Last year, we responded to over 5,000 search-and-rescue cases and saved 515 lives.

As busy as we are in these programs, more of our cutter hours and our aircraft hours are dedicated to fisheries enforcement. And fisheries enforcement is not done at the expense of those other programs; actually, we get a bonus out of being out there, in the first place, so that we can give quick response to disasters and people in trouble on the water.

Last March, the cutter "Diligence" responded to three separate cases while on fishing patrol. These cases involved fishing vessels taking on water. So we do get an added advantage to that.

I would just like to mention, a new thing that we have gotten in the area is the Gulf Regional Fisheries Training Center, which—we have seven people who go around to our units and train our people in the everchanging aspects of the fisheries. And that has helped ensure our professionalism, and we think that is a big improvement.

Regarding the Magnuson Act, from a Coast Guard-enforcement perspective, it needs no significant changes or the S. 39. It contains all of the elements necessary for us to do the kind of enforcement that we have to do.

Regarding S. 39, I would like to make three points.

First: The reduction of bycatch and economic discards will require continued at-sea enforcement. The nature of the enforcement involved with this bill requires to continue to have a presence at sea. And I do emphasize the words "at sea;" it is not something that we can do from in port.

The second has to do with the council process. And we certainly think that the continued full participation of commercial and rec-

reational fishermen in the council process should be preserved, since compliance depends on the resource users.

One of the other things about the council process which is extremely valuable is, it fosters understanding by everybody of the problems at hand, and, maybe more important than that, also, it ensures buy-in with everybody's participation. So we certainly encourage that.

We take our role very seriously in the council process. Rear Admiral North, our District Commander, attends the meetings. And we all believe that we should retain a nonvoting status, that we should not be involved in resource allocation questions. However, we do advise on the realities of the at-sea enforcement issues, which we hope is—and we think is valuable.

Third, Mr. Chairman, reduced fishing stocks will increase the competition and put more stress on the fishing management system. And that is all the more reason for us to have a good law in place and for us to continue to work together.

In conclusion, Mr. Chairman, we of the Coast Guard remain committed to doing our part to ensure the safe and productive future of this very important industry. And I would be glad to answer any questions.

[The prepared statement of Captain Newlin follows:]



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DEPARTMENT OF TRANSPORTATION

U.S. COAST GUARD

STATEMENT OF CAPTAIN C. BENNETT NEWLIN

CHIEF OF STAFF, EIGHTH COAST GUARD DISTRICT

ON THE REAUTHORIZATION

OF THE MAGNUSON FISHERY CONSERVATION AND MANAGEMENT ACT

BEFORE THE

SUBCOMMITTEE ON OCEANS AND FISHERIES

COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

SATURDAY, MAY 13, 1995

NEW ORLEANS, LOUISIANA

## CAPTAIN C. BENNETT NEWLIN, USCG

## Chief of Staff, Eighth Guard District

Captain Newlin is representing the Eighth Coast Guard District Commander, Rear Admiral Robert C. North who oversees Coast Guard missions of search and rescue, law enforcement, commercial vessel certification and safety, and marine pollution response from St. Marks, Florida to the Mexican border. RADM North is also Commander, Maritime Defense Command Eight, with responsibility for the security of all Eighth District ports and harbors, and the corresponding coastline out to 200 nautical miles.

Captain C. Bennett Newlin was born in Greensboro, North Carolina in 1941. He holds a Bachelor's Degree in Languages from the University of North Carolina, and a Masters in Public Administration from George Washington University. He has served aboard Coast Guard Cutters CHINCOTEAGUE and MALLOW, and commanded Cutters SWEETGUM, UNIMAK, GALLATIN, and DALLAS. He is a graduate of the Armed Forces Staff College and the Industrial College of the Armed Forces. He has also served as a senior policy analyst and Assistant Deputy Director of the Office of National Drug Control Policy under the Honorable William Bennett and Governor Bob Martinez. He assumed duties as Chief of Operations, Eighth Coast Guard District in 1992 and became Chief of Staff of the Eighth District in April of 1993. Captain Newlin is married to the former Rose Bertucci of New Orleans. They have three grown children.

DEPARTMENT OF TRANSPORTATION  
U.S. COAST GUARD  
STATEMENT OF CAPTAIN C. BENNETT NEWLIN  
CHIEF OF STAFF, EIGHTH COAST GUARD DISTRICT  
ON THE REAUTHORIZATION OF THE  
MAGNUSON FISHERIES CONSERVATION AND MANAGEMENT ACT  
BEFORE THE  
SUBCOMMITTEE ON OCEANS AND FISHERIES  
COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION  
SATURDAY, MAY 13, 1995  
NEW ORLEANS, LOUISIANA

Good afternoon Mr. Chairman, members of the Subcommittee, it is a pleasure to appear before you today to represent the Eighth Coast Guard District. I appreciate the opportunity to report on the Coast Guard's enforcement of fisheries laws and our views regarding the reauthorization of the Magnuson Fishery Conservation and Management Act (MFCMA).

The Eighth Coast Guard District encompasses the waters from St. Marks, Florida to the Mexican border. The 125,000 square nautical miles of fishing grounds within the Eighth Coast Guard District are used by over 10,000 offshore fishing vessels. In addition, there is a vast petrochemical and shipping industry in the Gulf. Our aids to navigation responsibilities equal about 33 percent of the Coast Guard's total. Although Search and Rescue, and Marine Environmental Protection may be our most visible missions, more cutter and aircraft hours are dedicated to fisheries enforcement than any other mission in the Eighth District. On a daily basis, we have three coastal patrol boats underway on fisheries patrols, augmented during peak periods with a large Coast Guard cutter. These surface assets are further

complemented by aircraft and small boat patrols each day. So far, in fiscal year 1995, this equates to over 536 cutter patrol days, over 1191 flight hours, and over 6,578 small boat patrol hours. These same resources are involved in over 5,000 search and rescue cases, save 515 lives, and \$1.2 million in property annually. Coast Guard units already operating on the fishing grounds provided and early response to many of these search and rescue cases. For example, while on fisheries patrol this past March, the CGC DILIGENCE responded to three separate cases of commercial vessels taking on water offshore.

Fisheries management plans are increasing in both number and complexity as resource managers work to protect existing fish stocks. The Coast Guard established the Gulf Regional Fisheries Training Center at Coast Guard Support Center New Orleans to address that increased complexity as part of a Coast Guard wide initiative. Our facility is similar to those established at Kodiak, Alaska; Cape Cod, Massachusetts; Charleston, South Carolina; and Alameda, California which have received strong congressional interest and support. Today the school provides Coast Guard enforcement personnel with in-depth training in a variety of fisheries enforcement areas. Consequently, the level of education and training provided to our boarding teams has greatly improved, thereby allowing us to perform our duties more effectively. Today, I believe the Coast Guard's current amount of effort and presence is adequate to meet the region's needs.

The Coast Guard is trying to look ahead. As you know, in 1993 the Coast Guard published a comprehensive study of its living marine resource enforcement program. To give us an objective

look at how we were doing, the study was conducted by a diverse working group representing various stakeholders in fisheries harvesting, conservation, and management. This group included representatives from Federal and State fisheries enforcement agencies, regional fisheries management councils, industry, and National Oceanic and Atmospheric Administration (NOAA) General Counsel. They looked at how the Coast Guard was currently conducting the mission, changes and trends in fisheries and fisheries management, and how the Coast Guard should respond to these changes and trends. Based on this study, it is the Coast Guard's view that no significant changes are necessary with regard to the MFCMA. The MFCMA contains all elements necessary to authorize effective enforcement. While there are some issues regarding enforceability which need to be addressed, these are narrow in scope and are limited to particular elements of specific fishery management plans. These issues are best addressed through the management council process and do not warrant statutory changes. However, the Coast Guard would like to offer some ideas pertinent to the reauthorization bill.

(1) Efforts to reduce bycatch and economic discards as outlined in Senate Bill 39 (S. 39), will require continued at-sea enforcement by Coast Guard units. The principal means to prevent harvesting and mortality of undersized fish is through the use of selective fishing gear. We must monitor compliance with gear requirement measures on the fishing grounds. Similarly, enforcing rules on regulatory discards, i.e., prohibited species such as red drum, will require an at-sea presence. The Coast Guard has been doing this job for years and we are prepared to

continue to do it.

(2) Full participation by commercial and recreational fishermen in the council process should be preserved. The success of fisheries management measures depends largely upon the compliance of resource users. We see compliance as a function of industry support of the measures, as well as an effective law enforcement presence. While consensus on specific management measures for a particular fishery may be difficult to obtain, a regulation must have the support of resource users to be optimally effective. The fishing industry cannot be expected to fully comply with regulations they do not understand. Understanding is enhanced through participation in the regulatory process. Fishermen understand the need for and practicality of particular regulations. Affording them the opportunity to fully participate in the management process helps to ensure buy-in by resource users with a particular management measure.

The Eighth Coast Guard District takes its role in the council process very seriously. The District Commander personally attends council meetings on a regular basis. His designee on the Gulf of Mexico Fisheries Management Council is the Chief of the District's Fisheries Law Enforcement Section, Lieutenant Commander Mark Johnson. He is a very experienced officer who has previously commanded a patrol boat that spent a significant amount of time patrolling the fishing grounds of the southeastern Gulf. He understands enforcement measures and fisheries management. Later this year, we intend to schedule a familiarization visit to Coast Guard vessels for council members to better acquaint themselves with the resources used to enforce

management measures at sea.

Various interest groups have voiced a recommendation to have the Coast Guard designate a voting member of each of the regional fishery management councils. Today, not only are the councils concerned with developing plans to conserve and manage our fisheries resources, they are increasingly involved in allocating limited fishery resources among competing commercial and recreational user groups. The Coast Guard needs to remain neutral to allocation issues and to specific conservation and economic objectives. Our role, rather, is to aid fisheries managers in choosing among various management alternatives by providing them expert advice on the operational realities of at-sea enforcement.

(3) Reduced fish stocks and competition over remaining productive fish grounds place more pressure on the fisheries management system than ever before. Therefore, it is essential that all parties work through the fisheries management council process to address these issues.

In conclusion, the Coast Guard recognizes the importance of the fisheries resources of the Gulf of Mexico and the safety of those who actively pursue them on the fishing grounds. We of the Eighth Coast Guard District are firmly committed to doing our part to ensure proper conservation of those stocks and to promote safety in the fishing industry.

I would be pleased to answer any questions.

Senator STEVENS. Thank you, very much, Captain.

Our next witness is Mr. Corky Perret, the Assistant Secretary of the Louisiana Department of Wildlife and Fisheries.

Good morning, sir.

**STATEMENT OF WILLIAM S. PERRET, ASSISTANT SECRETARY,  
OFFICE OF FISHERIES, LOUISIANA DEPARTMENT OF WILD-  
LIFE AND FISHERIES**

Mr. PERRET. Good morning, sir. Thank you, very much.

I would just say welcome, you all, and welcome to Louisiana and welcome to the Gulf. Senator Breaux, welcome home.

We do sincerely appreciate you taking the time from your busy schedule to be with us today. I just wish that we had a little more dry weather and you had a little more time so that we could take you around and show you some of our essential fishery habitat and, perhaps, some of the activities that go on.

However, I am sure you are familiar with the record rainfall that we have experienced this week, and the flooding. Because of that, we, just yesterday, shut down our shellfish beds to harvesting—our shrimp season is due to open Monday, and I suspect that, probably, we will have a mass exodus of shrimp ahead of the opening of the season because of all the fresh water.

And I am sure I and my Agency will be blamed for goofing up and not opening at the right time, but, be that as it may, that goes with the territory.

The Magnuson Act has been of utmost importance to the states and the Federal agencies, and it has been a cooperative effort—cooperative in our region, because our resources, for the most part, are estuarine-dependent. During some time of their life cycle, they are in our inland and coastal waters.

Our fishermen, be they recreational or commercial, fish in inshore waters, fish in our territorial sea waters and fish in the EEZ waters. So, as Senator Breaux stated earlier, fish are neither Republicans nor Democrats. Well, our fish also do not know and do not recognize political boundaries; they cross from inshore to territorial to Federal waters, they cross state boundaries, as well.

So for us to have successful management of these resources, we do indeed need cooperation, and this Act has been of extreme importance in that.

One of the most serious problems facing the Gulf Council and facing us here in the Gulf—and I do serve as a voting member of the council—is the lack of sufficient scientific information. Our problem is very fundamental: We do not have the necessary information.

We are acquiring additional biological data, we are getting some economic data and very little social data. Yet National Standard 2 requires that conservation and management measures be based on the best scientific information and, in many cases, this information is weak, at best.

The Gulf lacks a systematic system—as does the Pacific Coast, as does the system in New England—which requires independent assessments by outside scientists. This is something that I think would be of benefit to us in the Gulf. Perhaps an amendment could be established to develop such a system for the Gulf.



In my written text, I have suggested some possible funding mechanisms and things of this sort for this activity if it were implemented. I might add that, on the Gulf Council, we are continuously looking at possibilities of controlled access in fishery management plans.

Controlled access will require additional requirements of our personnel, i.e., onboard observer monitoring, better monitoring so we can track quotas in a better fashion, and so on. So this, indeed, will mean additional requirements and additional data.

A very vital component of fishery management is law enforcement. And law enforcement is an area that we feel must be addressed. And it should be addressed in a fashion, in my opinion, with additional state interest, effort and cooperation.

The states—four of the five Gulf states currently have cooperative agreements, but there is no money to go along with these agreements.

Perhaps some sort of funding program, as in the Inter-jurisdictional Fisheries Act, as an example, money being made available to the states to provide law enforcement for the Magnuson Act.

Captain Newlin just mentioned at-sea enforcement on bycatch. The states have personnel, the states have vessels and so on, and they have the training. And, perhaps, if some funding were made available, this would be of assistance for additional enforcement.

One thing currently hurting the Federal law-enforcement effort is Section 308(a), the assessment of penalties. In assessing a penalty, the Secretary is required to consider an individual's ability to pay; I think this should be changed.

Conflict of interest is another area that has received a great amount of attention in recent times. Currently, the Act requires that council members, by reason of their occupations or other experience, be knowledgeable in fisheries and exercise sound judgment as trustees of the nation's fishery resources.

S. 39 addresses the need to clarify when a conflict of interest occurs and when a member must recuse himself from voting; it does not, in my opinion, address a nonfinancial conflict of interest, where an individual member has a specific personal interest in an allocation vote.

I suggest that this should be addressed so that, if an allocation of a resource by a council member or a member of any organization is impacted, that member should excuse himself from voting on that issue.

Habitat is the key to maintaining fisheries. In the Gulf of Mexico, in Louisiana, we have 50 percent of the coastal wetlands remaining in the United States. We are experiencing some 80-percent loss of these wetlands. When these wetlands go, our fisheries will go, also.

So habitat is an issue of utmost importance. Fishery habitat concerns should be strengthened to allow the councils to provide more input on this issue. Conservation and management measures for protecting essential fishery habitat should not be constrained by impacts caused by fishing only.

An amendment should be provided that would preserve the traditional role of the councils by calling for the identification of the es-

sential habitats in individual fishery management plans and, also, direct the Secretary to establish general guidelines to assist the councils in this role. It should also limit the Secretary to commenting on and making recommendations on actions that could affect essential fishery habitats identified in individual fishery management plans, adopted by the council and approved by the Secretary.

One area that needs to be streamlined is the regulatory process. Efficient management of our fisheries must seek to reduce the costs associated with the regulatory delays. Federal fisheries management is currently hampered by the need to comply with redundant requirements of several other applicable laws in addition to the Magnuson Act; this complexity burdens and complicates the management process.

One area that I think needs to be addressed is the emergency rules. A unanimous vote by a council on emergency rule requires the Secretary to implement an emergency rule.

It has been a practice of NMFS regional directors to keep votes from being unanimous by voting against any measure when the rest of the council members have voted for it; this is done to allow NMFS to force changes to the measure, even when the rest of the council has unanimously supported such a measure.

This NMFS practice prohibits specific statutory language from becoming operative. An amendment should be provided to eliminate the regional director from being a voting member on emergency action.

Bycatch is the concern of the nineties, and it is a major issue. The Louisiana Department of Wildlife and Fisheries recognized this early on, and, since 1967, we have recorded all individuals taken in our trawl-monitoring work, and we continue to do this, and we have a tremendous amount of historical data on bycatch taken in our shrimp program.

It is an issue which affects practically all of our fishing. The primary concern is not simply the number of individuals and types of species taken incidentally, but it is the mortality of these species—I repeat: the mortality. Bycatch is not the issue; the mortality of the bycatch is the issue.

If all bycatch were released unharmed, there would be no concern over this unintentional take of the nontarget species. In many cases, this bycatch can be released unharmed and is of little biological significance. In other cases, the bycatch species suffer some level of mortality, and in these cases, this incidental take of nontarget species may or may not be of biological concern.

Bycatch work to date has been basically limited to studies quantifying the level of the bycatch in the various fisheries. Large quantities of bycatch do not automatically result in significant biological and ecological impacts.

This issue must be addressed on a regional basis. Even though fisheries may seem similar on the surface, the various councils' experience in managing the nation's fisheries indicates clear diversity in these fisheries. Bycatch mortality differs substantially within similar fisheries throughout this country, and it should be addressed that way.

S. 39 should be amended to provide for the completion of the scientific shrimp fishery bycatch research studies called for in Section 304(g) of the Magnuson Act as amended in 1990.

It also called for the inclusion of ecological impacts on the ecosystem resulting from the reduction in mortality of the nontarget species. It directs the Agency to submit its report prior to implementing regulation, and it requires consistency with states in developing any regulatory measures.

Thank you, very much, Mr. Chairman, Senator Breaux, for the opportunity to comment. Thank you.

[The prepared statement of Mr. Perret follows:]

Testimony By

William S. "Corky" Perret  
Assistant Secretary, Office of Fisheries  
Louisiana Department of Wildlife and Fisheries

on

Reauthorization of the Magnuson Fishery  
Conservation and Management Act of 1976

Presented To

The Subcommittee on Oceans and Fisheries  
of the United States Senate  
Committee on Commerce, Science, and Transportation

May 13, 1995

Mr. Chairman, and members of the Senate Subcommittee on Oceans and Fisheries of the Committee on Commerce, Science, and Transportation, my name is William S. "Corky" Perret. I am an Assistant Secretary of the Louisiana Department of Wildlife and Fisheries, and a voting member of the Gulf of Mexico Fishery Management Council. I sincerely appreciate the opportunity to appear before you and provide my input for your deliberations on reauthorization of the Magnuson Act.

This Act has been of utmost importance to cooperative management of the fishery resources of our region. I stress cooperative, because in our region, most of our fishery resources are shallow water, estuarine-dependent species harvested by both recreational and commercial participants in inshore, territorial and EEZ waters.

Fishery resources are not constrained by political boundaries; states and the federal government share jurisdiction over many of the same resources. Both the federal government and the states serve as trustees and stewards for the public utilization of these marine fishery resources, and each trustee's actions affect the others. The state and federal governments must coordinate their activities and cooperate if management is to be effective in achieving mutual benefits for our fisheries and their users.

One of the most serious problems faced by the Councils and state fishery administrative personnel is fundamental: our fisheries information base (biological, social and economic) is often insufficient to support sound management.

Under the Magnuson Act, the National Marine Fisheries Service (NMFS) is responsible for providing information to the Councils for proper management of the fisheries stocks. However, serious deficiencies exist in NMFS's collection and management of scientific data; this jeopardizes effective fisheries management.

National Standard 2 requires that conservation and management measures be based on the best scientific information available; however, the only scientific information available is often out-of-date and highly questionable.

Lack of sufficient data to adequately assess the stocks of many species and timely access to data hamper effective Council management. A clear example has been NMFS's inability to adequately provide fishery assessments and monitoring harvest of species which operate under an annual quota system. Delays in data availability have routinely resulted in quotas being greatly exceeded.

The Gulf of Mexico presently lacks a systematic and cost-effective system for collecting and reporting basic fishery statistics such as the system developed on the Pacific Coast. The Gulf of Mexico also lacks a systematic program for reporting on the status of stocks each year such as the program developed in New England. As a result, critical fishery information is not being adequately peer-reviewed and is not being collected and reported in a cost-effective manner in cooperation with state agencies and the fishing industry. An amendment should be developed that would require that such a system be established for the Gulf.

This amendment should also direct NOAA to establish a task force, which would include federal, state, academic, and industry representatives, to assess the efficiency and effectiveness of the present system for collecting and reporting catch and effort data in the commercial and recreational fisheries for the Gulf of Mexico. The amendment should require a report on the findings of the task force and recommendations to Congress within one year, including the possible methods of privatizing of the system.

The NMFS budget should be augmented to provide adequate funding for data collection, resource monitoring and administration. These data needs are becoming increasingly pressing as more fisheries are being brought under additional management measures. Possible funding mechanisms could be the establishment of a trust fund using revenues generated from an excise tax on the landed value of all domestic and imported fish and fish products, or from economic rent. Additionally, the Councils should be provided with discretionary funds to conduct outside independent research and/or monitoring studies as necessary.

Various methods of controlled access in fishery management are currently being addressed by the Councils. These systems, if implemented, will have special requirements (i.e., onboard observers and monitoring systems, and good collection and management of data) if the programs are to be effective. However, current funding is severely limited for such programs; authority to collect fees is currently limited to administrative cost of permit

issuing, with the funds collected being deposited to the U. S. Treasury, and not available for managing the fishery from which the funds are derived. This should be changed. Fees collected for permits should be available for NMFS to support the permitting programs and other administrative functions.

Law enforcement is a vital component of fishery management and another area that needs improvement. Many believe that the federal agencies are unable to properly enforce fishery management regulations, and illegal activity is hurting both the resource and legitimate resource users. Another thing hurting federal law enforcement is Section 308(a), Assessment of Penalties. In assessing a penalty, the Secretary is required to consider an individual's "ability to pay". This should be changed.

Law enforcement is an area where the states have demonstrated expertise. In the Gulf, as an example, cooperative law enforcement agreements currently exist between NMFS and four of the five Gulf states; however, these agreements do not provide funding for state law enforcement personnel who enforce Magnuson Act regulations. If funds were made available to the states, additional "at sea" as well as "at the dock" enforcement could be provided, thus improving our law enforcement efforts and ensuring better compliance with federal regulations.

Recently, a great deal of discussion has centered around conflict of interest for members of the Fishery Management Councils. The Act requires that Council members, by reason of their occupational or other experience, be knowledgeable of the



fisheries, and should exercise sound judgement as trustees of the nation's fishery resources. The intent is to avoid promotion of narrow interests in the deliberation of Council actions. The appearance of conflict is especially strong in the case of individuals who are representatives (at times, officers) or employees of fishery organizations. Conflict of interest is a serious issue and must be addressed. Otherwise, there will be further erosion of public confidence in federal fisheries management.

S.39 addresses the need to clarify when a conflict of interest occurs and when a member must recuse himself from voting. It does not address a non-financial conflict of interest, where a "recreational" or "other" category Council member has a specific personal interest in an allocation vote. I suggest an amendment that would limit recusal of members to situations when the vote is addressing an allocation of resources and a Council member would obtain an exclusive share or exclusive opportunity to harvest fish.

Habitat is the key to maintaining our fisheries. The Gulf region has approximately 50% of the nation's coastal wetlands. These wetlands, which are being altered at an alarming rate, are vital to the future productivity of our many estuarine dependent species. Fishery habitat concerns should be strengthened to allow Councils to provide more input on this issue.

Conservation and management measures for protecting essential fishery habitat should not be constrained to impacts caused by fishing. An amendment should be provided that would eliminate the

direct focus on fishing methods. Without this change the language could cause a problem between net fisheries and hook and line fisheries. NMFS should be directed to look at all activities that affect essential fishery habitat.

This amendment should preserve the traditional role of the Councils by calling for the identification of essential habitats in individual fishery management plans, and also direct the Secretary to establish general guidelines to assist the Councils in this role. It should also limit the Secretary to commenting on and making recommendations on actions that could affect essential fishery habitat identified in individual fishery management plans, adopted by the Council and approved by the Secretary.

The regulatory process must be streamlined. Efficient management of U. S. fisheries must seek to reduce the costs associated with regulatory delays. Federal fisheries management is currently hampered by the need to comply with redundant requirements of several other applicable laws in addition to the Magnuson Act. These include the National Environmental Policy Act, Coastal Zone Management Act, Paperwork Reduction Act, Endangered Species Act, Executive Order 12291, Regulatory Flexibility Act, and the Administrative Procedure Act. This complexity burdens and complicates the management process. Provisions should be made to exempt FMPs from separate analyses of these other acts.

Another area that must be addressed is emergency rules. A unanimous vote by the Council on emergency votes requires the Secretary to implement such action. It has been a practice of NMFS

Regional Directors to keep votes from being unanimous by voting against any measure when the rest of the Council members have voted for it. This is done to allow NMFS the chance to force changes to the measure, even when the rest of the Council supports the measure adopted. This NMFS practice prohibits specific statutory language from becoming operative. An amendment should be provided to eliminate the Regional Director from being a voting member during emergency votes.

Concern over large volumes of fish bycatch has definitely surfaced as a major issue in the 1990's. The Louisiana Department of Wildlife and Fisheries realized the need to document the occurrence of bycatch since the inception of its ongoing shrimp monitoring program. Department personnel have recorded the numbers and sizes of all species taken with trawls as early as 1967 and continue to record this data.

Bycatch is an issue which affects all forms of fishing. The primary concern is not simply the number of individuals and types of species taken incidentally, but the mortality of those species. If all bycatch could be released unharmed, there would be no concern for the unintentional taking of non-target species. Every fishing activity currently practiced, except possibly spearfishing and harpoon fisheries, produces some level of bycatch mortality. In many cases this bycatch can be released unharmed and is of little biological or ecological consequence. In other cases the bycatch species suffer some level of mortality and in these cases the issue of incidental taking of non-target species may or may not

be of biological concern.

Most of the bycatch work completed to date has been limited to studies aimed at simply quantifying the level of bycatch in various fisheries. Large quantities of bycatch do not automatically result in significant biological and ecological impacts. The impact of bycatch mortality on non-target populations depends on the life history features of the impacted species. Impact studies which bridge the gap between bycatch quantities and the consequences of these losses at the population and community levels are necessary if we are to intelligently address the bycatch mortality issue.

This issue must be addressed on a regional basis. Even though fisheries may seem similar on the surface, the various Councils' experience in managing the nation's diverse fisheries clearly indicates that blanket regulations do not adequately address issues which arise. Bycatch mortality differs substantially within similar fisheries throughout the country. Regulations which are designed to protect particular species may work well in some locations but would not be effective or necessary in other parts of the country.

S.39 should be amended to provide for the completion of the scientific shrimp fishery bycatch research studies called for in Section 304(g) of the Magnuson Act as amended in 1990. It also calls for the inclusion of ecological impacts on the ecosystem resulting from the reduction in mortality of non-targeted species. It requires the evaluation of the benefits and costs associated with requiring any device or change in fishing on the industry. It

also calls for the assessment and development of utilizing non-targeted species that are unavoidable, including all dead fish. It directs the Agency to submit its report prior to implementing regulations. It requires consistency with states in developing any regulatory measures.

Again, I sincerely thank you for the opportunity to provide input to your subcommittee on this issue that is so vital not only to our U. S. fisheries resources and their participants, but also vital to the overall well being of the Nation.

Senator STEVENS. Thank you, very much, Mr. Perret.

Next up: Larry Simpson, the Executive Director of the Gulf States Marine Fisheries Commission. Welcome.

**STATEMENT OF LARRY B. SIMPSON, EXECUTIVE DIRECTOR,  
GULF STATES MARINE FISHERIES COMMISSION**

Mr. SIMPSON. Thank you, sir. It is a pleasure to appear before you, Mr. Chairman; I have never had the pleasure.

And, Senator Breaux, I keep losing hair and getting bigger, and I am wearing glasses; and you keep getting younger. It is a pleasure to appear here before you again.

Senator BREAUX. Life on the Hill.

Mr. SIMPSON. My name is Larry Simpson; I am Director of the Gulf States Fisheries Commission.

A few points. I have been on the council, the Gulf Council since 1978 and have been around the bend a few times on a few things. I would like to direct your attention to a few specific concepts that I would like for you to consider, and it is something that we have been working on now for a couple of years.

I think, without question, we all share the opinion or the fundamental basic thought that this is a shared jurisdictional effort. The states have an important role to play and have had an important role to play in management of fishery resources for many, many years; they were around before the Federal Government got involved in fisheries management.

As Corky indicated, there is a tremendous tie to our wetlands and estuarine areas, and you capture or bring into possession these animals, both in Federal areas of jurisdiction as well as state jurisdiction. It is necessary to have a cooperative approach to management.

And I am not just throwing out a buzz word, but some things can be more majorly addressed by the Federal Government and, some things, more majorly addressed by the states. But there are a few and very important species that need to be addressed really, really cooperatively, and this is what I would like to address for you today.

Recent court decisions—lawyers are involved in fisheries management, too, I am afraid to say—have raised into question some of the validity of state landing laws, as well as interstate marine fisheries management measures. And this is of some concern.

These cases have created uncertainty about whether the state laws and management measures developed in these agreements are valid in the face of claims from alleged violators that harvest occurred in the EEZ, as compared to the state waters.

Without an amendment to Section 306, the state jurisdictions section, the states ultimately will continue to face increasing problems within the Federal judicial system in trying to maintain the integrity of their conservation and management regimes. And it is important to realize that they have a management regime, also.

I do not want you to think that these are just smoke and mirrors, so I have attached to the back of the testimony some specific examples of how these items might be or have been a problem, menhaden and spotted seatrout, mullet, white shrimp and Spanish mack-

erel, to be specific. And if you could look over those, you might see some of the issues that I am trying to get across to you.

Section 306 should be amended to specifically clarify—and I maintain it is a clarification—and/or establish, if that is the case, the authority of the states, in the absence of a council FMP, for fish harvested in the EEZ which are concentrated in the state jurisdictional waters. Further, for a fishery which is under a council FMP, a state's authority, both in the EEZ and the state's jurisdictional waters, needs to be clarified and established.

Now, our goal here is to provide an efficient, unambiguous clarification of authority so that the states' management regimes can apply in situations where Federal management is not presented or is not warranted, consistent with Section 306(a)(3) and past supreme court rulings.

There is a section in the Magnuson Act which nobody can really explain to me, and I maintain is what needs to be clarified, that is Section 306(a)(3). It said, "A state may not directly or indirectly regulate any fishing vessel outside its boundaries unless the vessel is registered under the law of that state." Well, obviously, there was a sense at some point that there was some cooperative effort that needed to be accomplished.

And on page 4 of my testimony, I have the specific language which we are presenting, a 2-part scenario. Without a fishery management plan, then a state's law would apply to 200 miles if that state has a legitimate state interest in the conservation and management of the fishery. If there is a council plan, then the state law would only apply under certain circumstances.

The specific example of white shrimp is a real example, Mr. Chairman. That took 3 years and prevented the State of Louisiana from enforcing its 100-count white shrimp law because there was nothing in there in this (b)-type section. If this had been in place, it could have rapidly been taken care of, within a matter of a couple of months, and shrimp that were smaller than 100 count—a smaller shrimp, larger count—would not have been taken.

Last, Corky mentioned the need for significant improvements in our data-collection systems. And I would echo those comments and would encourage the types of programs that need to be addressed would be centered or based upon what we are calling RecFIN and ComFIN in the Gulf of Mexico.

Those are cooperative type programs that utilize the best of all minds from both the Federal as well as the state partners in the program to design the specific data elements that are required to improve the kind of information that we need to manage these fish in a more sophisticated manner.

Last, I would like to point to the back of the testimony, once again, and indicate that there are some very significant and important facts about the Gulf of Mexico area that you might like to peruse.

It is quite important that fishery resources in this region be managed and that they be managed cooperatively, both with the states and with the Federal Government. And I would love to answer any questions, now or at a later date, that you might have. Thank you.

[The prepared statement of Mr. Simpson follows:]

Testimony of  
Larry B. Simpson  
on behalf of the  
Gulf States Marine Fisheries Commission

regarding

**Reauthorization of the  
Magnuson Fishery Conservation and Management Act**

presented to

The Subcommittee on Oceans and Fisheries  
of the  
Senate Committee on Commerce, Science, and Transportation

New Orleans, Louisiana

May 13, 1995



Mr. Chairman and members of the Subcommittee, my name is Larry B. Simpson. I am the Executive Director of the Gulf States Marine Fisheries Commission. In response to your request for input and on behalf of the Commission, I would like to offer the following recommendations for consideration in reauthorization of the Magnuson Fisheries Conservation and Management Act.

In the way of background, I have served as a non-voting, but functionally active member of the Gulf of Mexico Fisheries Management Council since the summer of 1978. To my knowledge, no other Council member in the nation has a longer tenure and knowledge of the activities of the Council system in the nation than I have. I have personally witnessed every Council members' service and the production of FMPs in the Gulf since its creation.

This Act has been an integral part of cooperative management of marine resources in our region. I note the word "cooperative," because in the Gulf most of the harvest and life cycle of the marine resources occur in the states' jurisdictional waters and estuarine areas. As documented in the Act, states are partners in the shared responsibility of management of this nation's marine resources. What one entity does affects another. Therefore, state and federal authority actions **must** be coordinated. Cooperative management is dictated by law and **must** be constantly worked on to be effective in achieving our mutual goal of proper management of marine resources to provide the most benefit for our users and this nation.

Despite the clear Congressional intent that fish stocks be managed as units throughout their range (National Standard 3 and portions of Section 306), some problems impede that goal. Certain fisheries concentrated within state jurisdictions which require coordinated management but are not subject to Magnuson Act jurisdiction need addressing. Likewise, certain fisheries

concentrated in the federal jurisdiction and are under a federal FMP but which require state coordination need addressing.

Coastal states have traditionally exercised considerable management authority over fish and shellfish species which are harvested in both state and federal waters. Section 306 of the Magnuson Fishery Conservation and Management Act (MFCMA), 16 U.S.C. 1856, continues the authority of coastal states to manage fisheries within the territorial sea and internal waters, while reserving the right of the federal government to manage fisheries in the U.S. exclusive economic zone (EEZ). A state is also authorized to regulate fishing vessels registered under the law of that state even if the vessel is fishing outside of its boundaries.

Enforcement problems occur when the harvest of fish and shellfish occur both within state waters and in the EEZ. Fishermen may claim that fish actually harvested in state waters were, in fact, caught in the EEZ in order to evade state imposed conservation and management measures. Coastal states have used state fishing laws and management measures developed in interstate fisheries agreements to enforce their fishery regulations. Without the ability to continue to do so, enforcement of state laws and interstate marine fisheries compacts would be dramatically impeded.

Recent federal court decisions have raised into question the validity of state landing laws and interstate marine fisheries management measures. These cases have created uncertainty about whether the state laws and management measures developed in interstate marine fisheries agreements are valid in the face of claims from alleged violators that the harvest occurred in the EEZ. Without amendments to Section 306, the states will face increasing problems within the federal judicial system in trying to maintain the integrity of their conservation and management regimes.

The Gulf Council, Gulf States, and the Gulf States Marine Fisheries Commission have successfully worked together under shared jurisdictions since the inception of the various institutions in a partnership arrangement for management of marine resources. Recently, the authority of the partners has been affected by some divergent legal interpretations which cause confusion and less than effective management arrangements for some species. State rules have been challenged in federal court with a lower court ruling invalidating one state's rule. An initial court of appeals brief returning it to the lower court suggested that all fish in the EEZ should be managed under the Magnuson Act. This would create a serious problem if subsequently upheld by a higher court and overtax the ability of the Council system to provide EEZ management for all species not managed under FMPs. With the states' management authority clarified, actions by the states under a coordinated interstate FMP for a species would provide for effective management without the need for federal Council's costly and time-consuming management process.

Section 306 should be amended to specifically clarify and/or establish the authority of the states in the absence of a Council FMP for fish harvested in the EEZ which are concentrated in state jurisdictional waters. Further, for a fishery which is under a Council FMP, state's authority both in the EEZ and states' jurisdictional waters needs to be clarified and/or established. Our goal is to provide an efficient, effective, and unambiguous clarification of authority so that states' management regimes can apply in the situations where federal management is not present or warranted, consistent with Section 306(a)(3) and past Supreme Court rulings.

The Gulf States Marine Fisheries Commission recommends at the end of Section 306(a), add the following:

(4)(A) For any fishery for which there is no fishery management plan approved and implemented pursuant to this Title, a state may enforce its laws or regulations pertaining to the taking of fish in the EEZ off that state or the landing of fish caught in the EEZ providing there is a legitimate state interest in the conservation and management of that fishery.

(B)(1) For any fishery for which there is a fishery management plan approved and implemented pursuant to this Title, a state may enforce its laws or regulations pertaining to the taking or landing of fish caught in the EEZ, so long as such law or regulation is not inconsistent with any relevant fishery management plan approved and implemented under this Title. Any state may request that the Secretary of Commerce, in consultation with the relevant Regional Fishery Management Council, issue a determination of consistency with respect to any specific state law or regulation.

(2) Any state seeking a determination of consistency pursuant to this paragraph shall submit such a request to the Secretary and the relevant Regional Fishery Management Council. The Secretary shall immediately publish a notice in the Federal Register setting forth the request and inviting written data, views, or comments of interested persons. The state's laws or regulations subject to the request shall be deemed consistent with the federal

fishery management plan if the Secretary has not notified the state in writing of his denial of the consistency determination within 90 days of the receipt of the request by both the Secretary and the Council.

For many years, the Gulf States Marine Fisheries Commission has supported the need to improve our shared fisheries information base (biological, social, and economic). The Gulf States, the Gulf States Marine Fisheries Commission, and our federal partners have been working over the last few years to solve our data illnesses, not just to treat the symptoms. We support efforts in the reauthorization to build on these cooperative efforts being addressed in a true partnership approach.

In recent years the three interstate marine fisheries commissions have taken on broader responsibilities for fisheries statistics on behalf of their member states. The Pacific States Marine Fisheries Commission manages and maintains a substantial and sophisticated fisheries data management program in cooperation with its state members and the National Marine Fisheries Service. The Gulf States and Atlantic States Marine Fisheries Commissions have promoted cooperative statistics planning activities through the RecFIN and ComFIN programs. As these programs develop, the interstate marine fisheries commissions, the states, and the federal government need to be able to share data to do stock assessments, develop and monitor fishery management plans, and take actions to administer and implement fishery management programs for coastal and interstate fisheries. The only proposed change is to include the three interstate marine fisheries commissions along with the states as organizations that the Secretary may enter into agreements with for the purpose of sharing

confidential data. The Secretary's ability to protect public disclosure of confidential data through the agreements and through regulation is not affected.

We recommend the following technical amendment of Section 303(d):

Section 303 (d)(2) (16 USC 1853 (d)(2)), after the word "employees", insert the words ", and employees of interstate marine fisheries commissions,".

The subsection would read: "(2) to State employees, and employees of interstate marine fisheries commissions, pursuant to an agreement with the Secretary that prevents public disclosure of the identity or business of any person; or".

The Commission has supported necessary habitat actions to foster the environment needed to sustain marine resources in perpetuity. Habitat is the key to maintaining our fisheries. Since the Gulf has approximately 50% of this nation's coastal wetlands and is a major player in fisheries production, we view habitat decline and alteration as significant issues. We support the provisions in S. 39 regarding habitat (specifically - identifying essential fish habitat).

Thank you Mr. Chairman for the opportunity to share our opinions on this important legislation which is up for reauthorization. I look forward to working with the Subcommittee and staff on this and future issues. I will be happy to answer any questions you might have.

## Gulf of Mexico - Important Facts

- The Gulf of Mexico receives drainage from two-thirds of the continental United States, largely through the Mississippi River.
- It boasts almost half of the nation's coastal wetlands and five of the top ten U.S. fishing ports.
- Gulf shrimp are the nation's second most valuable fishery, trailing only Alaska salmon.
- Seventy-two percent of the country's offshore oil and 97 percent of our offshore gas production comes from rigs in the Gulf.
- Over half of the Gulf Coast shellfish growing areas have been closed.
- Marine debris on Gulf Coast beaches has averaged better than one ton per mile - and almost two tons per mile along some stretches of the Texas coastline.
- With a coastline of approximately 1,630 miles, the U.S. Gulf Coast is longer than the U.S. Pacific Coast from California to Washington, and is equivalent to the distance from Newport, Rhode Island, to Miami, Florida.
- The coastal wetlands of the northern Gulf provide habitat for four to seven million migratory waterfowl every winter.
- Nearly 50 species of fishes or shellfish are harvested for commercial and recreational consumption in Gulf waters including oysters, shrimp, crabs, snapper, flounder, mackerel, tuna, and swordfish. Over 200 different species have been captured in sampling trawls.
- Nearly 40% of total U.S. commercial fisheries landings are from Gulf fisheries.
- The marshes and estuaries along the Gulf Coast serve as nurseries or spawning grounds for 98% of the fishes caught in the Gulf of Mexico.
- Nearly half of all U.S. import/export tonnage passes through Gulf waters.
- Four of the country's ten busiest ports are in the Gulf of Mexico - New Orleans, Houston, Corpus Christi, and Tampa - and six Gulf ports are among the top ten U.S. ports handling crude oil.
- Some 33 major river systems drain into the Gulf, carrying pesticides, fertilizers, garbage, and other effluent from half of the country.
- Louisiana's wetlands are disappearing at the rate of over 30 square miles a year.
- Four of the top five states in the country in total surface water discharge of toxic chemicals are Gulf States - Alabama, Mississippi, Louisiana, and Texas.
- The human population of the Gulf Coast is growing; it is estimated that between 1960 and 2010 the population of Florida and Texas will have grown by 226% and 121%, respectively.
- Per capita consumption has increased to 15 pounds in 1993 with an ever-increasing population.
- The Gulf of Mexico, with a total area of about 600,000 square miles, is surrounded almost completely by the United States, Mexico, and Cuba.

- The 21 major estuaries along the Gulf Coast account for 24% of all estuarine area in the 48 contiguous states, and 55% of the marshes.
- Over 50 million people visit the state of Florida each year and spend upwards of \$25 billion.
- Over one million people a year visit Gulf Islands National Seashore which is located in Alabama and Mississippi.
- In the Gulf region of the state of Louisiana, tourism expenditures amount to over \$3 billion annually.
- About \$5 billion in tourism-related expenditures are made in the Texas Gulf region each year.
- Of 346 million pounds of shrimp landed in the United States in 1990, over 70% was landed in the Gulf.
- Of 201.8 million pounds of crabs landed in the United States in 1990, 45.5 million pounds were landed in the Gulf.
- The Gulf States contributed approximately 10.6 of the 29.2 million pounds of oysters landed in 1990, and Louisiana accounted for approximately 75% of this.
- Off the Gulf Coast of Florida, 11.4 million pounds of grouper worth \$19.3 million were landed in 1989. Florida landings also included 4.0 million pounds of snapper worth \$7.9 million. Louisiana landings of snapper were 2.1 million pounds worth \$4.4 million.
- Louisiana fishers caught 8.6 million pounds of yellowfin tuna worth \$16.3 million; in Texas, 3.1 million pounds of yellowfin tuna were landed worth \$6.2 million.
- In 1989, total Gulf landings of shark were 11.5 million pounds, for which fishers were paid \$5.5 million.
- In 1985, 4 million residents of the Gulf States fished the Gulf of Mexico for sport. Texas led all other states with nearly 1.7 million residents fishing the Gulf, followed by Florida with more than 1.5 million, Louisiana with 550,000, Alabama with 130,000, and Mississippi with 80,000. Residents and non-residents took more than 24 million fishing trips in the Gulf. More than 80% of the recreational catch was in inland waters or within offshore state waters.
- On November 11, 1947, the Kerr-McGee Oil Company completed the first commercially well drilled completely beyond the sight of land. Today, the Gulf of Mexico is the most active area in the world for offshore oil and gas activities, and the industry has placed more than 3,600 platforms on the Gulf of Mexico Outer Continental Shelf.
- In the next two decades, the population in almost one-third of Gulf Coastal counties will increase by more than 30%.



16 U.S.C. 1856

SEC. 306. STATE JURISDICTION

97-453, 98-623

(a) IN GENERAL.--

(1) Except as provided in subsection (b), nothing in this Act shall be construed as extending or diminishing the jurisdiction or authority of any State within its boundaries.

(2) For the purposes of this Act, except as provided in subsection (b), the jurisdiction and authority of a State shall extend

(A) to any pocket of waters that is adjacent to the State and totally enclosed by lines delimiting the territorial sea of the United States pursuant to the Geneva Convention on the Territorial Sea and Contiguous Zone or any successor convention to which the United States is a party;

(B) with respect to the body of water commonly known as Nantucket Sound, to the pocket of water west of the seventieth meridian west of Greenwich; and

(C) to the waters of southeastern Alaska (for the purpose of regulating fishing for other than any species of crab) that are--

(i) north of the line representing the international boundary at Dixon Entrance and the westward extension of that line; east of 138 degrees west longitude; and not more than three nautical miles seaward from the coast, from the lines extending from headland to headland across all bays, inlets, straits, passes, sounds, and entrances, and from any island or group of islands, including the islands of the Alexander Archipelago (except Forrester Island); or

(ii) between the islands referred to in clause (i) (except Forrester Island) and the mainland.

(3) Except as otherwise provided by paragraph (2), a State may not directly or indirectly regulate any fishing vessel outside its boundaries, unless the vessel is registered under the law of that State.

99-659

(b) EXCEPTION.--

(1) If the Secretary finds, after notice and an opportunity for a hearing in accordance with section 554 of title 5, United States Code, that--

(A) the fishing in a fishery, which is covered by a fishery management plan implemented under this Act, is engaged in predominately within the exclusive economic zone and beyond such zone; and

(B) any State has taken any action, or omitted to take any action, the results of which will substantially and adversely affect the carrying out of such fishery management plan;

the Secretary shall promptly notify such State and the appropriate Council of such finding and of his intention to regulate the applicable fishery within the boundaries of such State (other than its internal waters), pursuant to such fishery management plan and the regulations promulgated to implement such plan.

(2) If the Secretary, pursuant to this subsection, assumes responsibility for the regulation of any fishery, the State involved may at any time thereafter apply to the Secretary for reinstatement of its authority over such fishery. If the Secretary finds that the reasons for which he assumed such regulation no longer prevail, he shall promptly terminate such regulation.

97-191, 101-627

(c) EXCEPTION REGARDING FOREIGN FISHERY PROCESSING IN INTERNAL WATERS--

(1) A foreign fishing vessel may engage in fish processing within the internal waters of a State if, and only if--

(A) the vessel is qualified for purposes of this paragraph pursuant to paragraph

(4)(C) ~~and~~

(B) the owner or operator of the vessel applies to the Governor of the State for, and (subject to paragraph (2)) is granted, permission for the vessel to engage in such processing and the application specifies the species to be processed.

(2) The Governor of a State may not grant permission for a foreign fishing vessel to engage in fish processing under paragraph (1)--

(A) for a fishery which occurs in the waters of more than one State or in the exclusive economic zone, except after--

(i) consulting with the appropriate Council and Marine Fisheries Commission, and

(ii) considering any comments received from the Governor of any other State where the fishery occurs; and

(B) if the Governor determines that fish processors within the State have adequate capacity, and will utilize such capacity, to process all of the United States harvested fish from the fishery concerned that are landed in the State.

(3) Nothing in this subsection may be construed as relieving a foreign fishing vessel from the duty to comply with all applicable Federal and State laws while operating within the internal waters of a State incident to permission obtained under paragraph (1)(B).

(4) For purposes of this subsection--

(A) The term "fish processing" includes, in addition to processing, the performance of any other activity relating to fishing, including, but not limited to, preparation, supply, storage, refrigeration, or transportation.

(B) The phrase "internal waters of a State" means all waters within the boundaries of a State except those seaward of the baseline from which the territorial sea is measured.

(C) A foreign fishing vessel shall be treated as qualified for purposes of paragraph (1) if the foreign nation under which it is flagged will be a party to (i) a governing international fishery agreement or (ii) a treaty described in section 201(b) of this Act (16 U.S.C. 1821(b)) during the time the vessel will engage in the fish processing for which permission is sought under paragraph (1)(B).

## Specific Examples of Jurisdictional Issues In Need of Clarification:

### Menhaden

The Gulf of Mexico menhaden fishery is the second largest fishery in quantity in the U.S. In 1991, Gulf production was 954.3 million pounds and valued at \$49.4 million which is in excess of 90% of all U.S. landings of menhaden. Fishing takes place in the nearshore waters of all the states of the Gulf of Mexico. The bulk of the industrial fishery is in Louisiana, Mississippi, and Alabama. Over 80% of the landings are in state waters, and most occur west of the Mississippi River.

There is no federal fishery management plan (FMP) in place for this fishery. The states with industrial menhaden fisheries have, however, established seasons to prevent over-harvest and to protect spawning stocks in the exclusive economic zone (EEZ). This key management measure was developed under an interjurisdictional FMP by the Gulf States Marine Fisheries Commission (GSMFC) in cooperation with the industry, scientists, and managers. There are currently no enforcement problems with this fishery; however, concern has been raised that there may be a growth in the fishery in the U.S. EEZ. Uncontrolled growth in the federal fishery would increase opportunities for fishing on spawning stocks and would thwart the management efforts set forth by the interjurisdictional FMP.

### Spotted Seatrout

In 1992 commercial landings for spotted seatrout were 2,368,000 pounds in the Gulf. The two million pound quotas are 85% of the total Gulf commercial landings. Spotted seatrout are found in all Gulf state waters. There is both an active commercial and recreational fishery in existence.

There is no federal FMP for the spotted seatrout fishery in the EEZ. The states of Louisiana and Florida each have adopted approximately 1 million pound commercial quotas for spotted seatrout. Under each state's management plans, the seasons are closed once the quotas are landed. Texas and Alabama have prohibited a commercial net fishery for seatrout through state statute.

No enforcement problems have been identified at this time; however, the state fishery managers remain concerned about the potential for a growth in the fishery inconsistent with their conservation and management regimes.

### Mullet

The Gulf of Mexico produces approximately 90% of the U.S. production of roe mullet in the U.S. Florida accounts for 85% of Gulf production. Average landings Gulf-wide are 27.5 million pounds annually.

There is no federal FMP for roe mullet in the Gulf. Florida currently limits the number of fishing days for roe mullet under a plan to allow for a 35% spawning potential ratio in the offshore stocks. The Florida plan is designed to assist in the rebuilding of the roe mullet by providing for scientifically-based spawning goals. The plan is supported by commercial

fishermen, processors, and trade associations. If additional fishing was allowed on those stocks in the EEZ, Florida is concerned that it would not be able to enforce its spawning protective measures, and the biological health of the resource could be threatened.

Further impacts could also occur in the markets for this special fishery product. To the extent that the fishery grows too fast, dockside price may drop as the market is glutted. There is concern by some fishery managers that roe stripping may occur in the unregulated EEZ as fishermen seek to maximize production of roe through discards and waste.

### White Shrimp

Total Gulf shrimp landings for 1991 were 222.1 million pounds for all species. This ranks second in value and seventh in quantity for all U.S. commercial species. Roughly 13,000 fishing vessels participated in the fishery in 1990. Approximately one-third of the entire landings of shrimp Gulf-wide were white shrimp. The center of production is Louisiana and Texas.

A shrimp count is a management tool which limits the harvest of smaller shrimp. Its basic purpose is to increase the value of the fishery because the markets pay a premium based on larger size. To maximize the value of the shrimp harvest for its fishermen, the state of Louisiana prohibits the take of white shrimp in excess of 100 count (100 shrimp per pound). The Gulf of Mexico Fishery Management Council (GMFMC) developed a federal FMP for white shrimp as well. The federal FMP initially did not include a shrimp count because most of the shrimp harvested in the EEZ are usually larger than those in state waters.

The failure to include a count requirement in the federal FMP effectively prevented Louisiana from enforcing its 100 count white shrimp possession law when fishermen said that they had caught smaller shrimp in the EEZ. The GMFMC and the industry agreed with Louisiana's efforts to maximize the value of the white shrimp; however, it took almost three years to adopt and implement Amendment 4 to the FMP to correct the enforcement problem.

The amendment proposed by this paper would have enabled Louisiana and the GMFMC to seek the Secretary of Commerce's assistance in expediting a determination that the white shrimp count was consistent with the underlying goals and objectives of the federal FMP.

### Spanish Mackerel

The total harvest of Spanish mackerel in the South Atlantic is roughly 5.25 million pounds annually. In 1993, 2.73 million pounds was taken by the commercial fisheries, and 2.52 million was harvested by recreational users. The lion's share of the commercial landings of Spanish mackerel occur off the coast of Florida, averaging 93% of the Gulf-wide catch since 1980. Ninety-five percent of the total commercial harvest and 61% of the recreational harvest occurs in state waters.

The South Atlantic Council's FMP contains a commercial quota but no trip limits. Florida's management measures, in contrast, impose trip limits on landings of Spanish mackerel in the commercial fishery. The trip limits do not prevent the taking of the full quota and were designed to fairly distribute the allowable catch among users and provide greater economic benefits.

These management measures were enacted by Florida with the full knowledge and approval of the South Atlantic Council. Fishermen may seek to avoid the state trip limits by claiming that the fish were harvested in the EEZ creating an enforcement dilemma for Florida fishery managers. The proposed amendment would permit Florida and the South Atlantic Council to obtain a consistency determination without the time delays associated with a formal plan amendment cycle.

Senator STEVENS. Thank you, very much.  
Our next witness is Mr. Julius Collins, the Chairman of the Gulf of Mexico Fishery Management Council.

**STATEMENT OF JULIUS COLLINS, CHAIRMAN, GULF OF MEXICO FISHERY MANAGEMENT COUNCIL**

Mr. COLLINS. Thank you, Mr. Chairman and members of the Committee. My name is Julius Collins and, again, I want to thank you for letting me testify as Chairman of the Gulf of Mexico Fishery Management Council. And we appreciate the opportunity to be here.

We will first address the eight issues set forth in your letter, but have included our recommendations on other issues as part of this document which we submit for the record.

Our council supports the Senate provisions for addressing bycatch. We also support the intent of the new national standard in House Bill 39 for bycatch, with the caveat that each council retain the ability to address its own regional problems relating to bycatch.

Our council is currently developing an amendment to address bycatch in the shrimp industry. We also support continuation of the incidental harvest research program, which has provided us with the information and gear technology necessary for development of this amendment. Continuation of this program is necessary in order to allow us to continue to revise our management problem based on better information.

The council supports Senate Bill 39 provisions for the National Marine Fisheries Service to develop guidelines for not only ITQ systems, but also any limited entry system.

Just 2 days ago, our council has approved in Tampa an ITQ system for the commercial red snapper fisheries, after 3 years of developing the system with industry participation. We felt it was the only viable alternative which will eliminate the derby fishery that has been occurring, and also, the market glut that could generate higher revenue for the fishermen.

We have limited the duration of this system to 4 years. During that time, we will fully evaluate it, and the system could be extended longer. We also support the collection of fees, up to 4 percent annually, on exvessel value, provided that the fees are dedicated to that region's fishery management program and the council sets the level of those fees.

On conflicts of interest, we feel that it should be pointed out that such perceived conflicts are part of the Magnuson Act system and, in order to have good council members who are knowledgeable and/or experienced in the fisheries, persons must be appointed that are participants in the fisheries.

We feel that it should also be pointed out that the potential for such conflicts exists in both recreational and commercial sectors and, to some extent, ex-officio members; the business aspects of recreational fishing is no different than for the commercial. NOAA General Counsel already has the authority to determine whether members have, "An interest of a particular concern," that might preclude them from voting on certain issues.

I have been sitting on the council for 14 years now. And, during my time, I believe everyone that has served on this council, at one time or another, had some kind of conflict of interest; even the regional director at times has conflict of interest because he has to vote how his boss tells him to. So we have had this going all along.

Our council supports your provisions and proposed national standard related to fishery-dependent communities. We in this region of the Gulf have many communities that are largely or wholly dependent on commercial and/or recreational fishing activities.

Our council FMPs are already in compliance with the overfishing provisions of the 602 guidelines, and, of the two bills, we favor the House version. From our experience with red snapper, we are concerned over the 10-year period in S. 39 for rebuilding overfished stocks. This would not have been possible for red snapper, even with complete closure of the fisheries. And red snapper is the only fish that we manage that is on the overfished status.

Our council has long recognized the importance of habitat protection and has been actively involved in that area since 1977. We feel habitat issues transcend all fishery issues. However, we feel the task of identifying and describing all essential habitat may create a fiscal and manpower demand on the councils.

Our council opposes the sustainable development strategy, which would provide funding for vessel buyback programs and economic assistance for commercial fishery failures.

We also support the provisions of S. 39 pertaining to expedited review of council regulations by the Secretary, extension of emergency rule periods, standardized vessel registration and support.

Our council supports the Gulf States Marine Fishery Commission's proposal, which Larry just pointed out, that would clarify state authority for management of species which are not on the FMP.

We recommend that Section 305(c) for emergency actions be revised to provide that the National Marine Fishery Service Regional Director be prohibited from voting on emergency actions unless his vote is necessary to break a tie; currently, the administration is requiring the RD cast a negative vote to assure no unanimous votes occur.

The council is also concerned that, under the proposed reorganization of NMFS, the RD will only occasionally attend council meetings; we feel that he should attend every meeting, not only to vote on issues, but to explain NMFS policies.

We also question the need for establishing authorization for negotiation panels; we have done that on our council on different occasions, and we use the advisory panels and ad hoc panels, and it has worked very well for us. Our council feels that the proposed provision on defining gear allowed is not necessary; this is frequently done in FMPs, and the provision may impede the development of new gear for the industry.

And our council opposes the provision to guarantee NOAA loans for vessels. This has been—in our area, it has not been too popular in the past.

And this concludes my testimony. I will answer any questions that you have of me.

[The prepared statement of Mr. Collins follows:]

Testimony of Julius Collins, Chairman  
Gulf of Mexico Fishery Management Council  
Before  
The Subcommittee on Oceans and Fisheries of  
Senate Committee on Commerce, Science and Transportation  
New Orleans, Louisiana  
May 13, 1995

Mr. Chairman, and members of the committee, I greatly appreciate the opportunity to appear before you to present the Council's recommendations on amendments to the Magnuson Act. The Council reviewed the proposed language of S. 39 and the companion bill, H.R. 39. I will first address the eight issues set forth in your letter, but have included our recommendations on other issues as part of this document which we submit for the record.

Our Council supports the Senate provisions for addressing bycatch. We also support the intent of the new national standard in H.R. 39 for bycatch with the caveat that each Council retain the ability to address its own regional problems relating to bycatch. Our Council is currently developing an amendment to address bycatch in the shrimp fishery. We also support continuation of the incidental harvest research program which has provided us with the information and gear technology necessary for development of this amendment. Continuation of this program is necessary in order to allow us to continue to revise our management program based on better information and gear technology and provide for information transfer to the industry.



The Council supports the S. 39 provision for NMFS to develop guidelines for not only ITQ systems, but also any limited entry system. However, we do oppose the interim moratorium on implementation of ITQs while this task is accomplished by NMFS. Our Council has approved an ITQ system for the commercial red snapper fishery after three years of developing the system with industry participation. We feel it is the only viable alternative that will eliminate the derby fishery and associated market glut and generate higher revenue for the fishermen. We have limited the duration of the system to four years after which it will be fully evaluated and could be extended. We also support the collection of fees from participants in any limited entry system up to 4 percent annually of the exvessel value provided that the fees are dedicated to that region's fishery management program and the Councils set the level of the fees.

The Council recognizes that Congress will likely proceed with conflict of interest and recusal provisions. We feel that it should be pointed out that such perceived conflicts are part of the Magnuson Act system and in order to have good Council members who are knowledgeable and/or experienced in the fisheries, persons must be appointed that are participants in the fisheries. We feel that it should also be pointed out that the potential for such conflicts exist in both recreational and commercial sectors, and to some extent for ex-officio members. The business aspect of recreational fishing is no different than for commercial. NOAA General Counsel already has authority to determine whether members have "an interest of particular concern" that might preclude them from voting on certain issues.

Our Council supports your provisions and proposed national standard related to fishery dependent communities. We, in our region, have many smaller

communities that are largely or wholly dependent on commercial or recreational fishing activities.

Our Council's FMPs are already in compliance with the overfishing provisions of the 602 Guidelines, and of the two bills, we favor the House version. From our experience with red snapper, we are concerned over the ten-year period in S. 39 for rebuilding overfished stocks. This would not have been possible for red snapper even with complete closure of the fishery, which would have had devastating social and economic impacts. For severely overfished stocks of long-lived fish, rebuilding will require more than the biological generation time for that species.

Our Council has long recognized the importance of habitat protection and has been actively involved in that area since 1977. We feel habitat issues transcend all fishery issues. However, we feel the task of identifying and describing all essential habitat may create a fiscal and manpower demand on the Councils that cannot be accomplished without additional funding and personnel. Such funding may be better utilized for habitat research.

Our Council opposes the sustainable development strategy which would provide funding for vessel buy-back programs and economic assistance for commercial fishery failures. We feel such funding will not resolve the problems associated with overfished stocks and could be used for better purposes in managing the stocks.

We also support the provisions of S. 39 pertaining to expedited review of Council regulations by the Secretary, extension of emergency rule periods, standardized vessel registration and data collection, highly migratory species

advisory panels, vessel safety, annual reports to Congress on enforcement, prohibited acts, and judicial review of permit sanctions and civil penalties.

Because of the affects of recent court rulings in prosecuting violators, we recommend that the words "ability to pay" be stricken from the last sentence of Section 308(a) - Assessment of Penalty. The recent court rulings have created a significant burden on the Secretary to establish the financial status of each person charged with an offense prior to stating the level of the penalty. We feel each person should be treated equally in specifying the penalties. Ability to pay may be a factor to be considered in adjudication of the case.

Our Council supports the Gulf States Marine Fishery Commission's proposed revision to Section 306 which would clarify state authority for management of species for which there is no FMP. Their position statement is appended to this testimony.

We also recommend that Section 305(c) for emergency actions be revised to provide that the NMFS Regional Director (RD) be prohibited from voting on emergency actions unless his vote is necessary to break a tie vote. Currently the Administration is requiring the RD cast a negative vote to assure no unanimous votes occur. The Council is also concerned that under proposed reorganization of NMFS the RD will only occasionally attend Council meetings. We feel he should attend every meeting possible, not only to vote on issues, but to explain NMFS' policy.

Under S. 39 proposed revisions to Council procedures, we feel that allowing members to revise the agenda 14 days prior to a meeting will create a disservice to persons who might be affected by the issue added. The time

period is too short to notify these persons. We have not had any problems with members adding agenda items.

We also question the need for establishing authorization for negotiation panels. We have on a number of occasions used two of our advisory panels (AP) or Ad Hoc APs to negotiate rules which the Council implemented.

Our Council feels that the proposed provision on defining gear allowed is not necessary. This is frequently done in FMPs and the provision may impede the development of new gear by the industry.

Our Council opposes the provision to guarantee NOAA loans for vessels and shore-side facilities because of fishery recovery efforts. There has been historically little support in our area for the original loan programs and no new loans have been made under these programs for years.

I thank you for this opportunity to testify on behalf of the Gulf Council.

Senator STEVENS. Well, thank you, very much.

And we do appreciate all of you gentlemen being here.

Mr. Perret, I hope you do not mind if I tell you that Louisiana has half of the wetlands of the lower 48.

Mr. PERRET. You are absolutely right. And if I may—

Senator STEVENS. Yes. We have 90 percent of the wetlands.

Mr. PERRET. Louisiana led the Nation in fisheries through 1987, and Alaska has been No. 1 ever since. You are right.

Senator STEVENS. Yes. But I am talking about the wetlands now.

Mr. PERRET. Yes, I know it.

Senator STEVENS. And I know you have a severe problem; but it is nothing like ours, because ours are locked up.

In terms of the statements, let me just make a few comments. And then I will turn it over my friend here.

Mr. Schmitt, your statement indicates that you do support collecting of the fees. And we have a provision in the bill, just like the witnesses have suggested, that the fees remain in the region in which they were collected.

Now, I take it that the National Marine Fishery Service really does not support that provision. But would you support it if we provided that that money would be dedicated primarily to the acquisition of scientific data for the region?

Mr. SCHMITTEN. Senator Stevens, I hope you can hear me. We, in general, do support—

Senator STEVENS. Can you hear us down there?

Mr. SCHMITTEN. Yes, sir. I do not have the microphone—

Senator STEVENS. I do not need that mic; we hear you well.

Mr. SCHMITTEN. Good. In general, we do support use of regional funds for science and management. We would like to see a slight portion—and work on the ratio of that—for a national administration. But in general, the disproportionate amount should go to the regions, and we can support that. And I particularly like the idea of for science, as you have suggested.

Senator STEVENS. Well, we will take a look at that. Mr. Simpson—

Mr. SIMPSON. Yes, sir?

Senator STEVENS. I think you mentioned what we would call the “Mr. Big” problem. Are you familiar with “Mr. Big?”

Mr. SIMPSON. [No response.]

Senator STEVENS. Well, strangely enough, the person who had been on the council for the Atlantic coast showed up right outside of the Alaska jurisdiction with “Mr. Big.” It was a scallop boat. And there is no plan for scallops in Alaska beyond the 3-mile limit, so the state has been managing that fishery for some time.

And “Mr. Big” proceeded to harvest more scallops than were allowed under the state plan before we could get an injunction. And we are in a position now of trying to find some way to change Section 306 to do just what you suggest.

I am not sure about what my friend here from your state feels about it, but we do feel that where there is no nationally approved plan and the state has a fishery within the 3-mile limit, the plan should extend out to the 200-mile limit and the enforcement capability of the state ought to, by virtue of having, in effect, been ap-

pointed under the law as the Federal enforcement agency, prevent exceeding the limits established by the plan.

We would like to work with you to assure that what we are working on will meet your objectives and be consistent with the ideas of your state and your senators and representatives. But it is a very serious problem for us because of the lack of enforcement capability; we are half of the coast line of the United States.

We have a very small state enforcement series of vessels, and that is a lot of coast line to cover. If all you have to do is be outside the 3-mile limit and be free of all limitations on harvesting of a species the fish are going to be in serious trouble. At times, as Mr. Perret says, some fishermen do not read the signs.

They do not understand when they have gone into the area of Federal jurisdiction in which, in some instances, there is no one to enforce the laws. In our area, however, I think the "Mr. Big" read the signs and intentionally violated them. I thank you for mentioning that, and I hope we are able to reach an agreement on that matter.

Mr. SIMPSON. Mr. Chairman, I just might add that I have worked with the Pacific States Commission. And their language is very, very similar to ours, with some regional differences. And it is quite close. So—

Senator STEVENS. Yes. They had a problem out there with another species. I do not know what that was, but they had a cause celebre. And we have had a very great—it was really unfortunate, our situation.

You mentioned the idea of privatizing some of the effort to collect basic fisheries information. How would you do that?

Mr. PERRET. I think we should have outside assessments by scientists from state, private industry, commissions and other government agencies to take a look at the existing system today; to look at the opportunity if, indeed, we were to privatize it, to let private consulting firms do it if it could be handled in a more efficient and less costly manner.

I think this is something that we have not looked into here in the Gulf, to my knowledge, but something—

Senator STEVENS. Are you talking about harvesting statistics and processing statistics—

Mr. PERRET. That—

Senator STEVENS [continuing]. And waste statistics?

Mr. PERRET. Yes, sir. That is the basic biological input necessary for stock assessment. But also, we are severely, severely lacking in social and economic data, which is also required by the law.

Senator STEVENS. What would you think about enabling the people who are the observers to be the collectors of the data and have it privatized, both?

Mr. PERRET. Enabling the observers? We have a certain number of observers. But just to—

Senator STEVENS. They are not privatized, are they?

Mr. PERRET. Some are. Some are consultants. Some are hired on contract with short-term money from universities, as an example, Senator. In our shrimp fishery in Louisiana alone, we license approximately 16,000 or so vessels.

Senator STEVENS. Yes.

Mr. PERRET. I think any kind of coverage would require—on-board coverage of those kinds of numbers would certainly be cost-prohibitive. So we can only, I think, provide a certain percentage of coverage. But I think the private type approach should be definitely looked at, and it may be more efficient and less costly.

Senator STEVENS. I understand that. And I understand there are some feelings against observers in some places. But—

Mr. PERRET. Well—

Senator STEVENS. We have reached a 100-percent level now in some of our fisheries and have eliminated a lot of problems.

I do not know why we cannot have more observers who collect basic data and are also a part of the flow of data into the system.

Mr. PERRET. Yes, I concur with you on that. If we have got an individual, he should take—be getting and collecting as much information as we can. That is why, as an example, in our shrimp monitoring since 1967, since its inception, we have required our technical staff to record every animal taking in every gear. We measure them by individual lengths, and so on and so forth, and, in some cases, we weigh the species.

Senator STEVENS. Thank you.

Mr. Collins, I would appreciate it if you would check with the Staff about some of your suggestions, and on 305 in particular; I do not think we have had those suggestions before, and I want to make sure we understand them. We will take a very close look at what you are suggesting.

Senator Breaux?

Senator BREAUX. Thank you, Mr. Chairman.

And I want to thank the panel for being with us and for their testimony. It seems that, in all of the years that I have been working with this industry, we probably now have more conflicts and more difficult decisions regarding how we manage fishery stocks and, in some cases, less fish and more demand on the resource than we have ever had in any time in my memory.

When we make incorrect decisions, we see the results, and the results can be catastrophic if we do not make the right decisions. So the challenges are indeed very, very great.

Mr. Chairman, the achievement of 100-percent observer coverage in Alaskan waters is quite notable. But, as Mr. Perret said, with regard just to Louisiana the number of fishing vessels is enormous—I am not sure how many boats are engaged in the fisheries in Alaska.

In addition, I know many of the Alaskan boats are quite large.

Senator STEVENS. Well, I did not—let me just say, I did not say we have 100 percent everywhere. I said that, in some fisheries, we have 100 percent.

Senator BREAUX. Well, one of the differences, obviously that Corky was pointing out is that, just in Louisiana, we have about 16,000 to 17,000 licensed—

Mr. PERRET. And that was just in one fishery.

Senator BREAUX. In one fishery?

Mr. PERRET. But also, Senator, what I did not mention, and if I may, 80 percent of the commercial vessels in Louisiana are 30 feet and smaller.

Senator BREAUX. Yes. We have little boats.

Mr. PERRET. They are—we have a small-boat fishery, for the most part.

Senator BREAUX. So not only do we have a lot of boats, but there may not be enough room on the boats for another person that would be observing the fishery. But that is not the point I want to get into. I would just make the note that we have so many boats that are so small, it is very difficult to get good observer coverage in the Gulf because of the size and the huge number of individual, small boats.

Let me start with Mr. Schmitten and thank him for being with us and for the work that he has done.

I note that one of the statements you made, Rollie, was regulations alone will not restore our fisheries. I agree with that. I want you to elaborate on it because of the huge conflicts and problems we have with regulations in the Gulf.

I know you have had some meetings prior to this hearing today with representatives of the shrimp industry regarding the problems with sea turtle conflicts and the emergency plan that has been put forth by your agency. I would like you just to tell us, in your opinion, how this situation is working out and what progress is being made. Also, what do you mean when you say that regulations alone will not restore the fisheries?

Mr. SCHMITTEN. Yes, Senator BreauX. In fact, I have often said that we can regulate our fishermen out of business, and it will not necessarily bring our fish back in several of the fisheries.

And what that means is we have got to look at the other side of the problems: the habitat side. In many areas—especially, a good example here, Mr. Perret has indicated that you have got 50 percent of the wetlands; also, I saw a figure that 80 percent of the loss is occurring here and this is where the restoration program is imperative.

But what we are also—what is also needed is the ability to communicate on how we determine and implement these regulations. All too often, the Federal Government imposes and steps away. I have spent, in the last 2 weeks, a day each week down in the southeast, meeting with shrimp fishermen.

We have a very serious problem with the take of turtles and are trying to work collaboratively with the industry and with the conservation community to come up with a solution that protects the turtles but also reflects that people have to make a living. And these are very difficult choices, and we are working on the hard issues.

I think we have made some good progress, in particular on looking at the population numbers, what triggers our actions. We are also looking at some pretty imaginative short-term concepts that were portrayed yesterday to us. And I commend the industry for their proactive nature; I hope that we can reach agreement on those, as well.

But we are making progress in a very difficult area, primarily because we are sitting down and talking.

Senator BREAUX. Can you give me a prognosis of the results of that meeting with regard to commitments, suggestions or goals that were set with respect to modifying the emergency regulations submitted under the Endangered Species Act?



Mr. SCHMITTEN. Yes, Senator Breaux. In fact, I am, first of all, proud to say that on, to me, the most important piece, there was concurrence by both—all parties. And that was to go forward with the population study as soon as possible. It is that study that has raised a lot of questions: whether or not, as populations increase, are we proportionately allowing the take that would normally occur, or are we penalizing the industry by having erroneous figures.

We have committed to bringing in a panel of expert scientists—sea turtle scientists, the population dynamicists—to look at that, including inviting the industry, as well as the conservation community. It is imperative—I have said I am willing to change our incidental take levels based on a concurrence of this body and, if they go up or down, it will be on best available science.

On the short term, we simply need to get a better feel for what industry is proposing. We need to vent that through other shrimp industries, the coast area. We need to, certainly, communicate with our conservation community. Those actions are going to occur.

In fact, we realized time is of the essence. We will be meeting with our scientists this week—and again, we have invited all parties to that. Where the short term goes will only, again, depend on where the science rests.

Senator BREAUX. Well, I appreciate that comment. We are going to be following your efforts very, very closely. As you know, I have discussed publicly for a number of years, the fact that the regulations alone on turtle excluder devices and gear adjustments are not going to, in my opinion, produce any more turtles. They will reduce the amount of take of an endangered species but, in themselves, will not produce any more turtles.

If there has ever been an example, Mr. Chairman, of an effort that has been successful under the Endangered Species Act, it has been what Louisiana and other states—Florida, in particular—were able to do back in the sixties and seventies with regard to the American alligator, which was very seriously threatened and then moved to the endangered species list.

It was a very difficult problem, but, because of a very aggressive program by the State of Louisiana—and Corky's department is to be congratulated—that species today is not only not endangered, but, because of the farming operations, we now harvest about 25,000 alligators a year in this state. The stock is not only not threatened or endangered, it is in very healthy condition because of that aggressive effort.

I really want your department to work with us and look toward those types of additional efforts in addition to just gear restrictions. We will work on that.

Mr. Simpson—Larry, your suggestion gives me some concern. I understand the Chairman is looking at your suggestion of state management in Federal waters off of his area because it is very unique. I mean—

Senator STEVENS. Only where there is no approved plan.

Senator BREAUX. Yes. Well, I understand that, too. But Alaska is like a country up there. I mean it is so big, and the coast line is all Alaska. But the coast line in the Gulf is not all Louisiana; nor is it all Florida or Texas or Alabama or Mississippi.

And I have got some real concerns, quite frankly, when Texas wants to write a management plan that affects the activities of Louisiana shrimpers or any other type of Louisiana fishermen. Nor do I think Texas wants somebody in Alabama to be writing a plan that would govern fishing activities in Federal waters that would affect Texas fishermen.

And so it is just very different from the situation in the Chairman's state, where Alaska basically covers all of the coastline.

Corky, can you comment on that?

Mr. PERRET. Mr. Chairman, Mr. Simpson and I have discussed this issue numerous times. I am not as concerned about it as he is, although I have had a problem with the white shrimp issue and it took me about 3 years to get the Gulf Council's concurrence to have the same size limitation.

I think, in the absence of a Federal fishery management plan, though, that a state should be able to utilize its management scheme, for a species that has no Federal plan, off the waters of its state. Now, I—again—

Senator BREAUX. Well, what are we going to do, build fences between the states all the way to Cuba?

Mr. PERRET. Well, again, here is the problem. We can only—and I am not an attorney, but I have read this Act numerous times. We can only manage vessels registered in our state.

Senator Stevens, I think Louisiana may be the only state in the 50 states that has an oyster resource beyond our state territorial waters, beyond 3 miles in the Gulf of Mexico. My department leases water bottoms for oyster culture.

Senator STEVENS. How far out?

Mr. PERRET. This is probably 6 or 7 miles out.

Senator STEVENS. 6 or 7?

Mr. PERRET. Yes, sir. We have a 3-mile—

Senator STEVENS. Well, you know, the Magnuson Act replaced the 12-mile jurisdiction; actually, states lost a little bit when we combined them to three and gave the council the 197-mile jurisdiction.

Senator BREAUX. Some states. Not Louisiana. We already had a three-mile territorial sea.

Mr. PERRET. We were already three. But these leases were in—

Senator STEVENS. Well, no. We had three. But I am saying there was a statute that gave the states 12 miles—

Mr. PERRET. Florida and Texas—

Senator STEVENS [continuing]. For fishery jurisdiction. And we wiped that out when we took the 200-mile limit.

Mr. PERRET. OK. My point: In this oyster situation, these leases were in effect before Magnuson, and they have been renewed. The individual that has one or two of these leases out there called for law-enforcement help because, allegedly, they were—out-of-state boats from a state to the west of us were harvesting oysters on his private lease. Now, these leases are in Federal waters.

Senator BREAUX. Corky, let me interrupt. Are you talking about only having a state regulate, outside the territorial waters, their own citizens?

Mr. PERRET. Of its own state. Of its—

Senator BREAU. OK. Now, what happens then, if we are regulating our fishermen and all of Julius' boys come over and fish in that area?

Mr. PERRET. That is my problem with my oyster leases. That is what my lawyers tell me. I can tell my Louisiana fishermen they cannot harvest off that guys lease, but I—

Senator BREAU. But you cannot tell Julius—

Mr. PERRET. I cannot enforce a gull from out of state. That is a problem.

Senator BREAU. That is why we need national management.

Mr. PERRET. That is a problem.

Senator STEVENS. Well, that is—we ran into that problem up in—

Thank you, Senator, for yielding again.

—in New England—and it is very serious—in the lobster beds. I think we have to have some understanding that, if a state has a management plan in its waters—and it has been a historic one and respected—that we have protection for that plan. And the answer is not to bring the Federal people in to have them manage it. The plan is working very well, it has worked very well and, if people from outside of the state want in on that plan, they ought to come register and apply and get a permit under the state plan.

Senator BREAU. But it can only apply to the citizens of your state.

Senator STEVENS. No. The problem in our area is that they have found a loophole to fish outside of 3 miles without a state permit. You may be right though, about citizenship, under current law.

Mr. PERRET. Current law is—

Senator STEVENS. That is what—

Mr. PERRET. Right, current.

Senator STEVENS [continuing]. We are trying to deal with in New England as well. I think it is going to have an impact here too. But again, in our area, it is not really the fisheries; it is the creatures of the sea bed.

Senator BREAU. Julius, let me ask another question.

And Rollie, pay attention because I may want you to comment on this.

Julius raised the issue of a council vote on an emergency action.

If such an action is unanimously approved by the council, it cannot be overturned by the Secretary for not meeting national standards, not liking it or not thinking it is adequate.

However, what he says the National Marine Fisheries Service representative does on all of these actions is just vote no in order to prevent a unanimous vote. And I do not think we ever intended that to be what happens.

The intent was that, if the council unanimously agrees, it is a pretty good idea, and the Federal Government should not be permitted to just arbitrarily overturn it. Rollie, it sounds like you guys may be fiddling around with that. What do you think?

Mr. SCHMITTEN. Well, Mr. Chairman, I think that I have heard the concerns. I have served 10 years on both the North Pacific and Pacific Councils. And I know that it is true that to preserve the rights of the Secretary to make a final decision, in which all actions go through, this is a peculiar case, and that is exactly what occurs.

To clarify that—and I have to speak personally, not for my agency—would probably bring peace among the councils and a better understanding of what the action is. The Department and the Agency may have a difference in views.

Senator BREAUX. The department and agency? Do you mean Washington, as opposed to the regional folks?

Mr. SCHMITTEN. No. As opposed to my personal view that I just gave.

Senator BREAUX. Oh, OK. I hear you.

Last question, Corky?

Mr. PERRET. Senator, I will just say on that issue: I have served as a voting member of the Gulf Council since 1978 or 1979, and the Regional Director always voted up until a few years ago. And so this was a policy decision made somewhere at the Federal level. And that policy, to me, could be changed by someone in the administration; I do not think we need a change in the Act.

Senator STEVENS. Well, the reason that it was changed was there was a ruling that the members of the regional council, other than the representative of the National Marine Fishery Service, were not Federal officials and it would be—as I understand it, to be binding on the Federal Government would be an unconstitutional delegation of authority to those non-Federal people.

And that led to this concept that the regional director would either not vote or vote against the majority in order that it would come in automatically to the Secretary to be reviewed and become a Federal decision. It was a mechanism to assure Federal decision and constitutionality.

And I am not sure if we are capable of curing that in this Magnuson Act revision; we are looking at that. I think that the regional director's representatives would like to be back where they used to be.

But did you want to say something, Schmittin?

Mr. SCHMITTEN. Well, I was just going to say, Senator Stevens, you are absolutely right; it was the unconstitutional delegation of authority that was the issue. I think it is resolvable, and we would definitely work with the Staff to work on that issue.

Senator STEVENS. Yes. We—I hope we can resolve that.

Senator BREAUX. Yes. Thank you.

I want to thank the panel.

We probably have some more questions we will submit to you. Mr. Chairman?

Senator STEVENS. Thank you, very much. I am sorry to interrupt you, Senator Breaux.

Senator BREAUX. No. It is all right.

Senator STEVENS. The next panel will be: Mr. Nelson, Mr. Horn, Ms. Anderson, Mr. Murray and Mr. Scott. We will call you in just a few minutes, after a short break.

[Whereupon, a short recess was taken.]

Senator STEVENS. We are going to proceed with the statements now. There is one missing. Who is missing? [Pause.]

Senator BREAUX. Here she is.

Senator STEVENS. Here she comes.

We are going to set 8 minutes on the clock this time, because we want to get through here and be able to let some of the people from

the audience make some remarks before we are through. So we will proceed with Mr. Nelson. And Senator Breaux, who is completing his press comments, will be here in a few minutes.

But it is nice to see you again, Chris.

Chris Nelson was the Sea Grant Fellow who worked in my office in 1987 and 1988.

We are pleased to have you here. Thank you.

**STATEMENT OF CHRIS NELSON, VICE PRESIDENT, BON SECOUR FISHERIES, INCORPORATED**

Mr. NELSON. Thank you, Mr. Chairman; it is good to see you again, as well. It is really a tremendous privilege and a thrill to be able to testify in front of you as The Chairman and to see you down here in God's country. I am sorry and, as Mr. Perret said, apologize for the humid weather, but I am glad to see you here, as well.

I am working now in the family business at Bon Secour Fisheries. We are a 100-year-old business family, and I represent the fourth generation in the business; I have got three brothers and my father in it with me. We a lot of times say that with a lot of pride, but, with all of the problems that the fishing industry faces these days, a fourth-generation often is looked at as a slow learner, not finding anything else to do with our money or our time.

We are also operating vessels out in the Gulf of Mexico catching shrimp, and we are a shrimp and oyster packing plant.

As you mentioned, I enjoyed a year working on your staff as a Sea Grant Fellow, so I got some perspective from the legislative side on the Hill of these issues. I also grew up in the business, so it is part of my soul, really.

I received some academic training—I have got a master's in oceanography—and also worked for the National Fisheries Institute, the trade association that represents us in Washington. So I have a—maybe a unique or diverse background and perspective on a lot of these problems. And now, I am back in the family business and have started a family myself.

Gulf fisheries' issues are somewhat different from other regions'. We have—our major fishery is the shrimp fishery as far as the value to the region. It is an annual crop; we do not manage it so much to protect the spawning stock as we do to try to get the maximum yield out of it economically.

We have also got warmer waters here than a lot of other regions, which leads to faster growth rates. So overfishing concerns are somewhat different.

As NFI's Region 3 Vice President, I have worked with a group of industry members, really, since last fall, formulating some ideas, kicking around some ideas about what it was we wanted to get out of this round of Magnuson Act reauthorizations. And we have a package of ideas that I will be referring to that is somewhat incomplete still, and we are still discussing it.

But it is a package of ideas that we will call the Gulf Package, for lack of a different, any other better term, that are what we want to get out of this round of Magnuson Act reauthorization. And the other industry members that are testifying today may refer to that, as well.

The overall theme I would like to emphasize is that, in the Gulf, we need to—as you would rebuild a fish stock, we need to rebuild the fishermen's and the fishing industry's confidence in the system that we are living under down here.

I think that way, we will build commitment in fishing industry toward working with the Agency, both the state and the Federal agencies, to improving the situation, rather than having to force us into a situation of compliance. Commitment, rather than compliance, is what I want to point us in the direction of.

We have had a tremendous erosion in the confidence of the system, mostly due to the conflict between the recreational and commercial fisheries down here, as well as the erosion in the relationship between the commercial industry and the National Marine Fisheries Service that grows out of the TED and turtle controversy.

There are three major issues that I want to touch on with that overriding theme that I feel the Magnuson Act can help us in rectifying. Bycatch, as Corky mentioned in the previous panel, is our No. 1 issue over all down here. It also points out a good example of the differences among the regions.

Some of the bycatch species we have down here are things like long-spined porgy, lizard fish, sea lice, and the fishermen have a lot of rather profane terms for some of the other things that I cannot mention. But the point I am trying to make is that a lot of these species are not even juveniles of things that would be later harvested; they are things that we refer to as trash fish.

I know that is politically incorrect, but the point is that they would never become—there is not a market for them, so we throw them back over the side. That is a lot of this bycatch in the shrimp trawl fishery, anyway.

I have been active in working with the Gulf and South Atlantic Fisheries Development Foundation on their bycatch research program. A lot of the credit for being able to do that goes to Senator Breaux.

My—our company, Bon Secour Fisheries, has taken observers aboard our vessels to look at both the characterization of the bycatch to try and determine what is actually coming up in the trawls, how much of it is coming up and how does that vary over area and time, as well as trying to test some of these new gear ideas, the gear development aspect of the bycatch.

Now, the characterization looks very promising. The bycatch levels are somewhat less—significantly less than were previously reported, less than half. And the gear research also is showing some promise.

And I feel that the gear research needs more work, but I want to emphasize that it is promising so far. But I would hate to see us rush into anything on the gear, for fear of replaying the whole TEDs issue, where the Agency, particularly, came up with some early designs that they tried to get the industry to implement right away and they were not adequately tested.

And an example of how we can replay that whole thing has been, much to my dissatisfaction, seeing a video being made of some of the early TED designs that this extended funnel that will exclude a juvenile red snapper. And there is a video showing it do just that

on a clean bottom in clear water, where they can make an underwater video of it.

And to the uninitiated observer, they would say, Gee whiz, that thing looks like it works awfully well; There is no economic consideration here; There is obviously no shrimp loss.

But in actuality, our fishermen tell us that that device actually does lose shrimp under certain bottom conditions and under certain tidal conditions where you are fishing down tide.

So what I do not want to see is us put in the position again of having the Agency represent something with a videotape that can be easily put out to the general public and people will misunderstand our objections to it. And we are put in the position of looking like we are dragging our feet.

Again, trying to keep this industry/Agency relationship from eroding any further, I think we are back on the right track, with Mr. Schmitt's leadership, to try to rectify that.

Another thing in the bycatch research is that the bycatch exclusion characteristics of our existing TED designs need to be further evaluated. There are a lot of data that show that the TEDs, under many circumstances, exclude as high as 70 percent and, certainly, higher than 50 percent of the total bycatch.

But we have been unable to test these TEDs in many instances against an unmodified net. And we—that is often referred to as a naked net, with no TED in it. And the shrimp industry feels that, to have full confidence in the results of that system, we would need to do further work on that.

Another thing I will mention that we want to look at is these atrophic-level interactions of the bycatch that we are excluding. What effect is that having on the ecosystem?

Fisheries Management data: We feel that the entire data-collection system down here in the Gulf needs a complete overhaul, and we support—I want to support, again, the ideas that are in our package of ideas that would call for a workshop type approach to looking at overhauling that. The old system was designed to just show long-term trends, and we are currently—asking the data base now questions that it is not designed to answer.

We also want to see a systematic program for scientific peer review of stock assessments. Right now, the red snapper is one stock assessment that we really think needs to be subjected to just such a peer review.

I want to mention really quickly also the habitat concerns that we have down here. That is a supply side-economics-meets-fisheries-management, and we really feel strongly that, if you do not focus more on habitat down here, we are going to be dealing continually with a shrinking resource and that will lead to further conflicts.

So in the interest of time, Mr. Chairman, I have submitted my written comments. And I look forward to working with you and the rest of the members of the Committee on a good, positive bill for the Gulf of Mexico. Thank you.

[The prepared statement of Mr. Nelson follows:]

TESTIMONY OF CHRIS NELSON  
BEFORE THE SENATE COMMITTEE ON COMMERCE, SCIENCE,  
AND TRANSPORTATION  
SUBCOMMITTEE ON OCEANS AND FISHERIES  
ON  
S. 39  
AND  
THE REAUTHORIZATION OF THE MAGNUSON FISHERY CONSERVATION AND  
MANAGEMENT ACT  
MAY 13, 1995

Mr. Chairman and Members of the Committee, my name is Chris Nelson, Vice President of Bon Secour Fisheries, Inc. in Bon Secour, AL. Bon Secour Fisheries has been owned and operated by my family since 1945. My family has been in the seafood business for more than 100 years, mine being the fourth generation in the business.

Bon Secour Fisheries is a seafood packing house and a vessel owner. There are 37 Gulf shrimp boats which unload at our plant in Bon Secour. Of these, Bon Secour Fisheries owns and operates 11 boats.

I appreciate this opportunity to provide testimony regarding the Magnuson Fishery Conservation and Management Act of 1976 and S. 39. As Region III (TX, LA, MS, AL) Vice President for the National Fisheries Institute I have been actively involved in meeting with other industry members to generate a package of amendments which are responsive to our needs in the Gulf of Mexico.

Gulf fishermen currently do not enjoy the benefits of the sound and equitable management philosophy that is the goal of the Magnuson Act. This will only occur when faith is restored in the fairness and equity of the management system. As it has operated in the Gulf, commercial fisheries have been restricted in some cases appropriately and in others, excessively. Recreational fisheries, on the other hand, have experienced less restriction at the expense of commercial fisheries for the same species.

Just as fisheries need rebuilding programs, so does the confidence of the Gulf industry in our fishery management



process. This will begin to occur only as there are provisions for more equitable management, based more soundly on science.

Management of the Gulf shrimp fishery contrasts sharply with that for other species in other regions. Tropical shrimp in the U.S. Gulf of Mexico, while FMP species, are not terribly hard to manage. Being an annual crop the production of shrimp is more closely tied to annual variations in oceanographic and atmospheric conditions than to the size of the spawning stock. Therefore, conservation measures designed to preserve the spawning stock are largely inappropriate for management of this fishery. Current management measures focus on mitigating potential impacts of this fishery on non-target species such as finfish and turtles as well as on maximizing economic yield from the fishery through the Texas closure.

#### Bycatch

The sea turtle/TED issue taught the industry, and we hope the Agency, two basic lessons: (1) that accurate, consensus data must be available before credible, and effective management measures are possible (2) that the industry must be part of the development of a management program from the beginning.

Whatever working relationship the NMFS had with the shrimp fishery prior to the implementation of turtle conservation regulations has largely been destroyed as industry is forced to accept increasingly onerous regulations without adequate consideration of our comments or of the consequences which each new regulation creates.

Particularly in the offshore northern Gulf, shrimp trawl/turtle interactions were and are rare. This fact was well documented before TED regulations were implemented. Despite this fact the initial regulations were more extensive in the northern Gulf than in the Atlantic where turtle encounters were fourteen times more likely. The Agency was also aware that the preferred habitat for Kemp's ridley sea turtles is in near-shore and inshore areas where it is "a shallow water, benthic feeder" that prefers blue crabs (recovery Plan for Kemp's ridley). The regulations, however, focused on the smaller number of large offshore vessels operating in the federal zone where Kemp's are rare. TED requirements have been phased in everywhere as of December 1994, yet the Agency is currently resisting industry proposals to relax restrictions offshore and provide incentives for moving shrimp effort away from the turtle habitat.

The effectiveness and necessity of TEDs are still hotly contested issues between the industry and the Agency. The Agency will not acknowledge that TEDs are less efficient. This inefficiency is manifested in a high frequency of failed or fouled trawl tows. TED equipped nets are highly subject to

tearing and clogging by debris common to Gulf shrimping grounds. The current regulatory regime embodied in the recent Biological Opinion and the Emergency Response Plan ties regulatory action to turtle strandings. As turtle populations increase the possibility for strandings also increases. Thus the more successful we are in conserving turtles the more restrictive the regulations will become. This is not a favorable incentive for the fishery and will lead to further erosion of industry/Agency relationships if alternative management regimes are not implemented in short order.

One of the key provisions of S. 39 is that of addressing bycatch in fisheries. Recently, the amount, makeup and impact on the ecosystem of this bycatch has become a popular issue among sport fishing and environmental groups as well as within other commercial fishing groups.

As a member of the Gulf and South Atlantic Fisheries Development Foundation's Bycatch Steering Committee I was personally involved in organizing the Foundation's bycatch research efforts. Bon Secour Fisheries has been involved since the early 1980's in taking NMFS observers and gear specialists aboard our shrimp boats. Most recently this has been in cooperation with the Foundation for the purpose of characterizing the magnitude and composition of shrimp trawl bycatch as well as the development of effective BRD designs.

Although those aspects of the Foundation's bycatch research dealing with bycatch characterization are nearing completion, some significant work remains in the gear research and development portion of this effort. This is not to say that up to now the gear research results are not extremely encouraging. Bycatch reduction rates are overall quite high in many of the trials with currently developed devices. There is also some evidence which suggests that significant numbers of juvenile red snapper, the bycatch species of particular concern in the Gulf of Mexico, can be excluded from a shrimp trawl. These are important results which deserve our attention and should be recognized by the public as steps taken by the industry and the Agency toward reducing bycatch.

NMFS, however, may be rushing to conclusions about which devices are best for overall bycatch reduction. An example of such hasty judgement is typified by the production of a video which demonstrates the effectiveness of a particular BRD design toward red snapper bycatch reduction. The video was produced under ideal fishing conditions in clear water. However, there is no effort to point out the difference between these conditions and those typically encountered during trawling operations in the Gulf. To the uninitiated, the gear looks very feasible to implement into normal fishing operations. However, in fact, the gear has not been adequately tested under "real life" shrimping

conditions. The same tactic was taken with early TED designs. The general public, after viewing the videos, could not understand why the industry was resistant to implementing devices which were ostensibly flawless. Any objections by industry to using the gear is still seen as "denial" of the efficacy of the gear, rather than genuine concerns regarding the economic impact of poorly tested devices on shrimping operations.

Some of NMFS's own research suggests that TEDs exclude more than 50% of the total finfish bycatch. Further research should be conducted before separate and additional gear are added to shrimp trawls to exclude bycatch. However, the Agency has been extremely reluctant to allow comparisons of bycatch in TED equipped nets with that in unmodified or "naked" nets. Gear research at the University of Georgia entitled "Credit for TEDs" should be continued and expanded into the Gulf in order to understand more fully the bycatch exclusion characteristics of TEDs.

The Agency and the Foundation should finalize and report their findings relative to the characterization of the bycatch. This work should continue, but on a less intensive scale than before. Further work on bycatch characterization should focus on obtaining data for areas and times not covered in the initial program.

As a final note on this subject, I would like to comment on the Shrimp Bycatch report that NMFS is circulating to Congress in response to the mandate in the 1990 MFCMA amendments. Despite the Agency's characterization of the program as "truly inclusive", the report was drafted solely by NMFS. Steering Committee members received a draft in early February and were given less than 10 days to respond. Many of us responded with extensive comments. Since then, I am not aware of any commercial representative on the steering committee who has been contacted about finalizing the report and addressing the comments we raised. Although typical, this is by no means a cooperative or inclusive approach and serves as further illustration of how the industry/Agency relationship has become strained.

Regarding gear development, the Foundation's efforts in conjunction with NMFS should continue and will need additional funding. Any efforts to implement current BRDs or to take other steps to reduce bycatch should be prohibited unless comparable measures are enforced throughout the range of the bycatch species.

Another key question yet to be addressed in the overall scope of bycatch research is that of the impact on the ecosystem of reducing bycatch mortality on species which are predators of shrimp. Earlier work by Dr. Joan Browder, with NMFS in Miami, indicated that bycatch reduction could have serious and

unintended consequences for the ecosystem as a whole. NMFS so far has de-emphasized these very real questions, even though the Service has for at least a decade been a proponent of "ecosystem approaches" to fishery management. The Agency should be directed to conduct such studies and report their findings to Congress within 24 months.

#### Fisheries Management Data

The characterization effort within the Bycatch Research Program provides important data regarding the composition and catch per unit effort of non-target species. In general these data were sorely lacking from the NMFS shrimp fishery data base. Poor quality data and data collection methods continue to plague all aspects of the data base. The current bureaucracy within the National Marine Fisheries Service imparts far too much credibility to poor data and has taken woefully inadequate steps toward improving it or addressing legitimate analytical concerns. Poor data skew public perception of the problem and handcuffs fishery managers with the best available but operatively useless data.

Industry, in cooperation with the Agency, should be involved in a complete overhaul of the current methods of gathering data from the shrimp fishery. Currently, many of the shrimp fishery data are collected by a mixture of state and federal employees through direct interviews of boat captains. This system depends on a good working relationship between the data collection agent and the fishermen. Due to strained relations between the industry and NMFS stemming from the TED issue, this relationship does not exist in many important areas.

The total number of interviews conducted decreased by more than 70% from 1981 to 1992. In 1981, Texas interviews represented less than 50% of the total while landings in Texas ports accounted for 33% of the total Gulf landings. In 1992, interviews along the rest of the Coast, especially in Louisiana, had dropped off precipitously and Texas interviews represented 75% of the total while landings in Texas ports still accounted for only 33% of the total. Louisiana ports, accounted for 45% of the landings in 1992, but experienced less than 10% of the total interviews.

These interview data are used to extrapolate Gulf wide shrimping effort. Too few interviews are being conducted in Louisiana where a high percentage of the catch is landed. Texas interviews which are an increasing percentage of the total, may not be representative of other areas. In general Texas ports have larger boats which make longer trips. These boats catch larger shrimp and expend more effort per pound of catch. If catch per unit effort data from Texas is over-represented in the data base then it is likely that overall Gulf effort will be

overestimated. Even where interview data are attainable, the accuracy of these data is largely dependent on the judgement of the port agent relative to the geographical and depth zone allocation of catch and effort.

At least in the Gulf Region, the current data collection system and data base management system is obsolete and must be redesigned. These systems were originally intended to show long term trends in landings and Gulf wide effort and catch per unit effort. The current trend in fisheries and protected species management will require greater accuracy and precision on a much finer scale than is attainable with the current obsolete data collection and management system.

An example of such inaccuracy is illustrated by the fact that currently, the fishery service estimates that the amount of fishing effort conducted by the Gulf shrimp fishery is constant or rising. This analysis flies in the face of anecdotal information regarding numbers of fishing licenses and documented vessels now fishing to those numbers 10 years ago. At our dock alone in 1979 there were 81 shrimp boats which routinely unloaded with us. Now there are less than 40. I have not talked to another unloading facility which has more boats now than they did 10 years ago.

One example of how data may be more accurately gathered is the program which we use at our unloading facility to interview captains as the trip is "shared" (distribution of revenue from the trip among the captain and crew). Data regarding the length of the trip, the amount of time spent trawling, the areas and depth zones where trawling was conducted and the amount of shrimp caught within each area and depth zone are gathered directly. We feel this information is more reliable than that which a government employee can gather from the boatmen. Unfortunately the current data base will simply not accept the degree of detail for the catch and effort which our fishermen are able to provide. Given appropriate upgrades to the data management system, similar programs should be encouraged at other docks. Fishermen could also record such data in a log book similar to those kept in other fisheries. The quality of this data could be controlled by comparison with a limited number of direct observations aboard cooperating vessels.

To address this data problem, the Agency should be directed to establish a task force, in which federal, state, academic and industry interests are represented, to assess the efficiency and effectiveness of the present system for collecting and reporting catch and effort data in the commercial and recreational fisheries for the Gulf of Mexico and submit to Congress a proposed new system within one year. Language for such an amendment to the Bill is included in the Gulf Package. As the federal government downsizes it would seem to make sense that

State and private interests should play a larger role in gathering the necessary information to manage fisheries.

#### Conflict of Interest

Regarding conflict of interest within the Council voting process I wish to support that position contained in the Gulf Package which would limit recusal to situations when the vote is addressing an allocation of resources and a council member would obtain an exclusive share or exclusive opportunity to fish shared by a minority of persons. It would also eliminate the reference to personal interest which limits potential recusals to commercial industry members.

#### Net Bans/State-Federal Jurisdiction

Although this issue is not addressed by S. 39, the Committee should be aware of the massive disruption in fisheries, particularly the redistribution of effort and reallocation of stocks, caused by the net ban in Florida. White shrimp and spanish mackerel, both of which are FMP species, will be impacted and are under the jurisdiction of both the Gulf and the South Atlantic Councils. The situation in Florida will at best be inconsistent the goals and standards set forth in the Magnuson Act, and at worst will work at cross purposes with efforts to achieve optimum yield.

At a minimum both Councils should be directed to report on the status of the impacted fisheries and potential impacts in the Federal waters caused by this disruption in Florida state waters. Specifically the report should include the economic and social impacts created by the displacement of effort and reallocation of stocks to other gear groups within those fisheries.

#### Scientific Peer Review of Stock Assessments

The Gulf of Mexico lacks a systematic program for reporting on the status of stocks each year. As a result, critical fishery information is not being peer-reviewed and not being reported in a cost-effective manner in cooperation with state agencies and the fishing industry.

Nationwide it is becoming more common that industry members in various fisheries to ask scientists outside the Fisheries Service to conduct reviews of data or analyses gathered or performed within the Agency. The distrust of Agency gathered data and analyses stems from a growing distrust of government in general as well as a specific lack of faith in the methods used to gather data for use by Agency analysts.

I believe that the process in the Gulf would benefit from independent peer review of stock assessments and ESA biological

opinions. The Agency should establish a procedure for assessing and reporting each year on the status of significant fish stocks in the Gulf of Mexico to fishery managers and the public. This process would provide for the systematic peer review of stock assessments as well as ensure that qualified scientists outside of the Service are consulted in a timely manner. Such a systematic peer review program is called for in the Gulf Package of Magnuson amendments.

Immediately, the stock assessment for Gulf red snapper should be subject to just such an independent assessment. Serious concerns exist within both the directed snapper fishery and in the shrimp fishery regarding the status of the stock given the rapidity with which the commercial quota is reached each year and the fact that the recreational quota has been exceeded by greater than 2 million pounds for the last two years. This highlights the fairness issue, why should small charter businesses be allowed to keep fishing when the recreational quota is exceeded, while small family commercial operators are tied to the dock? Despite clear evidence that substantial bag limit reductions are needed, NMFS has instituted 1995 bag limits that will not reduce the catch adequately, and they have refused to implement alternative measures to constrain the recreational catch.

#### Habitat

Efforts to conserve fishery resources must include habitat conservation. Although there is a growing public awareness of the need for preserving estuarine and wetlands habitat, fishermen do not see fishery management agencies taking action or participating in efforts to conserve habitat. This inactivity conveys to the fishermen a lack of concern by managers for the impact which habitat destruction has on the status of a fish stock; while these same managers seem overly concerned about the impact of the fishermen and potential overfishing.

In particular I would recommend the amendment offered in the Gulf Package which would preserve the traditional role of the Councils by calling for the identification of essential habitats in plans, but directs the Secretary to establish general guidelines to assist the Councils in identifying essential habitat. The amendment would also eliminate the direct focus on fishing impacts on essential habitat. Without this change that language would cause a problem between net fisheries and hook and line fisheries. Is there not enough conflict among fishery users to avoid adding another arena of disagreement?

### Artificial Reef Construction

Shrimp production has been hampered significantly by illegal offshore dumping activity associated with the recreational reef fish fishery. Recreational fishermen are continuing to dump "junk" (e.g. car bodies) in highly productive shrimping grounds making shrimp trawling in these areas hazardous to gear and crews. TEDs have made shrimp nets more easily damaged and much more expensive to replace and repair. The recreational dumping continues unabated despite appeals and threats by the Corps of Engineers. Years ago shrimpers gave up a 1000 square mile area of productive shrimping ground off Alabama that was designated as a permitted artificial reef building zone. Even with the existence of this zone illegal dumping continues outside the designated area. On shore we refer to such areas as unauthorized landfills. In the ocean they are known as artificial reefs.

"Trawlable bottom" (i.e. ocean bottom suitable for shrimp trawling) in the Gulf of Mexico is becoming a scarce resource. Artificial reefs as well as oil and gas structures and their pipelines continue to restrict trawling areas. This fishery habitat should be conserved through effective control of reef construction and mapping of known obstructions. The Act should also reflect the awareness that habitat construction for one fishery can result in habitat destruction for another.

### Conclusion

I believe that fisheries management can work to benefit fishermen. Fishermen, who should be the target of management, need to have confidence in the management process and methods. It is time we began taking steps through the Magnuson Act to make that happen for the Gulf of Mexico. First we should foster progressive programs to develop trust and a sound working relationship among federal and state fisheries managers, commercial and recreational fishermen and non-consumptive users of the resources. These programs should specifically target improved data collection, management and analysis programs. Fisheries are too valuable to allow mismanagement to continue for lack of reliable data. Once an atmosphere of trust and cooperation is established we can move toward practical solutions for conserving and managing the fisheries in our waters.



Senator STEVENS. Thank you, Chris. I will have a question later on. Mr. Horn?

### STATEMENT OF PHILIP HORN, CLARK SEAFOOD

Mr. HORN. Thank you, Mr. Chairman.

My name is Philip Horn, and I am from Pascagoula, Mississippi. I am a 3rd-generation wholesale seafood produce and processor and, like Chris, I, too, am involved in a family operation. I have two brothers and a father involved in our business.

I am also a member of the Gulf of Mexico Fisheries Management Council. I have served there for 6 years and, during this time, I have served as vice chairman and chairman of the council and have chaired several management committees, also. And I presently am chairman of the reef fish committee on this council. I also served as a trustee for the Gulf and South Atlantic Fisheries Development Foundation.

But today, I am representing myself. And the issues I wish to address are: bycatch; individual transferrable quotas or individual fishery quotas, individual quotas—there are a lot of names for it; conflict of interest; and critical habitat.

Bycatch is a term used by sport fishing, environmental and commercial groups as if it were a generic term. It is, in fact, a different issue in each region of the country and in each fishery. In the Gulf of Mexico, the issue is most magnified in the shrimp fishery.

But all fisheries have bycatch. The major problems today are in how the data on bycatch are used to determine a problem and how outdated the data are.

Congress has helped fund some new bycatch research in the shrimp fishery, yet a lot of this information is still not being used fully by the National Marine Fisheries Service, denoted as being incomplete, yet not the best available data.

The Magnuson Act's 602 guidelines allow for the overharvest of lesser species for the benefit of major species. In the Gulf, we are undertaking the management of almost every species commercially harvested, some of which are a bycatch of the primary species; hence red snapper is a bycatch of the shrimp fishery.

But the directed red snapper industry has bycatch, also, some of the lesser species such as trigger fish and red porgies.

These issues should be addressed by each council in each region and cannot be covered by a blanket bycatch plan.

Individual transferrable quotas should be determined by the councils at the desire of the fishery being managed. I personally oppose this type of management tool; economics is the only reason to impose this type of a management measure. The Magnuson Act National Standards specifically prohibit management solely on the basis of economics.

In fisheries where there is strong competition among recreational and commercial user groups, this program could, in essence, reallocate the commercial fishery to the recreational fishery by sport groups buying up all the shares of quotas that are available.

NOAA and NMFS has also consistently tried to get fees attached to these type systems since they were brought to the Gulf Council; and it was the National Marine Fisheries who pushed for this system, not the industries asking for it.

Adding fees on top of everything else the offshore fishery vessels have to contend with, such as EPIRBs, special life boats and other safety rules that private fishermen do not have, would be another nail in the coffin of the industry. This type of system also takes away the competition that commercial fishing has always had and needs to be successful today.

On the issue of conflict of interest, that is a topic of which I have personal experience, but I will not go into any detail of those cases today. The Act has a very good handle on conflict. Anyone can bring charges of conflict to NOAA legal counsel.

This Agency has the basic final say on this, and the individual charged can defend his position, but the lawyers from NOAA will decide in the end. Even if there are more stringent rules on conflict of interest, it will still be the legal lawyers who decide.

The only change I would like to see is that, if an individual is accused of conflict, he should have the right to know who his accuser is. And a decision of conflict should be rendered long before issues of discussion are presented; it should not be decided just before an issue or question is to be debated on and voted on at the particular meetings.

In the Gulf, if just having a financial involvement is justification for recusal on conflict of interest then there would probably be no commercial members ever voting on the council. No treatment or discussion has ever been seriously debated about the philosophical conflict of interest that recreational sector members of the councils slant their actions and vote toward at every meeting; as usual, the commercial members are singled out.

Some consideration and discussion should be given to removing the voting rights of state directors and the regional director. My reason for this is that, more times than not, political lines, rather than the best scientific information, are the bases of their votes.

Increasing the awareness of essential habitat is beneficial. I am cautious about encouraging this policy, given past actions which eliminated commercial fishing in favor of recreational fishing, such as closed areas and sanctuaries.

Past actions have been to focus on only commercial impacts as detrimental to habitat, when recreational activities, development and human interactions also impact habitat, such as levees and roads, chemical runoff, anchoring or filling.

In closing, gentlemen, it is my conclusion that the Act is not broken. Justification for this statement is that, in the Gulf of Mexico, there is now only one managed species that is overfished. Thus, this is a major success story, in my mind, that no one wants to discuss. Though minor adjustments are needed, major changes are not necessary.

Thank you for this opportunity. And I will be glad to answer any questions.

[The prepared statement of Mr. Horn follows:]

Testimony of  
Philip Horn

regarding

**Reauthorization of the  
Magnuson Fishery Conservation and Management Act**

presented to

The Subcommittee on Oceans and Fisheries  
of the  
Senate Committee on Commerce, Science, and Transportation

New Orleans, Louisiana

May 13, 1995

Good morning Mr. Chairman and members of the Subcommittee, my name is Philip Horn from Pascagoula, Mississippi. I am a third generation wholesale seafood producer and processor. I am a member of the Gulf of Mexico Fishery Management Council. I have served for six years during this time and have served as vice chairman and chairman of the Council and chaired several management committees. I also serve as a trustee on the Gulf and South Atlantic Fisheries Development Foundation. Today, I am representing myself. The issues I wish to address are bycatch, individual transferable quotas (ITQs), conflict of interest, and critical habitat.

Bycatch is a term used by sportfishing, environmental, and commercial groups as if it were a generic issue. It is, in fact, a different issue in each region of the country and in each fishery. In the Gulf of Mexico, the issue is most magnified in the shrimp fishery. All fisheries have bycatch, though. The major problems as I see it are in how the data on bycatch are used to determine a problem and how outdated the data are. Congress has helped fund new bycatch research in the shrimp fishery, yet this information is still not being fully used by the National Marine Fisheries Service.

The Magnuson Act's 602 Guidelines allows for the overharvest of lesser species for the benefit of major species. In the Gulf, we are undertaking the management of almost every species commercially harvested, some of which are a bycatch of the primary species (i.e., red snapper, trigger fish, and red porgy). These issues should be addressed by each Council and cannot be covered by a blanket "bycatch" regulation.

ITQs should be determined by the Councils at the desire of the fishery being managed. I personally oppose this type of management tool. Economics is the only reason to impose this type of management measure. The Magnuson

Act National Standards specifically prohibit management solely on the basis of economics.

In fisheries where there is strong competition among recreational and commercial user groups, this program could in essence reallocate the commercial fishery to the recreational fishery by sport groups buying up the quotas.

NOAA and NMFS have also consistently tried to get fees attached to these type systems since they were brought to the Gulf Council; and it was the NMFS who pushed this system, not the industries asking for it. Adding fees on top of everything else that offshore fishery vessels have to contend with (i.e., electronic positioning indicating radio beacons [EPIRBs], special life boats, and other safety rules that private fisherman don't have) would be another nail in their coffin. This type system also takes away the competition that commercial fishing has always had and needs to have to be successful.

Conflict of interest is a topic on which I can speak to because of personal experience. However, I will not go into detail about my specific cases.

The Act has a very good handle on conflict. **Anyone** can bring charges of conflict to NOAA Legal Counsel. This agency has the basic final say on this. The individual charged can defend his position, but the lawyers for NOAA will decide in the end. Even if there are more stringent rules on conflict of interest, it will still be the NOAA lawyers who decide. The only change I would like to see is that the accused should have the right to know who his accuser is, and that a decision of conflict or not should be decided before an issue of question is to be debated and voted on, not just before the meeting! In the Gulf, if just having a financial involvement is justification for recusal or conflict of interest then there will probably be no real commercial members ever voting on any Council. No treatment or discussion has ever been seriously debated about the philosophical conflict of interest that the recreational sector members of the

Councils slant their actions and votes toward at every meeting. As usual, the commercial members are singled out. Some consideration and discussion should be given to removing the voting right of the state directors and the regional director. My reasons is that their votes (more times than not) are political rather than based on the best scientific information available.

Increasing the awareness of essential habitat is beneficial. I am cautious about encouraging this policy given past actions which eliminated commercial fishing in favor of recreational fishing. Past actions have been to only focus on commercial impacts as detrimental to habitat when recreational activities development and human interactions also impact habitat (i.e., levees, roads, chemical runoff, bulkheading, filling, anchoring, etc.).

In closing, it is my opinion that the Act is not broken. Justification for this statement is that in the Gulf of Mexico there is now only one managed species that is overfished. This, in my mind, is a major success story that no one wants to talk about. Though minor adjustments are needed, major changes are not necessary. Thank you for the opportunity to speak, and I'll be glad to answer any questions.

Senator STEVENS. Thank you, very much, Mr. Horn. Ms. Anderson?

**STATEMENT OF WILMA ANDERSON, EXECUTIVE DIRECTOR,  
TEXAS SHRIMP ASSOCIATION**

Ms. ANDERSON. Mr. Chairman, members of the Subcommittee, it is great to see you all in the great East Texas—you know, here in Louisiana. We kind of adopted you all, but we will let you come on in and help us out. That was for Senator Breaux's benefit, Senator Stevens.

Senator BREAUX. I know.

Ms. ANDERSON. My name is Wilma Anderson. I am Executive Director of the Texas Shrimp Association, a trade association representing the interests of 750 offshore shrimp vessels in the Gulf of Mexico. We also have associate members that include processors, packing houses, wholesalers, distributors, retailers and lending institutions.

I also serve as a trustee in the Gulf and South Atlantic Fishery Development Foundation and am the Executive Director of the Gulf Shrimp Research and Development Foundation. I wish to thank the Subcommittee for the opportunity to provide comment on S. 39.

We hope that Congress, as it amends the Magnuson Act, will continue to be mindful of those of us engaged in the fishery business. While we are not opposed to reasonable, science-based fishery management programs, our members want these plans developed and implemented in a manner that reduces unnecessary regulations and restrictions.

The best plans will be those that the shrimp industry can support and still stay viable. We want regulations to be adopted using cost-benefit analyses and risk assessment techniques whenever possible, modified as necessary to the needs of fisher management.

As we have learned in the context of the Endangered Species Act, too often, government officials go into a closed room and then come out with restrictions which are insensitive and unnecessarily harmful to small businesses such as our shrimp vessel owners.

The shrimp industry in the Gulf of Mexico is rather unique. The emphasis in S. 39 is on strengthening the management of the nation's sustainable fisheries. However, shrimp fisheries are quite different from long-lived finfish stocks such as cod, haddock and snapper.

The size of the shrimp catch is much more a function of quality of estuarine and near-shore nursery grounds than of the fishing quotas such as those set for other types of fisheries. Thus, overfishing—except for growth overfishing—is not as much of a concern.

TSA members are much more concerned about making sure that available shrimp are not taken in large amounts before they grow to a much more valuable size, which we call growth overfishing. This is the basis for why Texas closes its shrimp grounds for certain parts of the year out to 200 miles.

We have always supported policies that will ensure that shrimping will continue to be a sustainable fishery into the future. We therefore ask that the Subcommittee be mindful of these dif-

ferences when making changes in the Magnuson Act addressing problems in other fisheries such as the New England ground fisheries.

The nation's marine fisheries are quite varied, and each of them is uniquely complex, as the Chairman of the Subcommittee very well knows. Unfortunately, we have seen too many vast generalizations, frequently negative, appear in print lately, both about the status of marine fisheries and about commercial fishermen generally. These vast generalizations should not be converted into needlessly restrictive laws and regulations which cripple our livelihoods.

I wish to briefly discuss several issues that are important to the shrimp fishery in the Gulf of Mexico: bycatch of nontarget fish and other animals; council representation and conflict of interest; collecting data; and habitat protection.

The bycatch of other species in the shrimp industry. We sometimes forget that, with all the new advancements in electronic technology, the technique of fishing with a net deployed below the surface of the water remains an imperfect activity. Moreover, the areas in which the commercially desirable shrimp species found are occupied by other species of animal.

It is hard to imagine how to develop shrimp trawl gear—or any underwater gear—that will be absolutely and completely successful in pulling shrimp out of the Gulf without catching other species. But we agree that we must try our best to develop plans and techniques that minimize this undesired bycatch while still being cost effective for the fishermen.

As is well known, the shrimp industry has been struggling with the mandate of the Endangered Species Act that protects several species of sea turtle. Last year, members of the Texas Shrimp Association and vessel owners across the Gulf made the decision to formulate a plan for addressing the issue of turtle bycatch.

We have employed a scientific consulting firm to look closely at the science and come up with a plan that would be scientifically credible and effective in reducing the incidental take of sea turtles. The plan was prepared by LGL

Ecological Research Associates and was submitted to the National Marine Fisheries Service April 24, 1995 as a substitute for the Agency's biological opinion of November 14, 1994.

The thrust of our plan is to limit shrimp fishing effort in the near-shore waters within 10 kilometers of the coast to only those vessels willing to pull two 50-foot nets equipped with turtle excluder devices. The larger vessels that typically pull the large quad-rigs would move outside 10 kilometers. These vessels would not need to use TEDs in their nets because of the very low probability of catching turtles in deeper waters.

We know that the Kemp's ridley population is increasing and that, as these turtles increase in number, they are entering the shallow waters where shrimp are also found. By shifting the major shrimping effort off shore, fewer turtles will be incidentally caught. The other obvious benefit of our proposed plan is the reduction of finfish bycatch, which is largely an inshore and near-shore problem, as well.



Most bycatch reduction discussions have focused on technological fixes. Efforts must continue in excluding undesirable species. But we have learned with respect to TEDs that gear research is too often done in controlled, laboratory-like conditions; when the gear is then used in the real world conditions, it does not always work in a cost-effective manner.

Consequently, before bycatch reduction gear is mandated by regulation, the new equipment must be shown to be both effective in excluding bycatch and economical to use. TSA was a large participant in the Gulf bycatch program. We contributed numerous vessels, numerous data, and we were spending about 2 years of time on this project.

We are willing to work with the regional councils and others in seeking to minimize bycatch in a manner that does not impose prohibitive restrictions and costs to our industry.

In council representation and conflict of interest, we want individuals on the councils who understand the complex natures of marine fisheries, not political appointees who could care less. Many of the proposals to eliminate a perceived conflict of interest problem in the council system go too far.

We support proposals that limit the recusal of the council member to those votes in which allocations are determined are exclusive fishing privileges will be given; anything broader could diminish the value of the commercial industry participation on the council.

Collection of data. For many years, government officials have been complaining about the lack of adequate data on the shrimp fisheries in the Gulf. We are willing to work with them, we are willing to participate with them; we just want to be part of the process.

It is perhaps time to look at our existing data-collection system, together with those of the individual states, and come up with a new system that develops the information base needed without undue cost, duplication or intrusion. Our members do not want to buy more licenses or registrations to fill out with more forms.

Habitat protection. TSA is very strong in this. It is extremely important to sustain shrimp fisheries. In Texas, we continue to experience oil and chemical spills, new offshore development, flooding, and loss of wetland areas that threaten juvenile shrimp and their nursery areas.

We support efforts to focus attention on habitat conservation and protection, as long as the focus does not detract from the wise management of our fisheries. Congress must be careful here not to duplicate what is covered by other state and Federal laws or to weaken those that are currently designed to protect shrimp fisheries.

TSA's environmental director constantly works, on a daily basis, on the ecosystems of Texas, so we know what is happening. We know what industries are going in and what is affected. We are constantly monitoring our ecosystems.

In closing, Mr. Chairman, I want to reiterate the importance of the alternative shrimp/turtle management plan we have submitted to the National Marine Fisheries Services. The plan is an attempt to preserve the viability of our fishery, in light of the increasing population of turtles that are found in shrimp grounds and else-

where. We believe it is the best way to deal with the turtle bycatch problem, as well as the finfish bycatch.

I would be pleased to answer any questions.

[The prepared statement of Ms. Anderson follows:]

TESTIMONY  
OF  
WILMA ANDERSON  
EXECUTIVE DIRECTOR  
TEXAS SHRIMP ASSOCIATION  
BEFORE THE  
U.S. SENATE COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION  
SUBCOMMITTEE ON OCEANS AND FISHERIES  
ON  
S. 39, THE SUSTAINABLE FISHERIES ACT

May 13, 1995  
New Orleans, Louisiana

Mr. Chairman and Members of the Subcommittee:

My name is Wilma Anderson and I am the Executive Director of the Texas Shrimp Association ("TSA"), a trade association representing the interests of shrimp vessel owners operating in waters along the coast of Texas, Louisiana, Mississippi, Alabama, Florida's west coast, and in the Gulf of Mexico. TSA's 330 members own over 700 shrimp vessels and many of our members also own shoreside shrimping support facilities. TSA associate members include processors, packing houses, wholesalers, distributors, retailers, transportation companies, and lending institutions. I have been TSA's Executive Director since 1991 and, prior to that, served as a director for several years. I also own and operate three offshore shrimp vessels.

I wish to thank the Subcommittee for the opportunity to provide comments on S. 39, called the Sustainable Fisheries Act, which would reauthorize and amend the Magnuson Fishery Conservation and Management Act (the "Magnuson Act"), this

nation's premier marine fishery management legislation. We hope that Congress, as it amends the Magnuson Act, will continue to be mindful of those of us engaged in the fisheries business. While we are not opposed to reasonable, science-based fishery management programs, our members want these plans developed and implemented in a manner that reduces unnecessary regulations and restrictions. The best plans will be those that the shrimp industry supports. And we want regulations to be adopted using cost-benefit analyses and risk assessment techniques whenever possible, modified as necessary to the needs of fishery management. As we have learned in the context of the Endangered Species Act, too often government officials go into a closed room and then come out with restrictions which are insensitive and unnecessarily harmful to small businesses such as shrimp vessel owners.

The Shrimp Fishery in the Gulf of Mexico is Unique

The emphasis in S. 39 is on strengthening the management of the nation's sustainable fisheries. However, shrimp fisheries are quite different from long-lived finfish stocks, such as cod and haddock. The size of the shrimp catch is much more a function of the quality of estuarine and nearshore nursery grounds than of the fishing quotas such as those set for other types of fisheries. Thus, overfishing (except for growth overfishing) is not as much a concern. TSA members are much more concerned about making sure that available shrimp are not taken in large amounts before they grow to a much more valuable size,

which is what we call growth overfishing. This is the basis for closing shrimp grounds for certain parts of the year in Texas and in the Exclusive Economic Zone under the Gulf of Mexico Shrimp Management Plan. We have always supported policies that will ensure that shrimping will continue to be a sustainable fishery into the future.

We therefore ask that the Subcommittee be mindful of these differences when making changes in the Magnuson Act addressing problems in other fisheries, such as the New England ground fisheries. The nation's marine fisheries are quite varied and each of them is uniquely complex, as the Chairman of this Subcommittee knows well. Unfortunately, we have seen too many vast generalizations (frequently negative) appear in print lately, both about status of marine fisheries and about commercial fishermen generally. These vast generalizations should not be converted into needlessly restrictive laws and regulations which cripple our livelihoods.

Today, I wish to briefly discuss several issues that are important to the shrimp fisheries in the Gulf of Mexico: (1) bycatch of non-target fish and other animals; (2) council representation and conflict of interest; (3) collecting data; and (4) habitat protection.

#### The Bycatch of Other Species in Shrimp Fishing

We all sometimes forget that, with all the new advancements in electronic technology, the technique of fishing with a net deployed below the surface of the water remains an imperfect

activity. Moreover, the areas in which commercially desirable fish are found are occupied by other species of animal. It is hard to imagine how to develop shrimp trawl gear (or any underwater gear) that will be absolutely and completely successful in pulling shrimp out of the ocean without catching other animals. But we agree that we must try our best to develop techniques that minimize this undesired bycatch while still being cost-effective for the fishermen. Rigid and inflexible mandates should be avoided.

As is well known, the shrimp industry has been struggling with the mandate of the Endangered Species Act that protects several species of sea turtle that are listed as either threatened or endangered. Last year, members of the Texas Shrimp Association made the decision to try to formulate our own plan for addressing the issue of turtle bycatch. We hired a scientific consulting firm and asked them to look closely at the science and come up with a plan that would be scientifically credible and effective in reducing the incidental take of turtles. The plan was prepared by LGL Ecological Research Associates, Inc. and was submitted to the National Marine Fisheries Service on April 24 as a substitute for the agency's biological opinion of November 14, 1994.

The thrust of our plan to limit shrimp fishing effort in the inshore areas and waters within 10 kilometers of the coast to only those vessels willing to pull 100 feet of net equipped with turtle excluder devices. Larger vessels typically will pull 200

feet of nets. Outside of 10 kilometers, vessels would not need to use TEDs in their nets because of the very low probability of catching turtles in deeper waters. We know that the Kemp's ridley population is increasing and that as these turtles increase in numbers, they are entering the shallow waters where shrimp are also found. By shifting the major shrimping effort offshore, fewer turtles will be incidentally caught. The other obvious benefit of our proposed plan is the reduction of finfish bycatch, which is largely an inshore problem as well.

Most bycatch reduction discussions have focussed on technological fixes. Efforts must be continued to develop fishing gear that has greater success in excluding non-desired species. But we have learned, with respect to TEDs, gear research is too often done in controlled, laboratory-like conditions. When the gear is then used in real world conditions, it does not always work in a cost-effective manner. Consequently, before bycatch-reducing gear is mandated by regulation, the new equipment must be shown to be both effective in excluding bycatch and economical to use.

We are willing to work with the Regional Councils and others in seeking to minimize bycatch in a manner that does not impose prohibitive restrictions and costs on our industry.

#### Council Representation and Conflicts of Interest

The Council system in the Magnuson Act established an unusual and worthwhile mechanism for ensuring that those who are actually engaged in and knowledgeable about marine fisheries

participate in the management process. The essential counterbalance to undue influence by members of the councils is, of course, the Secretary of Commerce, who has the final decisional and rulemaking authority under the Act. We want individuals on the councils who understand the complex nature of marine fisheries, not political appointees who could care less.

Many of the proposals to eliminate a perceived conflict of interest problem in the council system go too far. We support proposals that limit the recusal of a council member to those votes in which allocations are determined or exclusive fishing privileges will be given. Anything broader could diminish the value of commercial industry participation on the council.

#### Collection of Data

For many years, government officials have been complaining about the lack of adequate data on the shrimp fisheries in the Gulf. In many respects, the base of information on fisheries used in the management process is frequently limited in both amount and timeliness. On the other hand, we have also seen efforts by government agencies to impose new licensing and registration systems that will be costly or duplicate existing systems. Everyone in this country has growing concerns about the cost and intrusiveness of providing information demanded by government agencies for what are said to be "good" objectives.

It is perhaps time to look at our existing data collection systems, together with those of the individual states, and come up with a new system that develops the information base needed



without undue cost, duplication, or intrusion. Our members do not want to buy more licenses or registrations or fill out more forms.

#### Habitat Protection

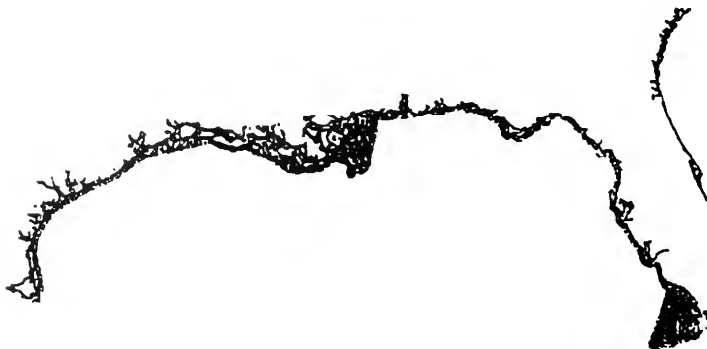
As noted earlier in this testimony, habitat protection is extremely important to sustainable shrimp fisheries. In Texas, we continue to experience oil and chemical spills, new offshore development, flooding, and loss of wetland areas that threaten juvenile shrimp and their nursery areas. Consequently, we generally support efforts to focus greater attention on habitat conservation and protection, so long as that focus does not detract from the wise management of our fisheries. Congress must be careful here not to duplicate what is covered by other state and federal laws, or to weaken those that are currently designed to protect shrimp fisheries.

In closing, Mr. Chairman, I want to reiterate the importance to my members of the alternative shrimp/turtle management plan we have submitted to the National Marine Fisheries Service. The plan an attempt to preserve the viability of our fishery in light of the increasing populations of turtles that are found in shrimp grounds and elsewhere. We believe it is the best way to deal with the turtle bycatch problem, as well as finfish bycatch.

I would be pleased to answer any questions the members of the Subcommittee may have.

## ALTERNATIVE MANAGEMENT PLAN FOR GOM

- 1) Establish ~~permanent~~ Sea Turtle Conservation Zone including most bays and parts of bays, seaward to 10 km offshore



- 2) Establish the following restrictions for the offshore portion of the STCZ
- Primary trawl gear limited to 100' of headrope, outside hanging to outside hanging
  - TED's required on primary fishing gear at all times and places within STCZ
  - 15' trynet (no TED required) allowed with door measurements not to exceed 18" x 36"
  - Night fishing prohibition to 7 fm or 10 km (whichever is greater) continued for Texas waters
- 3) Require conservation management plan to be filed by other users of the STCZ
- 4) Index "closure threshold" of strandings to abundance, if a weekly point value is compared to the mean for the prior three years, transform data as necessary and take sample variation into account (e.g., does the weekly value exceed the 3-yr mean + 2 standard deviations).
- 5) Rescind the TED requirement outside the STCZ

SEA TURTLE AND SHRIMP FISHERY INTERACTIONS—IS A NEW  
MANAGEMENT STRATEGY NEEDED?

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Prepared For

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April 1995

## ALTERNATIVE MANAGEMENT PLAN

Turtle Exclusion Devices (TEDs) became not only mandatory but in widespread use in the Gulf of Mexico and South Atlantic in 1990. However, inshore waters of the Gulf were exempted until December 1994. TEDs will be required for all major components of the inshore Gulf shrimp fisheries beginning in 1995. Correlations of shrimp fishing effort and strandings suggest that the sea turtle bycatch problem is attributable to the high spring-fall effort levels characteristic of both the inshore and nearshore fisheries of the open Gulf. In the Gulf of Mexico (Texas in particular), turtle stranding rates have not decreased in 1990-1994 (post-TED) as compared to rates observed for 1986-1989 (pre-TED) years; nor has there been any reduction in the strength of the observed correlations between sea turtle strandings and shrimping effort offshore. Collectively, these observations suggest that the inshore fisheries may strongly contribute to the overall problem. Increase in enforcement has been the only solution offered that might reduce strandings, even though compliance in the offshore waters of the Gulf was originally estimated to have been high, and the inshore fishery had not yet used TEDs as of 1994.

### Proposed Management Plan Summary

We propose a somewhat different approach, beginning with the establishment of a sea turtle conservation zone (STCZ) in the Gulf of Mexico, including inshore and nearshore waters out to a distance of about 10 km (6.2 statute miles) offshore in most areas of the Gulf (see Fig. 28). In parts of NMFS statistical areas 17 and 18, where the density of Kemp's ridleys appears highest, we extended the offshore boundary seaward to some 18 statute miles offshore and also made modifications in the Tortugas-Sanibel pink shrimp fishing grounds offshore southwest Florida. The STCZ, as proposed, would also afford protection for juvenile loggerheads as well as Kemp's ridley sea turtles (compare Figs. 12 and 28).

Inside the STCZ, TEDs would be required at all times and places. While up to four nets could be towed, all trawl(s) in combination could not exceed a total of 100 ft of headrope as measured from outside hanging to outside hanging. Additionally, a 15-ft trynet could be used. Trynet doors

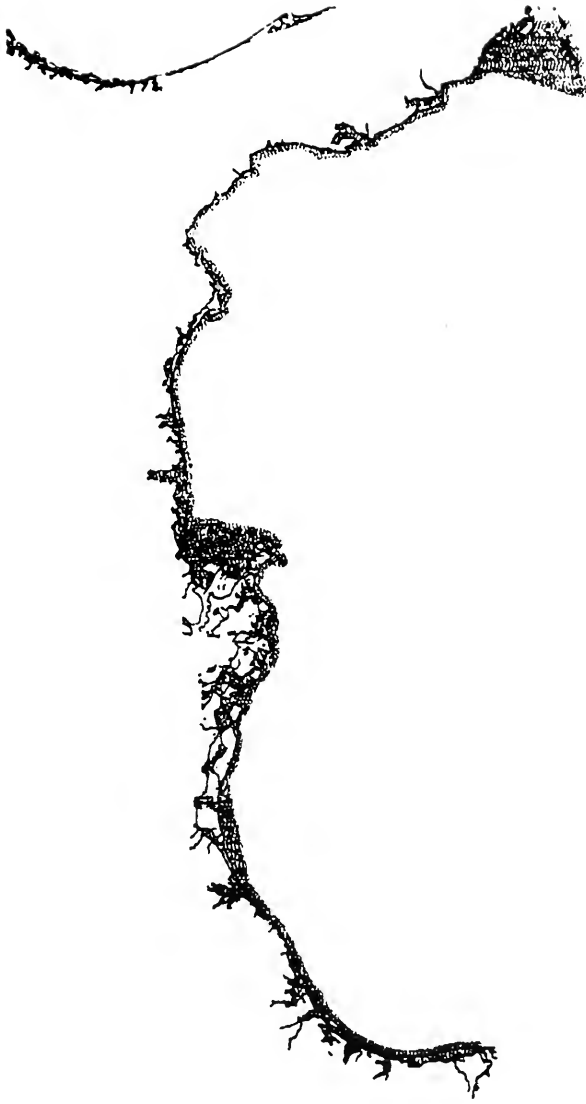


Figure 28. Proposed sea turtle conservation zone for the United States Gulf of Mexico (see also Panel B, Fig. 12).

could not exceed 18 inches in height or 36 inches in length. Night fishing would be prohibited in statistical areas 17-21. The inshore portion of the proposed STCZ would continue to be managed by the respective states. The STCZ would, for all practical purposes, be considered to be equivalent to critical habitat. As such, all or part of the inshore or offshore STCZ would be subject to emergency time/area closures should these be considered necessary. In order to prevent abuses, no user group could be exempt from a closure. Texas inshore and nearshore shrimpers have been contacted and endorse the concept (Appendix 3).

Restrictions of activity within the STCZ should not apply to the shrimp industry alone. As noted by Magnuson et al. (1990), there are many human activities other than shrimp trawling that can result in sea turtle mortality, and the authors of the report stated that these should be addressed and reduced (e.g., see recommendation 3, page 14 of Magnuson et al. 1990). Of particular importance in this regard is the Kemp's ridley abundance zone centered around Sabine Pass. All human activities known to result in sea turtle mortality could have higher than normal effects in this region because of the high density of Kemp's ridley sea turtles in the area. For example, recreational fishing is not normally considered a threat to sea turtles. Yet, in the Sabine Pass area, Kemp's ridleys are commonly caught by recreational fisherman to the detriment of the turtles. Other threatening activities in this region in particular and the STCZ in general, include boating, gill netting, dredging, long-lining, menhaden fishing, mullet-fishing and oil and gas activities (seismic exploration and platform removals using explosives) and military maneuvers involving explosives. Collectively or individually any one of these activities could result in turtle mortality rates high enough to create a shrimp fishing closure situation regardless of whether shrimp fishing was a contributor to the mortality or even blameless. All user groups of the STCZ should therefore be identified, and required to file a conservation management plan if they are to continue to use this region. Likewise, a closure of a region of the STCZ in part or in its entirety should apply across all user groups.

The inshore portion of the proposed STCZ would not be affected by restrictions above that which would occur under the present management

plan, with the exception that these areas would now be subject to closure for sea turtle protection purposes. Given this, consideration should be given to the idea that some parts or all of certain bays might be exempted from the STCZ based upon further review of the stranding and effort data within individual bays. The greatest affect will be on the offshore sections of the proposed STCZ. Large vessels will likely not fish this area due to the net-size and time-of-day fishing restrictions, and TED requirements. Pulse fishing in the nearshore zone attributable to displacement of the Texas offshore fleet to Louisiana and the convergence of the entire offshore Gulf fleet in Texas before and after Texas closure should be greatly reduced or eliminated. In effect, nearshore waters of the STCZ are intended to be allocated to the small boats of the respective States, with shrimp fishing allowed, but under very restrictive conditions. In contrast, the offshore fleet can operate without TEDs but will be forced to fish in offshore waters that are comparatively free of turtles during the peak of the offshore shrimp season.

In our proposal, TEDs would not be required seaward of the proposed STCZ. Offshore shrimping vessels electing to fish this zone without TEDs would, however, be required to mobilize and demobilize from a fishing mode seaward of the STCZ. Failure to do so should result in forfeiture of the catch, or more severe penalties. Magnuson et al. (1990) noted that TED use might be selectively applied when and where the probability of capturing sea turtles did not exceed acceptable levels. They even suggested much of the same area we have proposed be considered as one of these places.

Additional rationale for our proposal follows. The endangered Kemp's ridley inhabits shallow waters of estuaries and nearshore zones during April-November where it preys on estuarine-dependent crabs (and shrimp bycatch?). During April-November, one known center of abundance extends from Cameron westward to the upper Texas coast just west of Sabine Pass. During winter (December-March), the evidence suggests that the turtles which occur in this area in summer move west and south along the coast, as well as offshore to escape cold water temperatures. While the distribution of Kemp's ridley during this period is generally outside the STCZ, shrimp fishing effort outside the STCZ is low during winter, and the turtles present are dispersed over a large area. We believe that the probability of capturing

sea turtles outside the proposed STCZ under these conditions is within acceptable levels, as outlined below.

A consistent feature of the spring-fall distribution of the Kemp's ridley sea turtle in the Gulf is that they spend a high proportion of their time in an area within our proposed STCZ. Shrimping effort in the Gulf of Mexico is most intense in this same area and season. Although the trawl catch rate of Kemp's ridley is low in the Gulf, the overall combination of high nearshore effort and high density of the turtle almost certainly results in high capture and mortality rates. Protection efforts should focus on this zone and season.

Level of shrimping effort seaward of our proposed STCZ is markedly less intense than nearshore, and the effort is distributed over a much larger geographic area. Kemp's ridley sea turtles are likewise less dense in the offshore region than in the nearshore region except, possibly, during winter. However, during winter, shrimp fishing effort is at its lowest level and the turtles are dispersed over large areas. Given these features, no protection is required in this zone during any season.

Magnuson et al. (1990) noted that in several areas and times of the year, sea turtles might be sufficiently low in abundance that shrimp fishing could be conducted without the use of tow-time restrictions or TEDs. They recommended that water deeper than 15 fm in the Gulf of Mexico should be one such area considered. The results of our analysis suggest that unregulated shrimp fishing can be conducted in waters outside our proposed STCZ without serious threat to sea turtles. We believe that adoption of our proposal will yield another benefit—increased compliance and greater cooperation from the shrimp fishing industry. Leaders of the shrimp fishing industry accept the need for TEDs in nearshore habitats, but believe the requirement for TEDs offshore is an onerous and unwarranted regulation. Chairman Magnuson dedicated the National Research Council's study effort (Magnuson et al. 1990) to "the peaceful coexistence of sea turtles and shrimp fisheries". To make reality of that concept requires a regulatory change.



### Recommendations

Improved monitoring of stranding frequency and shrimp fishing effort would greatly enhance the ability to evaluate the effects of the proposed or a different management plan. At present, and for many years, the STSSN has operated largely on a voluntary basis with only a small if any budget. Yet, as evidenced by Magnuson et al. (1990) and this report among many others, these data are critical for evaluation purposes. NMFS should be allocated an estimated \$500,000 in new funding to improve beach monitoring for sea turtles, including estuaries. A systematic stranding monitoring plan should be developed in conjunction with the shrimp fishing industry. Representatives of the shrimp fishing industry need to participate in the monitoring program. A joint effort would go far towards relieving concerns of shrimpers about the possible bias or "cheating" that they believe may occur on the part of some volunteers collecting the strandings data.

Controversy about how shrimp fishing effort in the Gulf of Mexico is estimated and allocated by NMFS lies at the heart of all the present bycatch issues. Resolution of most of these issues are beyond the scope of this report. However, we strongly believe that NMFS should be allocated another \$500,000 in new funding and use these funds towards improving Port Agent coverage of shrimp landings and distribution of effort yielding those landings. Port Agent coverage across most of the western Gulf has declined from the late 1970s and early 1980s to embarrassingly low levels in recent years. For example, 19,681 interviews were conducted in 1981 versus only 5,431 in 1992, a 72% decrease (Nance 1993). Statistical methods being used to estimate missing values for time and areas for which there are no interview data are complex, not well understood, and should be treated as suspect when used for anything other than describing long-term trends.

One research program that should receive special consideration for priority and continued funding is the joint program being conducted by Dr. Andre Landry of Texas A&M University with NMFS personnel from the Galveston Laboratory. This program provides independent estimates of sea turtle abundance based upon entanglement-net (live capture) sampling. Captured sea turtles are weighed, measured, assayed for health, tagged in several different ways (including radio and satellite tracking tags) and

released. The information on movements and distribution of these turtles has already, and will continue to go far towards resolving sea turtle-shrimp fishing issues.

There are many other scientific research studies that, if conducted, would contribute greatly towards further resolving sea turtle-shrimp fishing interaction issues (e.g., see Magnuson et al. 1990). While we do not present our thoughts on these in this report, we do propose that an annual assessment workshop be conducted, jointly sponsored by NMFS and TSA. In this format, updates to the TSA database can be presented, and the GIS can be used to evaluate the effectiveness of the management program to date. The need for additional measures (or relaxation of existing measures) can be evaluated with the data supporting (or not supporting) an action clearly evident to all participants.

We would also recommend that Congress in 1995 allocate to the Gulf of Mexico shrimp industry a sum of \$300,000 in matching funds to be used to continue the assessment by a "Marine Endangered Species Assessment and Bycatch" (MESAB) Task Force. The shrimp industry has already provided \$150,000 for this purpose (this study), and plans to allocate another \$150,000 in the summer of 1995 even if no government funding is received. The proposed government expenditure would constitute matching funds and would be offset, in large part, from the government sale of shrimp catches confiscated and sold in 1994 due to TED violations. The proposed funding would carry the MESAB Task Force through 1995, and allow it to operate while future funding, if necessary, is secured from a coalition of the shrimp industry and conservation communities representing the private sector. Once the sea turtle and overall shrimp trawl bycatch problems have been resolved, the Task Force will pass from existence. Under this plan, the major adversaries—NMFS, shrimp industry, conservation groups—will have an opportunity to work together in a scientific and cooperative arena, rather than in an unstructured political and emotional context. LGL would withdraw from consideration as the Task Force contractor should this be considered necessary. We believe, however, that we could fill this role fairly and without bias.

As envisioned, the Task Force would be chaired by Dr. Gallaway of LGL, and he would recommend a co-chair be appointed by NMFS. They would direct the assessment activities, conduct workshops and formulate proposed management plans. They would also seek to promote publication of the results in the most prestigious scientific journals possible which would ensure that the results are objective and unbiased based upon the peer review received from the broader scientific community.

Senator STEVENS. Thank you, Ms. Anderson. Mr. Tom Murray?

**STATEMENT OF THOMAS J. MURRAY, SEAFOOD CONSUMERS AND PRODUCERS ASSOCIATION, INC.**

Mr. MURRAY. Thank you, Mr. Chairman. It is indeed a personal honor for me to be here today.

I began my career in economic analysis prior to the Magnuson Act as a fisheries economist for the South Carolina Wildlife Department. I was on the faculty of the Virginia Institute of Marine Science during the "heyday" of the Magnuson Act authorization and was very honored to serve as Executive Director of the Gulf and South Atlantic Fisheries Foundation, as well as the Chairman of the MARFIN Board in the Gulf of Mexico.

Senator Breaux, it is a particular honor to be here and offer some ideas from people who, over the years, you have been a great, great help to.

The Seafood Consumers and Producers Association, of which I am a messenger and one of the directors, was formed in Tampa 4 years ago to try and bring uniformity to some of the smaller fishing trade associations who fish the eastern Gulf of Mexico principally.

We represent the Florida Keys Fishermen's Organization, the "Monroe County Commercial Fishermen," the "Southern Offshore Fishing Association" and a number of small county groups who have a vital interest in the management of the Federal zone.

I do not have to tell you of the recent disruption which the state of Florida has gone through with its fishery management by way of the initiative process; the Amendment 3 to the Florida Constitution has greatly distorted the traditional fisheries of the state of Florida. For that reason, we are very fortunate to be able to be here today and share our views with you.

I will try to limit my comments to, really, four areas: the council composition and conflict of interest issues; bycatch; criteria for limited entry programs; and requirements to ensure stable, justifiable, scientific management of our fisheries.

Much has been said regarding the perception of conflict of interest on the council. Frankly, the councils themselves, we believe, should remain primarily made up of participants in the fisheries. We have seen recent appointments of scientists, economists and others on these seats. These are excellent individuals. We see that, however, as perhaps a bad trend.

We would like to see the councils continue to be made up of people who are most directly impacted by the regulations. That is what Congress envisioned, I believe, when they started the council process. We hope that can be continued without hamstringing the councils through very difficult policies and procedures that will do little but impede the representation of the people most affected.

In a nutshell, we believe that this perception is going to be a fact of life, that Congress must accept that a certain amount of conflict of interest will be inherent in the process. It is, in fact, the price which must be paid to keep the right people involved in this very important process to them.

With respect to bycatch, our perception and that of the fisheries people I represent is a little different. We are heavily involved in

hook-and-line fisheries in the offshore area of Florida. We see the primary bycatch issue as one of regulatory discards.

We feel that much can be done through the councils and National Marine Fisheries Service to begin to remove some of the bycatch which is associated with our fisheries that is really not necessary. We have, for example, quotas in place for our reef fisheries in the Gulf of Mexico.

We feel that, if there were an allowance to bring in a certain percentage of these quotas in terms of bycatch allowances, et cetera, we would remove waste and, also, be controlled by the quota itself, that these landings would be counted against the quota. Nobody is for waste, and certainly not the small business people that I represent, the fishermen.

Let me add that we salute and are very thankful for the leadership which the Gulf shrimp industry has taken. We support continuation of their program in a very difficult environment. It can be seen, in fact, that my constituents, hook-and-line fishermen and others, have much to gain by successful controls of bycatches in the Gulf.

So we endorse that program. But first, from a common-sense standpoint, my people say let us do away with the regulatory discards, things we can control immediately.

With respect to limited entry programs, certainly, the ITQs, IFQs and these things are almost the fashion of the day. In the southeast, I was involved in financing fishing vessels, as well, from North Carolina through Florida, fortunately, during the heyday of expansion in capital.

We were very guarded in the financing that we were involved in, and I think much of that excess capital is being bled out of our fisheries, particularly in the offshore area.

We think that the implementation of individual transferrable quotas and these other unique mechanisms should be held in abeyance until we have some guidelines and rules and, perhaps, a review, which will be comprehensive, to let my people who are small business people understand fully what they are. Right now, it is not that people support them or oppose them; we, frankly, do not have a good idea of what they are.

So we would endorse and feel it is essential that, when the councils and NMFS are creating and allocating economic rights and potentially conferring substantial wealth on individuals, they do so under clearly articulated guidelines and principles.

It has been recommended by some of those I work with that, in fact, perhaps a limited entry review commission could be established by Congress that would look in detail to these new mechanisms before they in fact are implemented throughout our fisheries. Such a framework would provide, we believe, the most rational approach to this and, I think, perhaps instill more confidence from the small business standpoint in this new and creative management technique.

Finally, the requirements for scientifically justifiable regulations have been talked about at length at a number of hearings you have attended. We feel that our industry needs a period of stability in the southeast, for example, the reef fish fishery of which my members and constituents are involved.

The first amendment to the reef fish plan came in 1990. This week, in Tampa, we reviewed the 11th amendment to the reef fish plan—in 5 years. This is not to say that the regulations are not necessary. We salute sound management based upon science.

But it is almost as if—with all due respect to the councils—there is a vested interest in continuing to spin off amendments which my people—and I am a messenger here—see as tinkering and diminishing returns in terms of what they accomplish in terms of conservation of the resource.

As was pointed out by a number of speakers, we have been very successful in the southeast in maintaining control of our offshore fisheries. We are proud of the fact that our fisheries are stable and properly managed. A period of regulatory stability would mean a lot to my people; right now, it seems as if you cannot plan from council meeting to council meeting.

Really, we have three recommendations in the area of upgrading the scientific management. First, Section 303 of the Act should require that FMPs implementing regulations should be supported by a clear preponderance of evidence in the record.

I am not sure that is really the case in our day-to-day activities with the council and the Agency today.

The thrust of the amendment we propose would be to depoliticize council action and require that it be based on the weight of scientific information.

Second, we would propose another amendment to Section 303 that any options adapted would be the least restrictive of those available. This is common sense. There are a number of ways of getting to the goals, whether they be spawning potential ratio goals or others.

Our request would be that the councils and the Agency demonstrate that what is selected is, in fact, the least disruptive economically to our businesses. So a least restrictive alternative requirement would help reduce the risk of severe dislocation as a result of new management measures.

Third, where the councils and the Secretary are considering allocation decisions with major economic ramifications, the requirement should be for circulation, independent review and a public scrutiny of a cost/benefit analysis. In fact, we have seen a number of our fisheries in the southeast totally allocated to user groups or away-from-gear groups based on vague net economic benefit grounds. We do not feel that is good enough.

We feel that there is a great wealth of professional expertise on our SSC committees and others that can look at the real costs and benefits of an issue. We have had a number of plans in the southeast—for example, the Atlantic billfish—which were based on what we feel are rather vague net benefit grounds. That kind of decision-making is the sort that undercuts the credibility of fisheries management and should not be permitted in the future.

Fishery monitoring and endorsement: I could go on with a number of issues.

If I may make one last point, Mr. Chairman, I would appreciate your indulgence. With respect to the state jurisdictional issue, we have felt good about S. 39 in that it seemed to have backed off from what we see as an expansion of state authority in the EEZ.

We feel the fishery resources predominantly harvested in the EEZ and currently not subject to a Federal plan could be made subject to a Federal plan. We feel that our councils are well representative of the states, that if, in fact, an issue deserves attention in the Federal zone, the councils are certainly suited to do it.

We feel now that, from my fishermen's perspectives, what the Federal zone represents is an area where there are standards in place that protect their interests and that management of the fisheries that are involved is based upon the best available scientific information, is fair and equitable to all of those involved.

And, frankly, the fear among the community in the eastern Gulf is that extension of state jurisdiction will not necessarily adhere to the Magnuson Act standards that our industry believes in.

Mr. Chairman, thank you, very much, for the opportunity to be here today. I look forward to discussing any of the questions you may have.

[The prepared statement of Mr. Murray follows:]

**TESTIMONY OF**  
**THOMAS J. MURRAY**  
**on Behalf of the**  
**SEAFOOD CONSUMERS AND PRODUCERS ASSOCIATION, INC.**

**Regarding**  
**REAUTHORIZATION OF THE MAGNUSON FISHERY**  
**CONSERVATION AND MANAGEMENT ACT**

**Presented to**  
**THE SUBCOMMITTEE ON OCEANS AND FISHERIES**  
**of the**  
**SENATE COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION**

**New Orleans, Louisiana**

**May 13, 1995**



**SUMMARY OF POSITION**

In the following statement, the Seafood Consumers and Producers Association, Inc. ("SCPA") express the view that the Magnuson Fishery Conservation and Management Act (the "Act") is not in need of major overhaul. Overall, a period of statutory and regulatory stability would be desirable. However, SCPA does have some modest, specific suggestions for administrative and legislative improvements in several areas:

(1) With respect to composition of the Councils and conflict of interest concerns, SCPA does not believe that any statutory changes are needed, although continued attention needs to be paid to ensuring that the councils remain representative of constituent groups.

(2) With respect to the scientific support needed for management measures, SCPA urges that provisions be added to the ACT requiring that (a) management measures be justified by the preponderance of evidence, (b) management measures be the least restrictive possible in terms of the impacts of participants, and (c) appropriate cost/benefit analysis be prepared for major allocation decisions. The use of independent scientific "peer" reviews should be instituted with data collection tied to cooperative public/private initiatives funded by regional fishery assessments.

(3) With respect to limited entry, SCPA suggests that a comprehensive review should be undertaken by a Limited Entry Review Commission which would report to Congress with concrete proposals to establish detailed procedures and standards for adoption and implementation of limited entry programs.

(4) With respect to "By-catch", SCPA suggests that any new national standard should focus on minimizing regulatory and economic discards to the extent economically feasible. The ongoing research on Gulf shrimp industry bycatch should be extended.

Testimony of

THOMAS J. MURRAY

on Behalf of the  
Seafood Consumers and Producers Association, Inc.

Regarding

Reauthorization of the Magnuson Fishery  
Conservation and Management Act

Presented to the  
Subcommittee on Oceans and Fisheries

of the  
Senate Committee on Commerce, Science, and Transportation

New Orleans, Louisiana

May 13, 1995

Good morning. My name is Tom Murray. I am pleased to appear before the Subcommittee today to present the views of the Seafood Consumers and Producers Association, Inc. ("SCPA") concerning the reauthorization of the Magnuson Fishery Conservation and Management Act (the "Act"). As I will explain, SCPA does not believe that a major overhaul of the Act is warranted at this time, but we would suggest some modest changes that we believe would help enhance its effectiveness.

SCPA, which is headquartered in Tampa, Florida<sup>1</sup>, is a non-profit association of business and consumers interested in the renewable harvest of U.S. fisheries. Representing trade associations, and Florida companies involved in all aspects of U.S. fish and seafood supply, SCPA provides research and government relations in support of industry and consumer objectives. Our experience leads us to conclude that, on balance, the Act is workable. The problems which we see are more in the implementation of existing Congressional mandates than in the statutory framework itself. Indeed, in some sense it may not be productive to adopt major legislative changes every two to four years, as has been the case since the inception of this law. Rather, there is something to be said for having a stable statutory structure. A stable structure would allow businesses better to plan effectively for the future. It would also leave the National Marine Fishery Service (NMFS) and Regional Fishery Management Councils (the "Councils") time to grapple with the day-to-day details of fishery management in a consistent fashion, free from difficult and time-consuming adjustments to new statutory objectives, standards and procedures.

In my testimony today, I will primarily focus on four major areas of concern to SCPA and of interest to this Subcommittee: (1) Council composition and conflict of interest concerns; (2) Bycatch; (3) Criteria for limited entry programs; and (4) Requirements to ensure stable, scientifically justifiable regulatory programs. In these areas, I will try to give you a sense of what SCPA sees as right and wrong in the current implementation of the Act and, even with our preference for stability, recommend several administrative and legislative changes aimed at improving fisheries management.

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<sup>1</sup>SCPA's address and telephone number are: P.O. Box 25954, Tampa, Florida 33622-5954; (813) 949-8926.

### **I. Council Composition and Conflict of Interest Concerns**

Congress made laudable efforts in its 1986 and 1990 amendments to the Act to alter the Act's appointment provisions and seek to remedy imbalances of constituent representation on the Councils. SCPA believes that these initiatives have had some positive impact in the Southeast. It also believes that, short of the most excruciatingly detailed seat-by-seat prescriptions for Council appointments, perfect balance is never going to be achieved. Moreover, the reality is that, whatever the Act says, the appointments process is and always will be political. Consequently, SCPA cannot envision a productive way further to "fine tune" the appointment process.

There is one troubling trend in the appointments process, however, which at least deserves note. Of late it has been increasingly common to see more appointments of academic experts, such as biologists and economists, to the Councils. Perhaps such appointments reflect a reaction to complaints about conflict of interest. Many of the appointments, moreover, are of highly competent individuals. However, SCPA believes that where there is a need for expert advice and analysis, it should for the most part be obtained through the advisory committee process. The Council's themselves should remain primarily representative of participants in the fisheries and other interested constituent groups. Otherwise, Congress might just as well turn management over to the Secretary and NMFS.

It may be claimed, of course, that continued emphasis on interest group representation on the Councils will exacerbate perceived problems of conflict of interest, about which much has been said in prior hearings before this Subcommittee. Frankly, SCPA does not view conflict of interest as a major problem in the Southeast. In any event, imposition of strict conflict of interest as requirements would hamstring the Councils. Moreover, the difficulties in drafting workable and fair conflict of interest provisions are

formidable. For example, SCPA firmly contends that there are many conflicts that are not financial in nature. Recreational fishermen may vote to promote the recreational interest, employees of environmental organizations are under pressure to adhere to their organizations' positions and State Directors are constrained to hew to State-established policy. It would be manifestly unfair to prohibit, say, a commercial snapper-grouper fisherman from voting but allow his recreational counterpart to do so. In short, unless Congress is prepared to abandon the current system in which a Council actually devises management measures and is not merely advisory, Congress must accept that a certain amount of "conflict of interest", broadly defined, is inherent in the Council process. It is in fact just part of the price which must be paid for keeping regulatory decision-making close to those most directly affected by fishery management measures.

## **II. By-catch**

We could support a National Standard requiring management plans to avoid unnecessary waste and to fully utilize fishery resources to the extent economically feasible. Specific legislative language on the subject of the new statutory standard should be positive. For example: "encourage utilization of the fishery resources to the fullest extent feasible while reducing unmarketable bycatch and discards as technologically and economically practicable".

Much more might be done by the Councils to minimize the "regulatory discard" of undersized, or otherwise prohibited species. Allowance of certain levels of take of otherwise regulated discards, would promote efficiency and could be accomplished with the use of "by catch" trip limits or percentage (of legal) quotas. In most cases such reduction in waste of undersized fishery resources could be accomplished with no significant threat to the stock by counting the previously discarded poundages against existing quotas.

### **III. Criteria for Limited Entry Programs**

It follows from what I have said that SCPA does not believe a major effort needs to be undertaken to devise limited entry programs for the fisheries in the Southeast. Still, moratoria on entry, Individual Transferable Quotas ("ITQs"), Individual Fishing Quotas ("IFQs") and the like are the fashion of the day. If the present NMFS policy continues, certainly there will be pressure on the Councils to move in this direction. In these circumstances, where the traditional open access fishery may be abandoned, the one thing SCPA strongly believes is that the rules for development of such programs must be much clearer than they are today.

Currently, the Act says almost nothing about the nature and scope of, and requirements for, limited entry programs. Section 303(b)(6) is the only provision of the Act that speaks expressly to considerations applicable to the establishment of limited entry schemes, and it is permissive in nature, allowing such establishment simply as long as certain specified factors are "take(n) into account." The National Standards Guidelines say little useful about such schemes. Not surprisingly in such circumstances, the two decided court cases (in the Atlantic surf clam and Pacific whiting fisheries) uphold the broad discretion of the agency in this area. At present, each Council can proceed more or less as it wants, and there is no consistency region-to-region or fishery-to-fishery.

SCPA views it as essential, when the Councils and NMFS are creating and allocating economic rights and potentially conferring substantial wealth on selected fishery participants, that they do so under clearly articulated standards designed to assure that the value of United States fisheries, consistent with sound conservation principles, is achieved. Otherwise, the prospect of abuse, and enriching one user group or entity at the expense of another, is all too real. SCPA does not at this point have specific recommendations for such standards. We would suggest that this is an area where a

comprehensive review is required, perhaps by a statutorily-mandated, independently-appointed Limited Entry Review Commission, which could then report to Congress within a fixed period with concrete proposals for statutory modification. Such an approach seems best designed to produce a rational framework for carrying our fundamental change in the way most fisheries are managed.

#### **IV. Requirements for Stable, Scientifically Justifiable Regulation**

The Southeast is for the most part dominated by well-established fisheries. In recent years, rather than experiencing explosive or uncontrolled growth, commercial fisheries have been marked by a levelling or decline of effort. All major fisheries are under management. Furthermore, I can think of no example where the excess capital formed soon after the passage of the Magnuson Act does not continue to be bled out of the commercial fisheries.

In such circumstances, notwithstanding the natural desire of the Councils perpetually to justify their existence by amending FMPs, there is not a need for new limited entry programs or major shifts in the approach of the Councils and NMFS to the conservation of the resource. Rather, to the extent possible consistent with the dynamic nature of fisheries, some period of stability in regulation would be desirable. Management measures need to be kept in place, not continually modified every year, until we have a solid scientific data and information base to indicate whether existing measures are working or whether change is truly warranted. The NMFS effort at this time should be concentrated on producing the best science possible, not inventing and seeking to implement newer and ever more creative management tools. The stable regulatory environment that hopefully would result would allow for the first time businesses to operate with a planning horizon beyond the next Council meeting.

Having stated the desirability of a stable regulatory climate, SCPA of course must acknowledge that some change will always be necessary in dealing with a resource as volatile as fisheries. In order to make sure that these new management measures are sensible, however, SCPA would suggest three modest ways in which the Act could be altered to improve the quality of decision-making. Hopefully, if adopted, these alterations would produce a degree of confidence in Council and NMFS decisions that has sometimes been lacking in the past.

First, SCPA would advocate an amendment to Section 303 of the Act requiring that FMPs and implementing regulations be supported by a "clear preponderance of evidence in the record." Too often in the past Councils have been comfortable taking action based on limited or conflicting evidence, knowing that only a minimal record in support of a chosen action would be sufficient to sustain it if challenged in court. The thrust of the amendment we propose would be to depoliticize Council action, require that it be based on the weight of the scientific evidence and help reduce the risk of arbitrary and capricious decisions.

Second, SCPA would propose another amendment to Section 303 of the Act requiring that FMPs and their implementing regulations be "the least restrictive available in terms of their impacts on participants in the fishery." Because of the wide array of regulatory options available to the Councils and the Secretary and the lack of existing restrictions on the choices made among them, we have seen numerous examples of draconian regulation unnecessary to achieve basic fishery management goals. Gear types, for example, may not have to be eliminated altogether from a fishery to reduce conflict or prevent overfishing. Yet, in the case of fish traps and drift gill nets, to name just two cases, they have been, destroying livelihood in the process. A "least restrictive alternative" requirement would help reduce the risk of severe dislocation as a result of new management measures.



Third, where the Councils or the Secretary are considering allocation decisions with major economic ramifications, the Act should require circulation and consideration in an open, public process, with provision for public comment and peer review, of a cost/benefit analysis which would detail the true economic impact of management alternatives. In the absence of such analysis, FMPs have gone as far as "decommercializing" an entire fishery, such as that for Atlantic billfish, on "net benefit" grounds, with little but a vague, qualitative assessment to support such a result. This kind of decision-making is the sort that undercuts the credibility of fisheries management and should not be permitted in the future.

#### **V. Fishery Monitoring and Assessment**

It follows from what is stated above that we support proposals to develop cooperative industry government research and management regimes. To insure timely and accurate information concerning harvests and fishing effort, and to minimize paperwork and regulatory burdens on fishermen and seafood marketers, the Secretary should develop and publish for comment a proposed regional fishery monitoring plan. Further, upgraded fishery assessments should be accomplished on a cooperative basis by amending Section 304(e); adding language to require the use of peer review panels consisting of independent and external experts, including reviewers or experts that may be involved with entities which may have an interest in the outcome of fishery assessments. All comments and opinions of such peer review panels should be made available to the public.

#### **VI. National Standards**

In general we believe the "Standards" are now succinct and appropriate. Proposals to amend Section 301 (a)(5) by striking "promote" and inserting "consider" are, we believe,

neither justified nor appropriate. We believe the intent of positively supporting, i.e. "promoting" "efficiency" in utilization of fishery resources continues to be the cornerstone of federal fisheries management. Promotion of efficiency goes beyond simply economic efficiency and imbues also standards for production efficiency including the minimization of non-directed harvests.

## **VII. Overfishing**

We support the concept of "criteria" for measuring overfishing rather than one "criterion" as is now often the case. It seems that the more indicators of resource health and abundance the better for the sake of policy. For example, the definition of overfishing should continue to be viewed in terms of Maximum Sustainable Yield ("MSY") as has been defined in "standard yield per recruit" and similar traditional fisheries biological analysis. "Overfishing" definitions **must not** be tied, solely as criterion, to a singular and abstract estimate, such as "Spawning Potential Ratios" ("SPR") or "Spawning Stock Biomass per Recruit" ("SBR") which have all too often become, as "ITQs", the "fashion of the day". While theoretically interesting, the severe shortages of hard biological data limit their utility in defining "overfishing". Decisions regarding the establishment of Total Allowable Catch ("TAC") should also be based upon the trend in criteria or indicators of stock health and abundance. Hence the time-tables for meeting established targets may be fixed based upon relevant social and economic information.

Future use of the "SPR" type of "non-parametric" statistics must be subject to independent scientific peer review **before** it is even more widely used in fishery management. Such analysis is currently, at best, a general "yardstick" (SPR with an associated range of variability and probability) but not sufficiently credible for use in all fisheries. Recent findings of the independent review of NMFS stock assessments, for

example, on Blue Fin Tuna concluded that "the most defensible" biological analysis was not being used to manage the fishery.

#### **VIII. Fees**

We support the establishment of a recreational permit with associated fees for fishing in the "EEZ". If established, we would then consider supporting fees related to "ITQ" fisheries. Fees levied as percentages of gross production should be retained for use in the subject fisheries management; in the region where the fishery is prosecuted.

In the Gulf of Mexico and South Atlantic fisheries it is not unusual for "recreational use" (as measured by fishing-related mortality) to exceed "commercial use", thus a fee on one "user group" alone is seemingly inconsistent with "national standards" Section 301 (a) (4), (5).

#### **IX. State Jurisdiction**

We commend the Senate drafters for not including recent proposals to extend the power of states to manage federal fisheries. Fishery resources predominantly harvested in the "EEZ", and currently not subject to a "Federal Plan", should be targeted by the cognizant councils for management, not left to any state "interested" in the fishery. States already have solid representation on the councils and thus may push for added management plans where none exist for federal resources outside of state territorial waters.

**Conclusion**

In general, while fisheries management will always be controversial and while endless changes to the Act could be proposed, SCPA does not believe that now is the time for a systemic overhaul. If anything, what is needed is more of a "breather", with increased attention over the next few years to learning to live with a properly implemented management program that is now in place. Such a period of stability, coupled with the several changes we have noted that would help improve the quality of regulatory decisions and a review of the parameters for limited entry, would do much to ensure that both the fishermen and the fish survive and prosper.

Thank you for the opportunity to appear before you today. I would be most happy to answer any questions that that you may have.

Senator STEVENS. Thank you.  
Mr. Scott?

**STATEMENT OF JEFF SCOTT, PRESIDENT, SCOTTCOS OF  
DULAC, INC.**

Mr. SCOTT. Mr. Chairman, Senator Breaux, other members of the Committee, my name is Jeff Scott. I am president of Scottcos of Dulac, which is a shrimp processing plant in Dulac, Louisiana. I have been at this facility since 1986. I have been in the industry for the past 35 years, and my family has been involved in the industry for over 75 years.

Scottcos is a shrimp processing facility in which we unload boats directly off of the water. We get shrimp right off the boats off the water in Dulac, Louisiana, and also, bring in product from other parts of the area, by trucks, to this plant. We process about 7 million pounds of raw product a year at this plant.

I hope you will bear with me for my limited education, and the only thing I really know how to do properly is process shrimp. I am not—definitely not a speaker, but I will try to do my best.

Senator BREAUX. Yes. Hold onto your wallet when you say that you are not a smart man. [Laughter.]

Mr. SCOTT. Well, we like to say that we made ours the hard way. But please. I appreciate this opportunity to offer testimony on the Magnuson Fishery Conservation and Management Act and on Senate Bill 39. I will begin with some general comments about Federal fisheries management in the Gulf of Mexico.

I recognize that this Act has had some improvements through previous reauthorization bills, but these improvements have mostly addressed the balance in the seats on the council between recreational and commercial fishermen. We should now make the Act work for our fishermen. We should make sure that there is fair and equitable management and that it is based on science, and not just the so-called "best available data."

Even though most tropical shrimp in the U.S. Gulf of Mexico are under a fishery management plan, they are not difficult to manage. Being an annual crop, shrimp production is more closely affected by annual variations of hydrological and environmental conditions than to the size of parent stock, for example.

Conservation measures designed to preserve the spawning stock are really not appropriate to this industry. Current management measures are concerned about impacts of the shrimp fishery on nontargeted species such as turtles and some finfish, as well as on maximizing economic yield from the fishery through the Texas closure, which brings up bycatch.

At the recent convention of the American Shrimp Processors Association, Andy Kemmerer delivered a talk on bycatch and bycatch reduction devices, or so-called BRDs. He showed a slide on the BRD design called the extended funnel. Now, fishermen tell me they already lose too much shrimp. But it sure looks to me like they would lose more shrimp with this new design.

I understand the Agency has produced another video. This one is of this gear under ideal conditions, just as they did with the TED. After seeing the video of red snapper being released by this BRD, the public will think of the industry's resistance to using this

device as just not being cooperative. We are going to be the bad guys again.

Between this kind of unrealistic publicity by the Agency and the propaganda put out by some overeager environmentalists, shrimpers are quickly becoming the endangered species. We should expect, at least, that further work on this bycatch device should be directed toward getting data in areas at times not covered by the program so far.

In addition to the bycatch characteristics, research needs to be done on the effects of shrimp population if most of the bycatch is eliminated. Most of the bycatch are predators of shrimp. What will that do to the shrimp stocks?

We already know that the protected redfish consumes a tremendous amount of shrimp; that situation was the result of questionable data and unfair allocation.

The Gulf and South Atlantic Fisheries Development Foundation has done a great job in researching the bycatch issue and the development of bycatch reduction devices, but the work is, evidently, not done. The Foundation's efforts in conjunctions with the National Marine Fisheries Service should be continued; they should be funded.

It is my recommendation that no action be taken by the Agency toward imposing the bycatch reduction devices until this research is complete. One additional point here is: If and whenever efforts are made to implement current bycatch reduction devices or to take other steps to reduce bycatch, it should not be allowed unless comparable measures are enforced throughout the range of the bycatch species.

I am very often reminded about how poor the management data has become; I am talking about only shrimp data. For the most valuable fishery in the United States, the data collected is very disappointing. Too many bad decisions are made on bad data.

The councils are limited to "the best available" but inadequate data. Our industry and the Agency should cooperate in revising the current method of collecting data. This method we have now depends on a good working relationship between the agents and the fishermen; it might have been that way years ago, before TEDs, but it is not that way now.

A good example of the data problem is effort. The National Marine Fisheries Service maintains that the amount of effort conducted by the Gulf Shrimp fishery is the same as it was 10 years ago. But the numbers of fishing licenses and documented vessels now shrimping show a substantial decline in the numbers of 10 years ago; I know for a fact that there are fewer shrimp trawlers unloading in the area where I come from than there were 10 years ago.

On the subject of conflict of interest on the councils, I do not think this is really a problem with the Gulf Council; the original intent of the Magnuson Act was to involve participants from the industry in the decisionmaking of the councils. Concerns about conflict of interest center on financial interests alone. This could prevent industry or commercial interests from voting on any issue relating to the fishery that is their livelihood.

It would be only fair if the definition of "conflict of interest" should be more narrowly defined, but not to prohibit the professionals of the industry, the true experts, from testifying on issues that may affect their ways of life.

Scientific peer review of stock assessments: this has a similar problem as with data collection. There is certainly a suspicion or distrust of data gathered by the Agency; the situation regarding stock assessments could be improved with an independent peer review of these stock assessments.

In a procedure for assessing stocks, the Agency could provide for a peer review and make sure qualified scientists are consulted. This kind of peer review is called for in the Gulf Package of Magnuson Act amendments.

They should begin with the stock assessment of red snapper; there is much doubt as to the accuracy of the assessment when we see the commercial quota reached in the first few days of the season. This is a big question when we see the recreational quota exceeded by over 2 million pounds for the last 2 years.

On habitat, I recommend the amendment in the Gulf Package, which would continue the council procedure of identifying essential habitats in the fishery management plans, but directs the Secretary to establish general guidelines to assist the councils with identifying what is an essential habitat. Additionally, the amendment would eliminate the direct focus on fishing impacts on essential habitat.

Unless this change is made, the current language can cause a problem between net fisheries and hook-and-line fisheries. We have enough conflicts.

In conclusion, I think the reauthorization process is an opportunity for our industry to correct the practices that have caused the councils to get away from their original intent. I think fishery management can work for all users; but to make this work, fishermen must regain confidence in the management process.

We need to do whatever is necessary to make it work, to regain the trust between the Federal and state fishery managers, between commercial and recreation fishermen. We should not continue with the way we have gone.

We should not lose sight of the importance of having good data, we need to develop better ways of collecting that data and we must be able to share the fishery with all participants in a truly fair and equitable manner. We can work together; our future depends on it. Thank you.

[The prepared statement of Mr. Scott follows:]

Testimony of Jeff Scott  
Before the Senate Committee on Commerce,  
Science, and Transportation  
Subcommittee on Oceans And Fisheries  
On Senate Bill 39  
and  
The Reauthorization of the Magnuson  
Fishery Conservation and Management Act  
May 13, 1995

Mr. Chairman and members of the committee, my name is Jeff Scott, President of Scottcos of Dulac, Inc. in Dulac, Louisiana. Scottcos has been operated by me since 1986. I have been involved in this industry for 35 years. And my family has been in the shrimp industry for more than 75 years.

Scottcos is a shrimp processing and freezing facility which includes an unloading dock on Bayou Grand Caillou. We unload as many as 75 shrimp trawlers in addition to purchasing shrimp from shrimp dealers who transport shrimp to my plant, from boats unloaded in other areas.

I appreciate this opportunity to offer testimony on the Magnuson Fishery Conservation and Management Act and on Senate Bill 39. I will begin with some general comments about federal fisheries management in the Gulf of Mexico.

I recognize that this Act has had some improvements through previous reauthorization bills, but these improvements have mostly addressed the balance in the seats on the council between recreational and commercial fishermen. We should now make the act work for our fishermen. We should make sure that there is fair and equitable management and that it is based on science and not just the so-called "best available data."

Even though most tropical shrimp in the U.S. Gulf of Mexico are under a fishery management plan, they are not difficult to manage. Being an annual crop shrimp production is more closely effected by annual variations of hydrological and environmental conditions than to the size of parent stock for example. Conservation measures designed to preserved the spawning stock are really not appropriate to this fishery. Current management measures are concerned about impacts of the shrimp fishery on non-targeted species such as turtles and some finfish as well as on maximizing economic yield from the fishery through the Texas closure. Which brings up by-catch.



### By-Catch Reduction

At the recent convention of the American Shrimp Processors Association Andy Kemmerer delivered a talk on by-catch and by-catch reduction devices or BRD. He showed a slide of a BRD design called the "extended funnel." Now, fishermen tell me they already loose too much shrimp. But It sure looks to me like they will loose a lot more with that BRD design. I understand the Agency has produced another video. This one of this gear under ideal conditions, just as they did with TED. After seeing the video of red snapper being released by this BRD, the public will think the industry's resistance to using this device as just not being cooperative. We're going to be the bad guys again. Between this kind of unrealistic publicity by the Agency and the propaganda put out by some over-eager environmentalists, shrimpers are quickly becoming the endangered species. We should expect at least that further work on by-catch characteristics should be directed toward getting data in areas and at times not covered by the program so far.

In addition to the by-catch characteristics, research needs to be done on the effects on shrimp population if most of the by-catch is eliminated. Most of the by-catch are predators of shrimp. What will that do to the shrimp stocks? We already know that the protected red-fish consumes a tremendous amount of shrimp. That situation was the result of questionable data, and unfair allocation.

The Gulf and South Atlantic Fisheries Development Foundation has done a great job in researching the by-catch issue and the development of by-catch reduction devices. But the work is evidently not done. The Foundation's efforts in conjunction with National Marine Fisheries Service should continue. They should be funded. It is my recommendation that no action be taken by the Agency toward imposing BRDs until this research is complete. One additional point here is--If and whenever efforts are made to implement current BRDs or to take other steps to reduce by-catch, it should not be allowed unless comparable measures are enforced throughout the range of the by-catch species.

### Fisheries Management Data

I am very often reminded about how poor the management data has become. I am only talking about shrimp data. For the most valuable fishery in the United States, the data collected is very disappointing. Too many bad decisions are made on bad data. The councils are limited to the "best available" but inadequate data. Our industry and the Agency should cooperate in revising the current method of collecting data. The method we have now depends on good working relationship between the agents and the fishermen. It might have been that way years ago--before TEDs, but it is not that way any more.

A good example of the data problem is effort. The NMFS maintains that the amount of effort conducted by the Gulf shrimp fishery is the same as it was 10 years ago. But the numbers of fishing licenses and documented vessels now shrimping show a substantial decline to the numbers of 10 years ago. I know for a fact that there are fewer shrimp trawlers unloading in our area then there was ten years ago.

#### Conflict of Interest

On the subject of conflict of interest on the councils, I do not think this is really a problem with the Gulf Council. The original intent of the Magnuson Act was to involve participants from the fishery in the decision making of the councils. Concerns about conflict of interest center on financial interests alone. This could prevent industry or commercial interests from voting on any issue relating to the fishery that is their livelihood. It would be only fair if the definition of conflict of interest should be more narrowly defined, but not to prohibit the professionals of the industry--the true experts--from testifying on issues that may effect their way of life.

#### Scientific Peer Review of Stock Assessments

This has a similar problem as with data collection. There is certainly a suspicion or distrust of data gathered by the Agency. The situation regarding stock assessments could be improved with an independent peer review of these stock assessments. In a procedure for assessing stocks the Agency could provide for a peer review and make sure qualified scientists are consulted. This kind of peer review program is called for in the Gulf Package of Magnuson amendments.

They should begin with the stock assessment of red snapper. There is much doubt as to the accuracy of the assessment when we see the commercial quota reached in the first few days of the season. This is a big question when we see the recreational quota exceeded by over 2 million pounds for the last two years.

#### Habitat

I recommend that the amendment in the Gulf Package, which would continue the council procedure of identifying essential habitats in the fishery management plans, but directs the Secretary to establish general guidelines to assist the councils with identifying what is an essential habitat. Additionally, the amendment would eliminate the direct focus on fishing impacts on essential habitat. Unless this change is made, the current language can cause a problem between net fisheries and hook and line fisheries. We have enough conflicts.

### Conclusion

I think the reauthorization process is an opportunity for our industry to correct the practices that have caused the councils to get away from their original intent. I think fishery management can work for all users. But to make this work fishermen must regain confidence in the management process. We need to do what ever is necessary to make it work--to regain the trust between federal and state fisheries managers, between commercial and recreational fishermen. We should not continue with the way we have gone. We should not loose sight of the importance of having good data. We need to develop better ways of collecting that data. And we must be able to share the fishery with all participants in a truly fair and equitable manner. We can work together. Our future depends on it.

Senator STEVENS. Thank you, very much.

Chris, you mentioned those artificial reef construction areas. I thought that our offshore antidumping provisions of Federal law would prevent the construction of artificial reefs without permission and that that ought to be coordinated with the regional fisheries council. How does it come about that you have them without the knowledge of the council?

Mr. NELSON. Senator, the—largely, the enforcement of that—of those provisions, the offshore dumping, relative to these artificial reefs falls on the states. And the state—our state, Alabama, honestly says, Look, we do not have the vessels or the ability to enforce exactly where that material goes once it is—certainly, once it is beyond our waters, but really, once it is beyond the co-reg lines.

And it is a big problem. And, quite honestly, I have—the shrimp industry in Alabama and elsewhere that has to deal with where this stuff winds up, which is on our trawling bottoms, has thought about trying to approach that in the same way that a lot of other situations are being approached, in a risk-averse fashion: if the state cannot manage what is going on, then we need to shut it down.

And I think that is, unfortunately, the direction in which we are headed unless we can gain some other way to control it because, with the TED in the net now, catching an old Pinto body or someone's refrigerator will tear the back end of the net off. We will lose the entire bag, and it is tremendously expensive, tremendously costly. So we do just get run out of areas where there is a higher probability of catching these things.

Enforcement is the big problem. Again, you have got recreational fishermen who are not committed to trying to use the permitted areas. And the compliance efforts are not effective.

Senator STEVENS. I see. Well, we will take a look at that.

Mr. NELSON. I would appreciate it.

Senator STEVENS. I remember so well the debate on the ocean dumping law. I thought we had a requirement for coordination with the fisheries management council. If not, I think we should require notification to the council of any proposed permit to dump.

And illegal dumping is illegal dumping; there have been substantial fines up my way for people who have dumped illegally beyond the 3-mile limit.

Mr. NELSON. You have got to get caught first, though, unfortunately. And not to—

Senator STEVENS. The states have no authority to allow people to dump beyond the 3-mile limit.

Mr. NELSON. Well, the—

Senator STEVENS. We will check it.

Mr. NELSON. OK.

Senator STEVENS. It is an interesting comment. I think that there ought to be some ability to preserve our trawlable bottoms. On the other hand, there ought to also be the ability to establish artificial reefs where that is deemed necessary, with notice to the people involved.

Mr. NELSON. I agree.

Senator STEVENS. Mr. Murray, one of the comments you made, I think, made me feel that you do not agree that we ought to have

some protection from distant fleets as far as these various jurisdictions are concerned. I remember, up in New England, we heard about Rhode Island fishermen who had overfished their grounds and were coming up to fish in Maine, and the Maine people were very disturbed about that.

I think that we ought to find some way to deal with the problems. And, in Alaska, as I mentioned, the ship from Virginia overfished our scallop grounds in a very short period of time.

With regard to your comment about state jurisdiction, we do have an extension of power to manage Federal fisheries in specific instances. Were you commenting on that provision in the bill as it is drafted now?

Mr. MURRAY. No, sir. My comment related to the proposal by the Gulf States Marine Fisheries Commission. Our concern is that—in our view, in the Gulf of Mexico, the council fairly represents the coastal states and that there is enough authority, if a fishery did, in fact, arise in a Federal zone that was of concern—not just interest, as the language that is being discussed now, but primarily prosecuted in the state waters—that the council could act quickly through its existing authority to implement a management plan, whether it be on an emergency basis or whatever.

Our feeling is that—again, this is a regional situation—there is more of a problem, which could be associated with the Florida fisheries, than there would be any benefits in terms of resource conservation. Again, you have to understand the perspective of the Florida fishing industry now in that, frankly, the Federal zone is looked to as an area where there is a process with standards through which you may go to retain some security in your business. I am not sure that is the case with the political situation, frankly, now, in the implementation of regulations such as net bans, such as bans on any other type of gear, irrespective of what the fishery is. So we are afraid that it might do more damage to our Florida west coast fishermen than it would do any benefits to the resource itself.

And here again, we feel that the councils have shown a great ability in the southeast to amend plans and to come in with new plans. And we just feel that that is the process. I am not familiar with the situation, of course, in Alaska and, as Senator Breaux pointed out, that is a unique situation up there. I am simply speaking from the perspective of the west coast of Florida fishing industry.

Senator STEVENS. OK. Thank you.

Several witnesses here and elsewhere have commented about the requiring of cost/benefit analysis and risk assessment. I think there is a tendency to assume that that would protect commercial fishing.

And yet, if you really look at how much a sports fisherman pays for a boat and for gasoline and for charter fees and various other things and then at how much he gets paid, by the time you come out on an economic analysis, the value of fish can be greater for the recreational fisherman. Yet the impact would be to deny the rest of the country access to the fishery product, to the product of our commercial fisheries.

I have been one who questions going too far in the economic and risk assessments, and I hope you will all think that over a little bit more before you really push that concept.

Senator Breaux?

Senator BREAUX. Thank you, Mr. Chairman.

And thank you, to the panel, for being with us.

Mr. Horn, with regard to—you are the only member of this panel that is on the Council. So tell me about the individual transferrable quota, ITQ, system that is being developed for the red snapper industry. How would it work?

Mr. HORN. Senator Breaux, this week, we had a meeting in Tampa, Florida, and the Council is recommending to the Secretary ITQs for the red snapper fishery. I personally, as I stated in my testimony, have opposed this type of management scheme because we do not really know what it is going to do; this is a highly competitive fishery.

It is going to be allocated among the traditional harvesters, but, in our case, the window of opportunity is very, very small, and it is a 3-year window of landings records that we are using. This fishery has been prosecuted for many years.

Senator BREAUX. How would the determination be made as to who gets the initial quota under the plan?

Mr. HORN. You had to submit landings prior to this to the National Marine Fisheries Service to document what you had caught during a 3-year window.

Senator BREAUX. Under the plan, how would you divide up the quota for recreational fishermen, as opposed to commercial fishermen?

Mr. HORN. Well, I do not know exactly how I would divide it up. Other than—the problem that I have with ITQs and limited schemes is that, from the council process, we are being pushed to limit access for overcapitalization of the commercial industry, yet we are promoting—we have states promoting recreational fisheries and wanting more people to come bathe in the sun and go fishing as a means of resource income.

And the recreational sector should be limited. If it is an overharvest situation, you could do license limitation; only so many people can go, and it would be a lottery system or something to that effect. They do it on other resources in the country.

I myself have applied for a deer hunting license in the state of Nebraska and did not get one because they have X amount of licenses available. And it is a lottery; you apply.

And, in my opinion, it is fair and equitable to whomever applies.

This is recreational, looking for an opportunity. And if I do not get to go hunting, I still spend my money elsewhere for recreation.

Senator BREAUX. I am trying to find out what would be your objection to an ITQ as a management tool. You think it is not something that can be made to work, or you do not like the way it will be implemented, or what?

Mr. HORN. Well, there is almost no way to prevent just anyone from getting in. Now, in the Gulf region, we have high competition among commercial and recreational users. We have recreational associations who are deemed anticommercial; they could in turn buy

up allocations and not fish them, to shrink the industry up, so that the recreational could grow.

License limitation and individual quotas, personally, from the standpoint of my own views, I am against all of it; that is not the American way of life. I prefer competition, survival of the fittest. Someone making money can survive; the one that cannot, he will get out and do something else. And so that is—I do not think that it could work.

It is hard to get a specific plan in place and say this is what you are going to get and let the fishermen choose. This week, we said, Do you want ITQs or do you want license limitation—those are the options—or status quo, what we have today? And the Council chose ITQs as a preferred option.

Then we turned around and changed it after we did that, and that is what is being submitted to the Secretary.

Senator BREAUX. Well, I think we need to have national guidelines. If we are going to have any type of program like this, I think it ought to be subject to guidelines that are consistent around the country, or I would at least hope so.

Wilma Anderson, thank you for being with us, again.

Thank you, to all of the panel, for that matter. We have worked together for a long, long period of time.

I have always thought about limited entry as being something that, if I were in the business, I would love because, if somebody said that, "If you are in, you can stay in, but nobody else can get in," I would say, "Hey, that is a heck of a deal."

But in Louisiana, Corky said that we have about 16,000 licensed shrimpers now. Some people have argued that we have too many shrimpers chasing too few shrimp and, therefore, it is more difficult for anybody to make a living.

Give me your thoughts on the problems and benefits we are talking about with ITQs versus limited entry, or if none of that is workable.

Ms. ANDERSON. Well, I am kind of like Philip: The shrimp industry has always managed to maintain themselves; what we do not want to see is the government bureaucracy come in.

We have looked at the limited entry idea, but it simply is: If we looked at it with the turtle situation and the finfish and all that, what scares us is, once the government gets their hands on that, we will find ourselves into an ITQ system and, as we move on further, it is just another tool that can keep managing us.

I am like Philip: The survival of the fittest will make it. Economics dictate in the cost of the vessel today. We have had a great reduction in the Gulf; a tremendous amount of boats have left.

Senator BREAUX. So you prefer, if we have a fishery that has to be managed, set the quota, and let anybody who can go after it, as opposed to restricting the number of people that can go after that amount?

Ms. ANDERSON. Well, Senator BreauX, today, if your average \$150,000 shrimp trawler cannot make it in the Gulf of Mexico, a new one of \$800,000 cost is not going to make it in the Gulf of Mexico. Economics—you know, the cost increases—has really fore-stalled new entry into the system.

We are watching more, in different areas, of the smaller buildup, but not in your big Gulf areas. And it simply is we cannot trust the councils on current status today to leave just a simple limited entry plan alone; they will keep amending and amending.

And if you were to put a 4-percent user fee on the shrimp industry today because they forced us into an ITQ limited entry—these people are nonmarginal—with this TED deal we have been going under for 4 years, it would break the industry. We could not afford to pay the 4-percent user fee to manage it.

Senator BREAUX. Well, I thank the panel and Jeff and Tom and everybody for their good words, and I appreciate it.

And, Wilma, I particularly appreciate your involvement in trying to help unite the industry. It has not been easy, but you have been a real leader in that effort, and I thank you.

Thank you, Mr. Chairman.

Senator STEVENS. Yes. We all thank you, very much. I have looked through your statements; they are very, very good. We will be back to some of you with regard to some of the suggestions you have made. We appreciate your testimony very much. Thank you.

We are now going to take a 5-minute recess.

[Whereupon, a short recess was taken.]

Senator STEVENS. We will begin our last panel with Linda Johnson, please.

We have set the clock, again, for 8 minutes, if that is all right.

#### STATEMENT OF LINDA JOHNSON, EXECUTIVE DIRECTOR, DO YOU CARE? COALITION

Ms. JOHNSON. Thank you, Mr. Chairman.

Ladies and gentlemen, my name is Linda Johnson. I am the founder and Executive Director of the Do You Care? Coalition. We represent directed, endorsed red snapper harvesters in the Gulf of Mexico, which is down to 124 boats as of 1995. I thank you for the opportunity to put forth our opinions and, most importantly, our concerns.

It is evident that National Marine Fisheries Service has an agenda to help implement strict regulations on the commercial harvesters. This is done with little regard for a balanced plan that focuses on the resource, but rather, what effect it has on their budget. I believe they are controlled and work solely for the elite of this country, not the average consumer and constituent.

This country was founded on farming, fishing, manufacturing and mining. All of the foundations for the economic well being of this country are presently in trouble. It must be remembered that the commercial sector of fishing is the creation of wealth and food for the majority of the population, whereas the recreational sector is the redistribution of wealth.

With the reauthorization of the Magnuson Act, we strongly suggest that major reforms be made to National Marine Fisheries Service, especially in the Silver Springs office, or abolishment of the Agency be considered.

I truly believe in conservation of resource. But unless we are God, there will never be preservation of any resource. We of the commercial industry are asking, through the reauthorization of the



Magnuson Act, that the original intent of Magnuson be remembered.

To the best of my knowledge, fishermen stood and applauded in 1976, when Magnuson was implemented, for the protection of the American commercial harvester from foreign fleets, to protect our resource from overfishing by foreign vessels. I am here to advise this panel that protection of any commercial harvester is no longer in existence, and protection of resource is not fact, but fiction manipulated through inaccurate data served to the scientific community by whatever means is necessary.

Best available data may mean nothing. While we have very specific recommendations on how to obtain true and accurate data for our user groups, we do not have the time to elaborate on this at this time.

In our region, we allow a user group that fishes for red snapper 365 days a year a special management zone, not to protect resource, but to protect the recreational angler and give him a zone so he can further overharvest what is an overfished species. That does not meet the seven national standards. How can this be justified if we are truly looking to protect resource?

We support reasonable and equitably shared restoration programs, but not with just one user group paying the price. The stock of red snapper cannot read, and they truly do not care whether they are eaten by a predator at sea, caught and placed on the plate of a consumer or the recreational angler catches the stock. Dead is dead.

The bycatch of this issue for the commercial harvesters, when the quota was reached in just 50 days in 1995, with a 2,000-pound trip limit and 124 boats harvesting this resource, the bycatch and the waste of this resource during the closure is immense.

We need to work on council makeups, not in the guise of academia holding outside positions with GCCA, and not with the conflict of interest, because that is utter nonsense. We need people who make their livings from the harvests of the resource or enjoy going sport fishing for the resource. We do not need this constant, intentional division of user groups because NMFS has become a master at conquer and divide.

I am implore this Committee to look at the laws and the devastation that has been imposed on only one user group, the commercial harvester. The agenda has been obvious since 1990:

The Agency and certain members of the Council find loopholes to not look at the socioeconomic effects that their regulations have that they have rubber-stamped.

True and accurate data is not now, nor has it ever been, used in the handling of the commercial sector. Again, as we reauthorize Magnuson, let us not go through the motions to sustain an Agency with a hidden agenda.

I have specific recommendations on how to obtain accurate data, and we want that accurate data on all stocks of fish. But to put regulations on species of fish so that it can be more easily enforced, because enforcement agents cannot tell the difference between one species and another, is unnecessary and ridiculous.

ITQs, which were just passed for the Gulf Council for red snapper, are unfair, unwanted and unnecessary for the protection of the

resource. I cannot stress to this Committee how diligently we fought ITQs—not the concept, but the implementation with so many unknowns with such a diversified fishery.

Conservation of resource should be the least amount of waste of resources. And I would have to tell you that the most endangered species in the Gulf of Mexico at present is the commercial harvester, and we should be put on the top of the endangered species list. The national standards are fine if they are followed, and I have seen them continuously ignored.

When an agency and a council feel that they have more power than the U.S. Congress, I believe it is time to set the record straight. And I would like to expound on that.

At the last Council meeting, I strongly recommend that this Committee get a copy of the final day's tape to hear what the appointed Council members feel about the United States Congress, this field hearing and any other field hearings that do not go along with their agenda.

We had fought ITQs when Mike Orbach was first brought into this region in 1991. We had an emergency action on red snapper—because we were opened for 53 days in 1992, we had to have an emergency action for 1,000 pounds. This was not the fault of the industry.

This was the fault of the Agency because they did not put permits out. They allowed every boat to go out without a permit and land the harvest of the resource. 700,000 pounds of red snapper are still unaccounted for.

I see that my light is on. And I will wind this down, but I really would like to expound further on ITQs. Thank you for my time.

[The prepared statement of Ms. Johnson follows:]

## Do You Care?

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TESTIMONY FOR U.S. SENATE ON COMMERCE, SCIENCE, AND TRANSPORTATION  
FIELD HEARING, MAY 13, 1995, NEW ORLEANS, LOUISIANA

I THANK YOU FOR THE OPPORTUNITY TO PUT FORTH MY THOUGHTS AND OPINIONS ON BEHALF OF DIRECTED (HOOK AND LINE) COMMERCIAL REEF FISH HARVESTERS (ENDORSED SHAPPER BOATS) IN THE GULF OF MEXICO.

FIRST, I RESPECTFULLY REQUEST THAT YOU LOOK AT WHAT HAS HAPPENED TO THE COMMERCIAL HARVESTERS BECAUSE OF ERRONEOUS DATA THAT HAS BEEN USED TO REGULATE **COMMERCIAL HARVESTERS NEARLY OUT OF BUSINESS**, NOT TO PROTECT THE RESOURCE BUT KNOWINGLY ALLOWING ONE USER GROUP TO CONTINUOUSLY OVERHARVEST WITH MANIPULATION TO THE MAGNUSON ACT FOR THE BENEFIT TO THE RECREATIONAL ANGLER, NATIONAL MARINE FISHERY SERVICE HAS GONE ASTRAY.

THERE NEEDS TO BE SOME CONGRESSIONAL ACTION TO CUT THE FAT IN THE SILVER SPRINGS OFFICE OF NATIONAL MARINE FISHERY SERVICE WHO DIRECTS THE REGIONAL OFFICE ON THE MANAGEMENT OF THE RESOURCES. THEY USE ERRONEOUS DATA, THEY TREAT USER GROUPS DIFFERENTLY, AND BECAUSE IN THE RED SHAPPER FISHERY THEY HAVE KNOWINGLY ALLOWED THE RECREATIONAL SECTOR TO OVERHARVEST, WITH NO CLOSURES, BY MORE THAN 100 PERCENT OF THEIR ALLOCATION FOR THE LAST THREE YEARS, AND DATA IS STILL NOT AVAILABLE FOR 1994, AND THE DIRECTED COMMERCIAL HARVESTERS WERE SHUT DOWN IN 50 DAYS IN 1995 WITH FISH OWED TO THEM, THE AGENCY IS NOT PROTECTING THE RESOURCE, THEY ARE DIVIDING THE USER GROUPS. I HAVE TRIED TO WORK WITH NATIONAL MARINE FISHERY SERVICE, THE GULF OF MEXICO FISHERY MANAGEMENT COUNCIL, AND THE UNITED STATES CONGRESS TO REACH A FAIR AND EQUITABLE RESOLUTION TO THE SITUATION BUT THE SILVER SPRINGS OFFICE HAS FAR TOO MANY CHIEFS AND NOT ENOUGH INDIANS. WE NEED RESOURCE PROTECTED WITHOUT PREFERENCE TO USER GROUPS, WE NEED NO WASTE OF RESOURCE, WE DON'T NEED THE FISH EATEN BY A PREDATOR AT SEA RATHER THAN BY A CONSUMERS.

THE FEAR FACTORS THAT HAVE BEEN INSTILLED IN THE DIRECTED COMMERCIAL HARVESTERS SINCE 1990 IS UNFAIR, AND DEFINITELY GOES AGAINST THE ORIGINAL INTENT OF THE MAGNUSON ACT. WHILE IN 1976 THE COMMERCIAL HARVESTERS STOOD AND APPLAUDED THE ACT THAT PROTECTED THE RESOURCE FOR COMMERCIAL HARVESTERS AND THE GUIDELINES THEREIN FROM FOREIGN FISHING FLEETS; SOMEWHERE THE INTENT WAS LOST.



A Coalition For Commercial Fishermen





## A Coalition For Commercial Fishermen



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I WOULD LIKE TO MAKE THIS COMMITTEE AWARE THAT SINCE 1990 WE HAVE HAD 11 REGULATORY AMENDMENTS AND ARE CURRENTLY WORKING ON THE 12TH IN REGARDS TO THE RED SHAPPER STOCK, ALLOCATION, PERMANENT LIMITED ACCESS SYSTEM. ONE REGULATION IS NOT IN PLACE BEFORE THEY ARE LOOKING TO CHANGE IT. IT IS MY BELIEF THAT IS HAS BEEN A CONSPIRACY AT BEST, TO DESTROY COMMERCIAL HARVESTERS IN THE GULF OF MEXICO.

I RESPECTFULLY REQUEST THAT A RECOMMENDATION BE MADE THAT IF NATIONAL MARINE FISHERY SERVICE IS TO CONTINUE IN EXISTANCE, THEN THEY NEED TO BE SCALED DOWN STARTING IN SILVER SPRINGS, TO WORK IN COOPERATION WITH FISHING COMMUNITIES AND NOT DERIVE AND SCHEME TO MAKE EVERY FISH OVERFISHED, TO DIVIDE USER GROUPS, TO DESTROY THE LIVES OF THE INDEPENDENT OWNER OPERATORS THAT TACTICS NOW USED BE BANNED. ERRONEOUS DATA HAS BEEN USED AND CONTINUES TO BE USED BUT NMFS SEEMS TO HAVE NO GUIDANCE AND THINKS THEY HAVE MORE POWER THAN THE UNITED STATES CONGRESS, PLEASE LET THEM KNOW THEY ARE WRONG.

I HAVE REQUESTED IN THE PAST, AND ONE AGAIN REQUEST THAT THE REGIONAL OFFICES OF NATIONAL MARINE FISHERY SERVICE BE ALLOWED TO ACCESS AND WORK IN COOPERATION WITH ALL USER GROUPS WITHOUT BEING TOLD BY SILVER SPRINGS WHAT TO SAY HOW TO VOTE, THERE MUST NOT BE HIDDEN AGENDA'S BUT TRUE PROTECTION OF THE RESOURCE, PAPER FISH ARE NOT REALITY, TRUE AND ACCURATE SCIENCE SHOULD BE AND MUST BE USED. THE DIRECTED RED SHAPPER HARVESTERS HAVE BEEN RESPONSIBLE (ACCORDING TO NMFS) FOR A 300 PERCENT INCREASE IN SPR. THEY ARE THE ONLY USER GROUP THAT HAS BEEN SEVERELY IMPEDED.

THE PRECEDING WAS JUST A BRIEF HISTORY OF HOW WE GOT TO WHERE WE ARE TODAY, AND I WILL NOW ADDRESS WHAT YOU REQUESTED IN YOUR COVER LETTER.

### 1. PROVISIONS REQUIRING THE ASSESSMENT AND REDUCTION OF BYCATCH, ECONOMIC DISCARDS AND REGULATORY DISCARDS.

IT IS THE OPINION OF THE MAJORITY OF THE COALITION THAT INDEPENDENT ASSESSMENTS, OTHER THAN FROM NMFS MUST BE DONE. THE WASTE OF RESOURCE SHOULD BE FACTORED IN TO ALL REGULATIONS, WHICH AT THE PRESENT TIME IS NOT NOR HAS IT BEEN FOR THE LAST SEVEN YEARS. WE RESPECTFULLY ASK THAT THE ORIGINAL INTENT OF MAGNUSON BE ENFORCED THROUGH WHATEVER MEANS NECESSARY, LET THE AMERICAN COMMERCIAL HARVESTERS BE PROTECTED FROM FOREIGN FLEETS. LET US TAKE REASONABLE MANAGEMENT MEASURES TO PROTECT OUR RESOURCE WITHOUT THE DEMISE OF ANY USER GROUP, BUT ALSO WITHOUT WAST OF RESOURCE. I WOULD REQUEST THAT MANAGEMENT MEASURES NOT BE IMPLEMENTED FOR ENFORCEMENTS BENEFIT BECAUSE THEY CANNOT TELL SPECIES APART, THAT REGULATORY AMENDMENTS SHOULD AND MUST CONSIDER THE TRUEST FORM OF CONSERVATION AND THE LEAST ECONOMICALLY IMPEDING COURSE OF ACTION SO THAT THE FISH IS  
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## A Coalition For Commercial Fishermen



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### SPECIFIC RECOMMENDATIONS TO OBTAIN GOAL:

- A. THAT INDEPEND COMMERCIAL FISHING VESSELS TO USED TO DO STOCK ASSESSMENTS WITH SCIENTIFIC OBSERVERS ABOARD TO DOCUMENT ALL FACTUAL FINDINGS.
- B. THAT ACCURATE DATA BE USED AND THE ACCURACY OF THE DATA BE VERIFIED FROM MORE THAN ONE SOURCE, BEFORE ANY REGULATORY CHANGES ARE MADE.
- C. THAT ALL REGULATIONS IMPOSED TO PROTECT A RESOURCE BE FAIRLY DISTRIBUTED AMONG ALL USER GROUPS, MAKE SURE THE RESOURCES ARE PROTECTED THROUGH REASONABLE MANAGEMENT MEASURES FOR ALL USER GROUPS.

### 2. DEFINITION AND GUIDELINES FOR ITQ's.

THIS IS A VERY DIFFICULT SITUATION WITH THE RED SNAPPER STOCK IN THE GULF OF MEXICO. I MUST BE VERY CLEAR THAT NOT ALL MEMBERS OF THE COALITION ARE IN OPPOSITION TO ITQ'S ESPECIALLY AS A CONCEPT. HOWEVER, AT THIS TIME WITH THE FEAR FACTORS THAT HAVE BEEN USED TO BRING THE INDUSTRY TO THE POINT OF EVEN! CONSIDERING ITQ'S HAVE BEEN PLANNED, MANIPULATED, AND DEVASTATING TO MANY LIVES OF INDEPENDENT FISHERMEN WHO ARE DEPENDENT ON RED SNAPPER FOR THEIR FINANCIAL WELL BEING. WE SUPPORT A LIMITED ACCESS SYSTEM BECAUSE OF SPECULATORS THAT WERE ENCOURAGED BY THE AGENCY TO COME INTO THE FISHERY BECAUSE OF THE MORATORIUM ON REEF FISH PERMITS IN 1991, IT IS VIRTUALLY IMPOSSIBLE TO GO BACK TO ABILITY AND SKILL IN HARVESTING. THOSE THAT WERE DEPENDENT AS DEFINED FOR THOSE HOLDING RED SNAPPER ENDORSEMENTS MUST BE PROTECTED. THEY CANNOT MAKE A LIVING IN 50 DAYS OF HARVEST, THE FEAR OF THE BEST AVAILABLE DATA BEING USED TO CHANGE THE ALLOCATION FROM COMMERCIAL TO RECREATIONAL IS REAL. IT HAS BEEN STATED AND BUSINESS PEOPLE CANNOT MAKE LOGICAL BUSINESS DECISIONS WHEN FEAR TACTICS ARE USED TO IMPEDE THEIR JUDGEMENT.

### SPECIFIC RECOMMENDATIONS TO OBTAIN GOAL:

- A. THERE IS OBVIOUSLY FAR MORE RED SNAPPER IN THE GULF OF MEXICO THEN THE AGENCY WOULD HAVE US BELIEVE, OTHERWISE WHY WOULD THEY KNOWINGLY ALLOW THE RECREATIONAL SECTOR TO OVERHARVEST FOR THE LAST THREE CONSECUTIVE YEARS WITHOUT EVER BEING CLOSED ONE DAY. LET US GO TO A LIMITED ACCESS SYSTEM WITH A TRUE UNIVERSE DEFINED IN THIS SYSTEM, AND A REASONABLE TAC BE SET SO THEY CAN PERHAPS HAVE TWO SEASONS AND BE MORE ECONOMICALLY VIABLE.
- B. THERE MUST BE A CLEAR AND DEFINITIVE REASON WHY AN ITQ



## A Coalition For Commercial Fishermen



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C. THAT ITQ'S NOT BE ALLOCATED AS DERIVED BY THE AGENCY, THAT IS NOT FAIR. A MAN WHO AT THE TIME OF THE CONTROL DATE NOVEMBER 7, 1989, DID NOT HAVE AN ECONOMIC DEPENDENCE ON THE RESOURCE SHOULD NOT BE ALLOCATED AN ITQ AND ANY MAN WHO DID NOT LAND A REASONABLE AMOUNT OF FISH SHOULD NOT BE AWARDED SOMETHING HE DID NOT EARN.

D. THAT GCCA BE PROHIBITED FROM OBTAINING ANY ITQ'S SO THEY HOLD THEM IN ABEYANCE AND A COMMERCIAL MAN IS DEPRIVED THE RIGHT.

E. ITQ'S ARE A VERY EXPENSIVE WAY TO MANAGE THE FISHERY, THE COMMERCIAL INDUSTRY SHOULD NOT BE ASKED TO PAY FOR THIS AND WOULD REQUEST THAT IMPLEMENTATION AND ENFORCEMENT NOT BE PUT ON THE COMMERCIAL HARVESTERS.

F. IN OTHER WORDS WE RESPECTFULLY REQUEST THAT ALL OTHER ALTERNATIVES BE TAKEN BEFORE AN ITQ BE IMPLEMENTED. THE GULF REEF FISH COMPLEX IS VER DIVERSIFIED AND ONCE ONE SPECIES GOES UNDER THE ITQ THEY ALL WILL UNDER THE DOMINO EFFECT THIS MUST BE PREVENTED.

### 3. CONFLICT OF INTEREST AND RECUSAL REQUIREMENTS FOR THE COUNCIL PROCESS:

THIS IS NONSENSE. THERE WILL ALWAYS BE A CONFLICT OF SOME SORT, THE COMMERCIAL PEOPLE WILL OBVIOUSLY BE MAKING THEIR LIVING FROM THE COMMERCIAL HARVEST OF RESOURCE, THE RECREATIONAL FISHERMEN OBVIOUSLY SPORT FISH FOR SPECIES. WE NEED PEOPLE ON THE COUNCILS THAT UNDERSTAND THE NATURE OF THE SPECIES BEING DISCUSSED AND WHAT HAPPENS ON THE WATER. COUNCILS OF ACADEMIA WOULD BE EVEN MORE RIDICULOUS BECAUSE MOST ARE ASSOCIATED WITH GCCA IN OUR REGION, WE NEED TO LIVE WITH A VIRTUAL REALITY AND NOT PLAY WITH HIDDEN AGENDAS AND PAPER FISH.

### 5. A NEW DEFINITION AND PROVISIONS TO PROTECT AGAINST OVERFISHING

NOT ALL FISH ARE OVERFISHED BASED ON NORTH ATLANTIC SPR'S. UNTIL THE SCIENTIFI COMMUNITY CAN COME TOGETHER AND AGREE AT WHAT STAGE A RESOURCE IS OVERFISHED IT SHOULD NOT BE CLASSIFIED. WATER TEMPERATURES, THE NATURE OF THE SPECIES MUST ALL BE FACTORED IN TO THE DEFINITION. REASONABLE MANAGEMENT MEASURES FOR ALL USER GROUPS CAN AND SHOULD BE USED TO PROTECT RESOURCE.



## A Coalition For Commercial Fishermen



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### PROVISIONS REQUIRING THE ASSESSMENT OF ESSENTIAL FISH HABITAT AND POSSIBLE ACTION TO PROTECT SUCH HABITAT:

IT IS ESSENTIAL THE FISH HABITAT BE PROTECTED THE COURSE OF ACTION ON HOW IS VARIED. I KNOW THAT BLOWING UP RIGS WITH EXPLOSIVES IN THE GULF OF MEXICO NEEDS TO BE STOPPED BECAUSE OF THE VAST NUMBER OF HEADS OF FISH THAT ARE KILLED ON THE AVERAGE OF EVERY OTHER DAY. I WOULD AGREE THAT IF ESTUARIES AND WETLANDS ARE NOT PROTECTED THEN NO REGULATION WILL PROTECT FISHERIES OF ANY SPECIES.

### 7. AUTHORIZATION FOR VESSEL AND PERMIT BUY-BACK PROGRAMS:

I BELIEVE THAT THIS IS NECESSARY ONLY IF THE FISHERMEN FIND THAT IT IS A TOOL THEY CHOOSE TO USE TO GET OUT OF FISHERIES BECAUSE IT IS NO LONGER ECONOMICALLY VIABLE OPTIONS FOR THEM.

### 8. AUTHORIZATION FOR ECONOMIC ASSISTANCE WHERE THERE IS A COMMERCIAL FISHERY FAILURE:

IF THERE IS INDEED A COMMERCIAL FISHERY FAILURE THEN ECONOMIC ASSISTANCE WOULD BE NECESSARY. IF THE FAILURE IS MANUFACTURED BY ANOTHER USER GROUP OR BY A HIDDEN AGENDA OF THE AGENCY THEN I WOULD RATHER SEE CONSERVATION BY ALL TO PREVENT ANY FISHERY FROM COLLAPSING.

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ADDITIONAL COMMENTS: I HAVE JUST RECEIVED A PHONE CALL INFORMING ME THAT THE GULF OF MEXICO FISHERY MANAGEMENT COUNCIL PASSED BY A VOTE OF 10 TO 7 TO IMPLEMENT ITQ'S ON THE COMMERCIAL SECTOR. THEY DO NOT CARE WHAT ACTIONS CONGRESS TAKES, THEY DO NOT CARE ABOUT THIS FIELD HEARING BECAUSE THEY HAVE THE BELIEF THEY HAVE MORE POWER THEN CONGRESS. THEIR AGENDA HAS BEEN MET, THEY DO NOT CARE ABOUT UNANSWERED QUESTIONS OR HOW HAPHAZARDLY ANYTHING IS IMPLEMENTED. I IMPORE THIS COMMITTEE TO PUT SOME FAIRNESS AND EQUITY INTO OUR LIVES AND LET NATIONAL MARINE FISHERY SERVICE AND THE GULF OF MEXICO FISHERY MANAGEMENT COUNCIL KNOW THAT YOU DO NOT APPRECIATE THEM PLAYING THE GAME OF BEAT THE CLOCK. I WILL STATE MORE ON THIS SUBJECT DURING MY ORAL PRESENTATION.

Senator STEVENS. Thank you, very much.

Mr. Claverie, I note you have three statements, plus another report on big game fishing. We would be pleased if you would proceed in any way you want on those three statements.

**STATEMENT OF MAUMUS F. CLAVERIE, JR., REPRESENTING THE BILLFISH FOUNDATION AND THE NEW ORLEANS BIG GAME FISHING CLUB**

Mr. CLAVERIE. Mr. Chairman, Senator Breaux, members of the staff and fellow fishermen, I thank you for the opportunity to talk on one of my favorite other subjects, the Magnuson Act.

I have messed up a little bit, I believe. One of my points—I am wearing three hats. I am on the Billfish Foundation, and they have an agenda that is approved by the board of directors, and that is in that statement. And then the Big Game Fishing Club originally—I originally testified for them here in New Orleans 20—gosh, that long—20 years ago on a hearing on—the 200-mile zone is what we called that act in those days.

Senator BREAUX. Yes. I remember the hearing.

Mr. CLAVERIE. Yes. And then I have been a student of the Magnuson Act, so I have some of my own comments which are kind of technical. But I really appreciate you all coming here and giving me the opportunity to talk.

One of the things—I messed up a little because I understand you all have a different bill for the Atlantic Tunas Convention Act and this is only the Magnuson Act.

But one of my comments—and it is a strong desire of the Billfish Foundation—is that the ability of the United States to be more conservation oriented than ICCAT would impose on us be introduced into the Act. And I do not know if you all have done that in your other bill or not; I know it is not mentioned in S. 39.

But the graphs up here on the left show the stock condition of the two major species that ICCAT has been managing during the entire period shown on those graphs. And that is what gives everybody discomfort with the United States having to follow a recommendation, if it were to come from ICCAT: that they are not known for their conservation efforts; they would let the fisheries fall down so low that there are going to be problems.

For the Act itself—I think I am the only recreational fisherman conservationist on any of these panels here today, and I am a little scared to say this because nobody else has mentioned it. But I would ask you all to please reconsider taking U.S. industry out of National Standard 1.

Now, everybody here that has talked today is in the U.S. fishing industry, and nobody has mentioned it. So I hope I am not bringing up something I should not be; I do not know why it has not been mentioned.

But the Fishery Act—Senator Breaux, I believe it was you who amended it to add U.S. fishing industry after it had been originally passed. And that is a good thing to have in there because the industry is what keeps the connection between people and the fisheries. The fishermen are part of the industry, and it is all defined that way.



And, for the U.S., it needs to be in there because it is—if it is not for the U.S.—I remember we used to think that the Japanese government had a bigger desk at NMFS than the U.S. fishermen did. That is one of the reasons that that was put in there. And so we would request that you consider not eliminating U.S. industry from National Standard 1, as you propose to do in S. 39.

I see some heads shaking up there. Where you are—near the beginning, where you are—it is explained in one of my papers. But, in the beginning, where you are doing the new national standards, on line 19 of page 15, there used to be yield from each fishery—I forget exactly how it went—for the U.S. fishing industry. And this amendment would take that out.

I notice that—I can only speak on general things because there are so many details in all of my papers that I could not possibly cover them all. But I notice that there is a big thrust to get more data, and I question whether that will be—really accomplish the purpose that it is supposed to accomplish.

We have heard that the redfish science is questionable. And yet, there has been an awful lot of work on that fish down here.

The Gulf Council and the Gulf States Marine Fisheries Commission, in the early eighties, gathered together all the then-known science on redfish and put it in a Profile and concluded that, if you allowed the offshore purse seine fishery to go that it might be a serious problem for the species and that the species might be overfished without warning.

They concluded that, if you did let the offshore fishery happen, you would have to curtail the inshore fishery somewhat or entirely, because you cannot burn that candle on both ends. And when it all started happening and restrictions were coming down on the fisheries, everybody said, You do not have enough information; You do not have enough data.

And I believe it was Senator Breaux who, through MARFIN, funneled a lot of research money on research for redfish in the Gulf. And after they spent all that money, they concluded that what they said originally was absolutely correct.

And so that acquiring more information may not be the solution; I think the solution is to have a goal of obtaining science that is believable to the fishermen who are going to be regulated by regulations based on that science. I do not know that more is better; more may be worse.

What is more credible to the fishermen, I think, is the goal. And I do not know how to get there, but if that were the goal, I believe that everybody would be happy with the regulations that came down based on that science. So I would urge you to look at that.

The definition of optimum yield in the Magnuson Act is based on MSY, and that is why I have the two graphs that are on the right. They are not anything particular; it is just by way of example.

In the two graphs that you see on the right, it just happens that one is blue marlin and one is white marlin. And the reason I chose those is that those horizontal lines on those graphs are the population levels at MSY. And you can see that the population levels since the sixties have been allowed to go way below MSY. This is also true with the bluefin tuna, although now, the scientists do not draw an MSY line on that tuna graph.

But if the fisheries, the population levels which are shown on those right-hand graphs, were to be maintained at or above that MSY population level line, it would substantially reduce any conflicts about who is going to get to fish because there would be enough to go around. It would make the fishery itself more healthy. These are all of the things that you all discussed and decided on using the MSY criteria at the beginning of the Magnuson Act.

What has happened is that, whereas the Act has been—was very well crafted and had a very good management concept in it, I believe that the problem is the Agency—and particularly, if you read the guidelines, you can see that they did this—has just disregarded the act.

For instance, National Standard 1 says prevent overfishing, but the guidelines say that pulse overfishing and local overfishing and growth overfishing are not necessarily the kinds of overfishings that Congress said to prevent. And I believe that those are the kinds of overfishings that have led to all of the overfishing problems that we now have; it certainly led to the disaster in the northeast, and it has led to these sort of things. That is why we have conflicts over fisheries.

So if you would change one word in your definition of overfishing from “jeopardizes,” which means—you see? These lower fishery levels are not in jeopardy. They have not reached the endangered species. If you stop fishing on them, they could build themselves back up to the MSY level.

So if you change the word “jeopardizes” to “reduces,” then you are telling NMFS not to let them go below that level, not to let the population to go below that level. Or seek to build them back up to that level in some way that minimizes the disastrous effects of doing so on the fishermen.

[The three prepared statements of Mr. Claverie follow:]

**U. S. SENATE SUBCOMMITTEE  
ON OCEANS AND FISHERIES**

FIELD HEARING, NEW ORLEANS, MAY 13, 1995  
ON  
REAUTHORIZATION OF THE MAGNUSON FISHERY CONSERVATION AND  
MANAGEMENT ACT

Prepared Testimony of Maumus F. Claverie, Jr.

Thank you for the opportunity to address the Senate amendments to the Magnuson Fishery Conservation and Management Act.

I would like to add some personal comments and some comments specifically directed to some of the provisions highlighted in the letter inviting my participation.

1. **New provisions to protect against overfishing.** I believe the Act already clearly protects against overfishing in the present language of national standard 1. The problem lies in the agency regulations (Guidelines). These regulations allow overfishing and allow Maximum Sustainable Yield to include the sustainable mortality level of a reduced stock of fish. The proposed amendments to the definitions of "optimum" (S.39, 6/21-7/18) and "overfishing" - "overfished" (S.39, 7/15 - 7/18) and to national standard 1 (S.39, 15/14 - 15/21), together with additional requirements elsewhere based on these definitions, offer a new and more extensive approach, but do not fix this problem. Unless the agency is compelled to follow the Act in its regulations, strengthening the Act to prevent overfishing and rebuild overfished stocks may not bring the desired results.

Key to the new approach are the definitions of "overfishing" and "overfished" (S.39, 7/15). I see a problem in the definitions that should be changed to avoid a possible misconstruction of what is meant by overfishing. A present problem is the idea a fishery can be temporarily fished down below the level which will allow maximum sustainable fishing mortality on a continuing basis on the promise the stock will be rebuilt to that level

sometime in the future. This has led to disaster.

The idea behind this approach is the prohibition against overfishing only prevents long term damage to the stock if fished down to the extent it cannot be rebuilt to a healthy level. This means it can be temporarily fished down to the threshold of the threatened or endangered level. I think overfishing in the Act means the stocks must be continually maintained at a level which allows the maximum sustainable yield. The Department of Commerce so agreed in the *Maine v. Kreps* (563 F.2d 1043, 1977) case, but this has not been the agency's approach.

By using the word "jeopardizes" (S.39, 7/16) in the definition, this concept of overfish now and fix it in the future is memorialized. The capacity of a fish stock to produce maximum sustainable yield on a continuing basis is not jeopardized until it is fished down to the point it cannot be rebuilt. I suggest the word "jeopardizes" be changed to "reduces or has reduced" to solve this problem. Use of "reduces" does not allow fishing to even temporarily reduce the ability of a stock to produce its maximum potential. This more clearly prevents allowing a fishing level to temporarily reduce stock size below that which will continually maintain its maximum sustainable yield.

The Marine Fish Conservation Network has asked "... on a continuing basis" be removed from the definitions of "overfishing" and "overfished". I recommend the language be retained to guard against pulse overfishing and to bolster the prevention of temporary overfishing discussed just above.

2. Fishery dependent communities and commercial fishery failure. On its face this seems to be an encouragement to whole communities to pressure for overfishing. If the fishery is overfished to the point of economic collapse, money can be provided to mitigate the damaging results. If any money is provided to the individual fishermen, then those who probably caused the

fishery failure are being rewarded for having done so. One thing not usually considered in a fisheries failure is the damage done to the recreational industry dependent on the a healthy fishery. By giving economic assistance to commercial fisheries when a failure is caused by commercial overfishing, you are rewarding those who ruined the fishery for all and ignoring the other people hurt by the overfishing. Having said that, if relief is going to be given to communities dependent on commercial fisheries activities for social or economic input, then those communities dependent on marine recreational fishing activities should also be included. The magnitude of community dependency on recreational fishing activities can be just as great, or even greater, than on commercial fishing activities. Since recreational fishing includes release as well as harvest, the term "harvest" at S.36, 5/16 and 15/25 should be changed to accommodate recreational activities as well. Sec. 316 also (S.39, 87/14 - 88/20) needs revision to include recreational fisheries dependency.

Consideration should also be given to adding language making it clear a group or class of fishery participants whose fishing activities led to the fishery collapse can not participate in the relief, nor can their community.

3. Essential fish habitat. This is a fine idea, and one I have actively favored since the early 1980s. My concern is whether the provisions will help guard against a gradual piece-by-piece loss of habitat. Those small pieces add up to many square miles lost each year in coastal Louisiana. Is a small piece of estuary "essential"? This is emphasized by comparing the small piece to the national perspective called for at S.39, 3/25. Could the word "essential" on S.39, 5/7 be changed to "important" to cover this concern?

The Network has asked the definition of "essential fish habitat" be changed from as it is in S.39, 5/6-9. Please do not do this. The substitute language proposed by the Network has serious problems. The Network language

limits the habitat to water. Estuaries are only partly water. The original Senate language considers this. The Network language omits habitat necessary for fish after reaching maturity. The original Senate language considers this.

4. Bycatch reduction. I always thought bycatch waste was covered by the language in national standard 5: "promote efficiency in the utilization of fishery resources". The new idea here is fine, but some details may give serious operational problems. For instance, "bycatch" as defined (S.39, 4/17) fits my fishing when I tag and release, even though I am targeting the released species and they are released alive. The definition of "economic discards" (S.39, 5/1) relates size, sex or quality as economic factors. This does not fit. The definition of "regulatory discards" (S.39, 7/23) needs adjusting so "whenever caught" does not confuse concurrent fisheries for the same species when one can and the other cannot keep (delete "whenever caught" to solve this problem), and the word "required" may need to be changed to "allowed" at S.39, 8/2. It just does not seem efficient to create a new section in the Act when national standard 5 and some regulations (Guidelines) may suffice.

5. Non-users and academics displace recreational fishing representatives on the fishery management Councils. The Network is calling for one third of the fisheries Councils membership to be academics and conservationists. This could displace members with "hands on" fisheries experience, and would probably lead to an imbalance in the recreational to commercial ratio of voting members. In my experience, people with fisheries experience tend to make make better Council members than those without such experience.

6. Why demote "promote" to "consider"? The amendment (S.39, 15/20) to national standard 5 demotes the call to "promote efficiency in the utilization of fishery resources ..." to only "consider efficiency in ...". Since

efficiency in utilization is related to reduction of bycatch and waste, it seems counterproductive to lessen the thrust to reduce bycatch and waste in the keystone part of the Act.

7. Redefining "optimum". Added paragraph (C) (S.39, 7/8-10) is great. It introduces the concept of a healthy population level. The clause added to paragraph (A) (S.39, 7/2-3) is confusing to me. Is the purpose of this new clause to protect habitat (instead of ecosystems), or to consider the stability (instead of protection) of ecosystems? Protecting ecosystems may mean no fishing. Protecting habitat is a goal in the new essential fish habitat provisions. Ecosystems need to be stabilized to avoid a disaster such as experienced in the New England groundfish failure.

8. Secretarial management behind closed doors. Many have voiced complaint to the "behind closed doors" aspects of Secretarial management of Atlantic highly migratory species (MFCMA Sec. 305(f)(3) [16 U.S.C. 1854(f)(3)]). To overcome this concern, I suggest consideration be given to requiring the Secretary to fully interact with the interested public in the plan preparation process. By way of example, I suggest adding the following underlined language to the Section:

(f) FISHERIES UNDER AUTHORITY OF MORE THAN ONE COUNCIL. [16 U.S.C. 1854(f)]

(3) \* \* \*

\* \* \*

(F) In implementing the provisions of this paragraph, the Secretary shall institute formal mechanisms to consult with, and respond to the comments and concerns of --

- (i) the Secretary of State;
- (ii) commissioners and advisory groups appointed under Acts implementing relevant international fishery agreements pertaining to highly migratory species; and
- (iii) appropriate Councils; and
- (iv) interested members of the public.

Thank you for allowing comment. I hope it will be helpful in your efforts to strengthen the Act.

**U. S. SENATE SUBCOMMITTEE  
ON OCEANS AND FISHERIES**

FIELD HEARING, NEW ORLEANS, MAY 13, 1995  
ON  
REAUTHORIZATION OF THE MAGNUSON FISHERY CONSERVATION AND  
MANAGEMENT ACT

Prepared Testimony of Maumus F. Claverie, Jr.  
on behalf of  
THE BILLFISH FOUNDATION

Thank you for having this hearing as suggested in TBF's letter dated January 27, 1995 to the Chairman, and thank you for giving The Billfish Foundation the opportunity to testify on amendments to the Magnuson Fishery Conservation and Management Act and the Atlantic Tunas Convention Act.

TBF is a non-profit organization based in Florida with 6,400 members from nearly 70 nations. The sole focus is on the science and management of billfish. The nature of these species require international interest, and our membership and activities reflect this. TBF funded the thrust in ICCAT for science on billfishes, funded many private scientific research projects, and operates a cooperative worldwide billfish tag and release program.

TBF is interested in ICCAT and the MFCMA because they both have the authority to conserve and manage billfish in the Atlantic. MFCMA also treats management of billfishes throughout their range in most parts of the world, an interest shared with TBF.

Although there are many facets with possibly far reaching consequences for billfishes in the two acts, TBF comments on the following are considered of prime importance:

1) Eliminate the language in the Atlantic Tunas Convention Act that prohibits the U.S. from being more conservation oriented than ICCAT. This is needed to prevent a recommendation by ICCAT ruining the U. S. Atlantic Billfish Management Plan, or otherwise leading to a harvest level above that allowed by U. S. conservation and management policy. Based on history, TBF is concerned about ICCAT management expanding to additional billfish species besides swordfish. The attached graphs of Atlantic bluefin tuna and swordfish population levels depict the severely depleted state of these fisheries that



are being actively managed by ICCAT.

TECHNICAL:

Delete the words "or decreasing" from Sec. 6(c)(3) of the ATCA [16 U.S.C. 971d(c)(1) as follows:

"... except that no regulation promulgated under this section may have the effect of increasing ~~or decreasing~~ any allocation or quota of fish to the United States agreed to pursuant to a recommendation of the [ICCAT] Commission."

With this deletion the ATCA will no longer stand apart from the generally accepted traditional principal that a sub jurisdiction may be more conservation oriented than its superior jurisdiction. The U.S. will no longer be compelled to blindly follow foreign - imposed fishery management policy that differs from U.S. policy.

The proposed amendments (S 39) do not presently contain this deletion. They do seek to add an additional type of criteria to those that must be blindly followed: "fishing mortality level". If the above deletion is made, then it is o.k. to include the additional fishing mortality level criteria. If the deletion is not made, then the fishing mortality level should not be added to the ATCA list of exceptions to the general policy.

**2) Change the "optimum utilization" management criteria for highly migratory species back to "optimum yield".**

TECHNICAL:

Change the word "utilization" to "yield" in Sec. 102 of the Magnuson Fishery Conservation and Management Act [16 U.S.C. 1812].

Sec. 105 of S.39 (page 9, line 7) accomplishes this, and we laud and encourage this effort. This change will bring management of billfish back to the same management criteria as all other species. The "optimum utilization" principal was inserted by the 1990 amendments, and allows a very dangerous way to manage highly migratory species. The only management principal defined in the MFCMA is "optimum yield", and it means to maintain healthy stocks of fish. This is what these long-lived fish need. This is what the Atlantic Billfish

Management Plan calls for. This is what we want. This is what the recreational billfish fishery needs, since it is a rare event fishery looking for maximum encounter. To increase the encounter rate, and because of the reduction in stock size, in the last few years the U. S. participants, and those of some other nations, have adopted a catch and release ethic unprecedented in highly migratory fisheries. We want to make certain U. S. conservation and management of billfish is not compelled to deviate from this course because of one word.

3) Add language to the MFCMA making it clear the Secretary must follow the conservation dictates of the national standards when writing a fishery management plan for Atlantic billfish.

TBF favors adding language to Sec. 304(f)(3)(D) of the Magnuson Fishery Conservation and Management Act [16 U.S.C. 1854(F)(3)(d)] to make it clear the Secretary must comply with the national standards and other applicable law in any fishery management plan pertaining to Atlantic billfish. S.39 accomplishes this (page 37, line 12). We laud you, and hope the Act is so amended. The underlying principle of the MFCMA, the optimum yield theory of conservation and management, is in national standard 1. The present Sec. 304 (f) [16 U.S.C. 1854 (f)] is confusing as to whether the Secretary must follow the national standards. A clear legal requirement to meet the conservation criteria is needed to avoid pressure to replace the present Atlantic Billfish Management Plan and the possibility a new plan will not be as conservation-oriented as the present plan.

NOTE: The Marine Fish Conservation Network is asking Congress to delete the whole Section 304(f) of the Act. This would eliminate the confusing language, but the effect would be to return Atlantic highly migratory species management to the Councils. TBF is not in favor of a return to the Councils. The confusing language would stay as it is unless the Act is amended to clarify the management criteria the Secretary is to use in managing Atlantic billfish.

S.39 properly addresses these concerns by adding clarifying language and retaining the Secretary management system.

4) Allow the Secretary to continue the present Atlantic Billfish Fishery Management Plan, even if ICCAT recommends a higher fishing mortality.

TECHNICAL:

Change and add language to Sec. 304(f)(3)(E) of the M/MFCMA [16 U.S.C. 1854(F)(3)(E)] as follows:

"(E) With respect to a highly migratory species for which the United States is authorized to harvest an allocation or quota under a relevant international fishery agreement, the Secretary shall may provide fishing vessels of the United States with a reasonable opportunity to harvest such allocation or quota, so long as it does not result in fishing mortality exceeding that allowed by this Act [Chapter or Title] or any relevant fishery management plan for that fishery.

This language brings to the MFCMA the concept explained in 2) above where it applies to the ATCA. To do this, the added language would be inserted in S.39, line 3, page 39, and the clause "the Secretary may" inserted in S.39, line 25, page 38.

Thank you for the opportunity to make these comments, which we hope you find helpful in strengthening the MFCMA.

**U. S. SENATE SUBCOMMITTEE  
ON OCEANS AND FISHERIES**

FIELD HEARING, NEW ORLEANS, MAY 13, 1995

ON  
REAUTHORIZATION OF THE MAGNUSON FISHERY CONSERVATION AND  
MANAGEMENT ACT

by: Maumus F. Claverie, Jr.

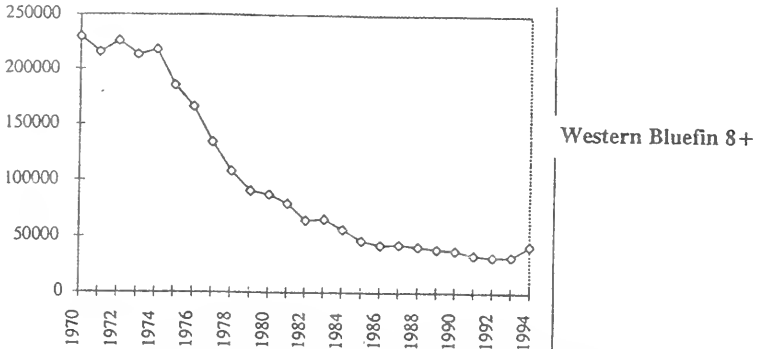
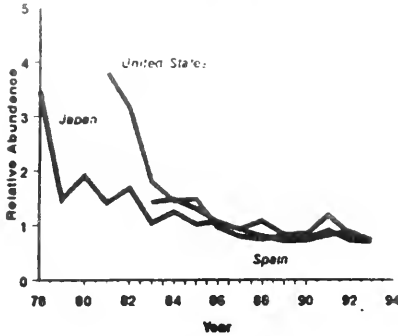


Figure 7. Deterministic population trends for the base case.

**North Atlantic Swordfish  
Age 5+ Indices**



**U. S. SENATE SUBCOMMITTEE  
ON OCEANS AND FISHERIES**

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on behalf of  
THE NEW ORLEANS BIG GAME FISHING CLUB

Thank you for having this hearing, and thank you for giving the New Orleans Big Game Fishing Club the opportunity to testify on amendments to the Magnuson Fishery Conservation and Management Act and the Atlantic Tunas Convention Act.

NOBGFC has 164 members from all states fronting the Gulf. Our clubhouse is the old Coast Guard station at the Mississippi River's South Pass, 25 miles from the nearest road, but only 12 miles from the Gulf's 100 fathom line.

Formed in the early 1960s when billfish were discovered off the mouth of the river, the NOBGFC began the ethic, now prevalent throughout the Gulf, of fishing for science while fishing for recreation. All of our fishing data, not just that from tournaments, has been kept in cooperation with Louisiana State University, the Louisiana Department of Wildlife and Fisheries, and the National Marine Fisheries Service. We pioneered the tag and release ethic now so popular in the Gulf. A copy of the latest edition of the National Marine Fisheries Service publication is attached to show the use made of the data.

The NOBGFC is interested in ICCAT, the ATCA and the MFCMA because they treat the highly migratory species we fish in the Gulf. We testified in favor of the "200 Mile Fisheries Act" in the mid 1970s, and have remain involved in the process.

The NOBGFC endorses the comments made to this hearing by The Billfish Foundation, and we are particularly thankful for yield instead of utilization and clarity in the criteria the Secretary must use in an Atlantic highly

migratory species plan. In addition, the following are offered:

1. **No federal observers forced on recreational fishing boats!** A forced federal observer would not fit with the social or business entertainment aspects of the fishing trips, and would even discourage participation in the fishery.

ATCA (Sec. 6(c)(3)(J) [16 U.S.C. 971D(G)(3)(j)]) (added by the '90 amendments) requires: "... that observers be carried aboard fishing vessels for the purpose of providing statistically reliable scientific data ..." This affects us because we fish for ATCA species (tunas and billfish), and should be amended by limiting it to commercial fishing vessels: "... aboard commercial fishing vessels ..."

There is similar language in S.39. This should be limited to commercial fishing vessels as well.

We have long kept all the data the scientists need and can use. No need to impose additional burdens on us to fix a non problem, especially when the solution puts a U. S. government agent observing our private recreational activities in the intimate atmosphere on recreational vessels where the presence of a stranger will offensively intrude into the social or business atmosphere of the trip.

2. **Do not let the MFCMA Guidelines become more important than they now are.** The Network wants to eliminate language in the MFCMA saying the Guidelines shall not have the force and effect of law. This sounds harmless, but would be bad.

The Guidelines (regulations) are written by NMFS "... to assist in the development of fishery management plans." The Guidelines contain the bad stuff, contrary to the law, that has allowed the massive overfishing we have all seen. For instance, national standard 1 requires fishery management plans to "... prohibit overfishing ..." The Guidelines say "... 'growth,' 'localized,' or 'pulse' overfishing ... are not necessarily overfishing under

the national standard 1 definition ..." (50 C.F.R. Part 602).

The status of the Guidelines should not be elevated in any way. Eliminating the no-force-and-effect-of-law clause may or may not have any legal effect, but it certainly will have a bad effect on the agency. Such an action will be viewed as a Congressional stamp of approval on the bad provisions of the Guidelines.

**3. Keep "U. S. fishing industry" in national standard 1.**

The Marine Fish Conservation Network wants to delete the U.S. fishing industry as the primary beneficiary of fisheries conservation and management. We, the recreational industry, are a part of the "fishing industry". Do not let this be changed, or the primarily beneficiaries then would include foreign flag vessels; the very reason the clause was added in the first place. We are also concerned the outcome of eliminating the U.S. fishing industry as the primary beneficiary of fisheries may be extremely harmful to sound conservation and management.

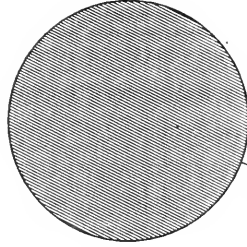
**4. Do not let user fees be levied on the offshore recreational fishing boats to pay for management and enforcement.**

We just got rid of a fruitless attempt by the Coast Guard to do their equivalent. It sounded good, but turned out to be just another tax in disguise and left a bad taste in everyone's mouth.

Thank you for your consideration of our concerns.

# SOUTH PASS 1994 RELEASE DATA BY SPECIES

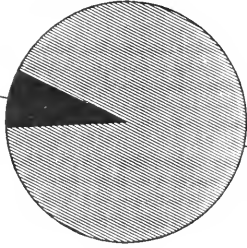
## SAILFISH



RELEASED 100%  
N=4

## WHITE MARLIN

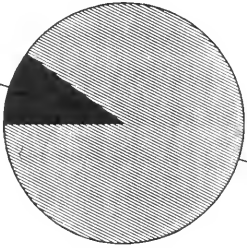
BOATED 8%  
N=1



RELEASED 92%  
N=12

## BLUE MARLIN

BOATED 10%  
N=9



RELEASED 90%  
N=82

N = Number of billfishes



Senator STEVENS. Well, let us talk to you about that, but let us move on now to these other two people.

Mr. CLAVERIE. OK.

Senator STEVENS. You have got two more hats to wear that I am interested in hearing and may have some questions of you about. But I think you should have brought two more bodies, and then we could have given you 20 more minutes.

But we want you to sort of just stand aside for a minute and let us listen to these other people. And then I will come back to you because there are some other things in here that I think we ought to question. You have got two points on the wall already with me, and I would like to follow up on some of these other things.

So with your indulgence—

And if that is all right with you, Senator Breaux.

—I would like to go to Mr. King.

Mr. CLAVERIE. Well, I appreciate that, and I apologize for having more to say than time to say it.

Senator STEVENS. Well, that is all right. Just—it is kind of hard sometime, when people have different, you know, perspectives to represent, to be fair about this.

Senator BREAUX. Yes.

Senator STEVENS. But let us listen to Mr. King and then Ms. Williams, and then we will come back.

#### STATEMENT OF ALBERT KING, SR., GULF SHORES, ALABAMA

Mr. KING. Thank you, Mr. Chairman, members of the Committee and staff. My name is Albert King. I live in Alabama. I am a member of the Gulf of Mexico Fishery Management Council and have been since 1991. I am also a trustee of the Gulf and South Atlantic Fisheries Development Foundation.

I am not going to attempt to sit here and read the written testimony that finally arrived and I appreciate Ms. Dalton reminding me it had not been received by the staff in Washington. It was mailed—express-mailed. Why it did not get there, I do not know; for that I apologize.

I hope that you, at least, have had an opportunity to review the copies of my late testimony. I was in Tampa. My plane was canceled into Pensacola, and then I came on into New Orleans late last night. So I apologize for all of those inconveniences.

I do not have but a few points that I would like to address to Magnuson. There are some recommendations that I think would improve the Act, rather than going in and being specific of what was contained in your Act.

The first is to require a congressional liaison person to attend all regional council meetings. It is pretty well self-explanatory why I have this opinion. You could cure a lot of the perceptions that are taking place here.

I know that each time there is a council meeting when staff of local congressman are attending there, there is a lot more cooperation. I will not say on whose side. I do not care about sides because, as it stands right now, I am just looking for one thing, and that is the truth in fisheries issues so that we can attempt to manage fisheries.

I think that this one point of requiring congressional liaison at the council meetings: will get the facts directly from the horse's mouth. If you do not get the truth on what is happening at the council then you have someone, your staff, to address and redress. And I would think that that would be a good thing to do.

The next—

Senator STEVENS. Mr. King, Senator Breaux and I think our staff put you up to that—

Mr. KING. No. Well, I would have—

Senator STEVENS [continuing]. Because those meetings usually take place during the fishing season. [Laughter.]

Mr. KING. I would hate to have to use a person from Washington; Mr. Perret thought that that was a great idea when I mentioned it to him. I told him that, if he stole it, I was going to stick a knife or something in him. [Laughter.]

Senator STEVENS. Is it all right if we come along with them during the fishing season?

Mr. KING. Sir?

Senator STEVENS. Is it all right if we come along with them during the fishing season?

Mr. KING. Well, I would hope you would, really and truly.

Mr. CLAVERIE. That is year-round in the Gulf.

Mr. KING. OK.

The second thing is to please make a clear determination on the intent of Congress in fisheries management, while giving as much regional autonomy as possible. The vague verbiage of, "Taking into account," is something that I have difficulty trying to interpret when I run over it.

It is the way that I feel—I think that our whole system is based on the definitive answers of attorneys. Fishermen are not attorneys; I try to represent them. In plain language tell what your intent is, when we say, "The National Standards," I would like to see them defined, in order of priority by your intent.

Is—the first national standard of overfishing, is it going to take precedence over, "Fair and equitable," in Number 4? I have seen them vacillate back and forth in NMFS, and I do not know what to do. We address it, we debate it, and then what even comes out of our council is sometimes lost in interpretation of what we said.

I know I am accused of having too much to say. It was stated to me yesterday, If you ask Albert King the time, he will tell you how to build a clock. [Laughter.]

Mr. KING. Well, that was the first time I had heard it.

But I promise you it is in my repertoire today, and I will warn people, if they ask me a question, that might be what they get. You are on your own with that.

The one point is that, if we allow these type interpretations of your laws to continue, we will be going back and chasing that rabbit in and out of that hole, just like we have been doing in fisheries management forever.

At the present as a member of the Gulf Council, I am also Chairman of the Highly Migratory Species Committee. I could have added a lot of words to what Mr. Claverie was saying because I was at the ICCAT meeting in Madrid negotiating up to 2 a.m., when all of the discussion was going on with swordfish and Billfish.

But what we thought was going to come out was going to prevail. It does not mean that what we try to do on the highly migratory species in this country has little impact on the thing worldwide in billfish because we are so unique. The allocated fishery quota can be landed as a bycatch allowance. Japan and others are addressing these issues of international allocations.

The third point I want to make is relative to bycatch. There is too much generalization in bycatch. This is the reason I mentioned the regional autonomy of fisheries. If we do not have regional autonomy to define what is meant by bycatch specific to each fishery then all we do is add credibility to anyone that wants to use the word bycatch as some kind of a rationalization for fundraisers or for anything else that happens that goes against and undermines the intent of Congress.

If you all do not give us the opportunity to sit down and specifically address the bycatch of each fishery each year by area then you are not fulfilling your responsibility. Now,

I know I am not supposed to be here telling you all what to do. The only thing I can do is carry the word of fisherman and I have done that all my life starting back as I mentioned in my paper, in 1952, when I was elected secretary/treasurer of a shrimpers' union in Morgan City.

My folks originally came from Florida. You know the reason I was elected secretary/treasurer? I had high-school bookkeeping. Big deal.

But it just gives you the understanding of what their frustration is and has been because I came from a fishing family. I have owned and operated boats and operated net shops. I am now attempting to be a fishery manager.

I know how to read regulations and I know how to follow guidelines. But I do not like for people to take a guideline and turn it around and write it and use it and interpret it to fulfill a special agenda or something that fulfills their need, unless it was the intent of Congress for them to do it.

If you want us to manage fisheries by the bycatch criteria, make it plain and explicit. If minor species is going to govern the harvest of a major one, say so. We can accept that if that is the intent of Congress.

But this opportunity of going back and forth and letting appointed agencies NMFS be able to do that—and I am sorry Mr. Schmitten and Dr. Kemmerer left because—Andy, I do not have any trouble with him, but I just do not get to see Mr. Schmitten very much—because I like to be sure that these edicts that are coming down are from him. I have some difficulties with those things.

Now, if we get into the individual transferrable quotas and—as we have just passed on the Gulf Council in the red snapper fishery—do you want us to manage fisheries for the highest number of individuals, or do you want us to manage fisheries for the fishery itself, for the economic condition? We can do it any way you say.

I see my light is on. I will go ahead and close up now.

[The prepared statement of Mr. King follows:]

**Albert L. King, Sr.**  
Post Office Box 498  
Gulf Shores, Alabama 36547-0498  
(334) 968-7653

May 13, 1995

Senate Hearing  
Magnusson Act Reauthorization  
New Orleans, Louisiana

Mr. Chairman, Members of the Committee, and Staff:

I thank you for the opportunity to address this group with my concerns for the type of management proposed for the fisheries of the United States. My comments and perceptions are my own.

My business background has always been rooted in Gulf fisheries (specifically, shrimp). It started in the summer of 1941 at the age of seven on the deck of an offshore shrimp trawler captained by my oldest brother. It ended with my retirement in 1986 when I sold my 50% interest in a shrimp processing freezer plant. I will not take your time talking about *the way things were back then* unless there are questions from you gentlemen about fisheries of that era.

My fishery management experience began in 1952 when I was elected Secretary-Treasurer of a shrimpers' trade union in Morgan City, Louisiana. I will not attempt to explain how this experience correlates to the council process of management except to say that the experience "got my feet wet" at an early age.

My first appointment as an at-large member to the Gulf of Mexico Fishery Management Council was in 1991 and I was reappointed to a second term in 1994. In 1992 I was asked to serve the council chairman as his designee to the International Commission for the Conservation of Atlantic Tuna (ICCAT) Advisory Panel and I continue to serve in that capacity. In 1994 I was selected to represent the five management councils represented on the ICCAT Advisory Panel as a member of the official U.S. delegation to the annual ICCAT meeting in Madrid, Spain.

After serving four years on the council, I am of the opinion that The Magnusson Conservation and Management Act is not broken, but it does need refining. My suggestions which will help accomplish this refinement are as follows:

**I. REQUIRE THAT A CONGRESSIONAL LIAISON PERSON ATTEND ALL COUNCIL MEETINGS.**

- A. This is the only way for Congress to have the oversight needed to assure that the intent of the law is not lost in the administrative procedure or agency agendas.
- B. This gives Congress the opportunity to know first-hand how the National Standards are "used".
- C. Congress can address their constituency concerns with more accurate information and in a more timely manner.

## Albert King Testimony

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D. It can give Congress unbiased insights as to how fishery management is really management of people and not fish.

E. It can expose the editorializing that hides private agendas in complex management issues to build administrative records for regulatory agencies.

II. PLEASE MAKE A CLEAR DETERMINATION OF THE INTENT OF CONGRESS IN FISHERIES MANAGEMENT WHILE GIVING AS MUCH REGIONAL AUTONOMY AS POSSIBLE. CLEARLY STATE HOW THE COUNCILS ARE TO APPLY THE NATIONAL STANDARDS. PLEASE BE MORE DEFINITIVE WITH THE VERBIAGE AND INSTRUCTIONS RATHER THAN USING VAGUE TERMS SUCH AS "TAKE INTO ACCOUNT" WHEN INSTRUCTING THE COUNCIL AND SECRETARY OF COMMERCE TO ADDRESS LIMITING ACCESS TO FISHERIES. MANY TIMES AN OFFICE MEMO WILL BE ALL THAT IS DONE TO "TAKE INTO ACCOUNT" IF NOT DIRECTED TO DO OTHERWISE. I WOULD HATE TO SEE THE IDENTIFYING OF HISTORICAL PARTICIPANTS, HISTORICAL FISHING PRACTICES, AND DEPENDENCE ON THE FISHERY NOT IDENTIFIED BECAUSE INADQUATE WORDING HIDES YOUR INTENT.

A. We have stocks of fish in the Gulf of Mexico that are said to be overfished according to NMFS stock assessments. The Magnuson Act, Section 301, National Standard No. 4, "*If it becomes necessary to allocate or assign fishing privileges among various United States fishermen, such allocation shall be (A) fair and equitable to all such fishermen.*" This National Standard seems to be ignored by NMFS at present unless it suits a particular purpose or agenda.

B. Most species of fish classified as overfished in the Gulf of Mexico have commercial and recreational user groups. The present method of management supported by NMFS is to control the commercial harvesters as follows: limit the number of participants, apply size limits, apply restrictive annual catch quotas, deny efficiency by imposing trip limits, and refuse to expand the quota as the fishery improves. These management measures have resulted in the 3.01 million pound commercial quota of red snapper being landed in 95 days of fishing in 1993, 77 days in 1994 and 50 days in 1995.

C. The recreational harvest is restricted by size limit and bag limit. A quota of 2.94 million pounds is allocated. NMFS estimated that for the fishing years 1993 and 1994 the recreational fishery for red snapper had exceeded its quota by as much as 2 million pounds in each year. This is blatant disregard for the "fair and equitable" portion of National Standard No. 4. My hope is that the congressional liaison person would report such actions and the responsible agencies would be addressed.

D. I read the April 7, 1995 edition of the Franklin Chronicle that reported on the Florida State University Symposium on Marine Conservation. One of the panel members was Dr. Russell Nelson of the Florida Marine Fisheries Commission, and the publication quoted him as saying, "As we look to the year 2010, I expect to see an increase in the order of 60 to 70 percent the number of people who want to go recreational fishing. We will see in the next near term, essentially the decline and phasing out of the concept of using fisheries as the means of really supplying people with food. . . . In the year 2025, in Florida you may be allowed to go out on some days of the week and catch and keep a single fish. A fishing trip off Florida's coast will probably involve pulling teaser baits and having the captain and crew take a video of a fish coming up behind a boat." Is it the intent of Congress to allow the Dr. Nelsons' of this world to continue to promote one user group at the expense of another? Scientists such as this seem to march

## Albert King Testimony

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to the beat of a different drummer which is out of step with the intent and spirit of the present law.

E. The above is a good example of what some state directors bring to the Gulf Council table. Many states, especially Texas and Florida, seem to want fisheries in the EEZ to be managed by their own states' fishery policy.

**III. BYCATCH IS THE CATCH-ALL PHRASE USED TO DESCRIBE THE INCIDENTAL HARVEST OF NON-DIRECTED SPECIES. IT IS THE MAIN REASON FOR THE NEED FOR THE AFORE-MENTIONED REGIONAL AUTONOMY OF MANAGEMENT. AT PRESENT "BYCATCH" IS THE MOST ABUSED TERM IN FISHERIES AS IT HAS BECOME THE RALLY CRY OF THE PRESERVATIONISTS AND DO-GOODERS.**

A. The issues of the Pacific Northwest are completely different from those in the Gulf of Mexico. The Northeast differs from the South Atlantic. These issues are best handled at the regional level.

B. Bycatch should not continue to be used as the driving force behind user group conflicts as is happening around the Gulf of Mexico. Congress must decide, with clear definitive action, as to how they want fisheries managed. Please do not leave it up to NMFS. You should make that determination yourselves. If you want incidental harvest to control the directed harvest, make that statement. If you do not, make that statement loud and clear for all to hear.

C. Draw lines of jurisdiction between each Council as though a fish cannot cross the boundary. This prevents NMFS from being able to play one council against the other in allocation issues. This will put a stop to the question of mixing rates which NMFS scientists have been unable to verify, yet use it as the best scientific information to settle allocation issues. Don't allow bycatch to cross council boundaries and drive stock assessments. Stop all joint council management plans.

D. Some of us try to manage fisheries in the Gulf of Mexico as a food source and a recreational opportunity. I become very frustrated when incidental harvest in one industry is blamed for resource depletion in another. This causes reduction in harvest for both the recreational and food supplying sector. When incidental harvest is reduced by one sector, it is almost impossible to receive recognition for the decreases in the bycatch. The finfish bycatch reduction from TED requirements is a prime example. I search for the truth in fishery management, especially in the science upon which the management is based.

E. The shared quota system would work better between recreation seekers and food producers if the fair and equitable standard was applied to allocation between user groups in all state waters as well as the EEZ.

**IV. INDIVIDUAL TRANSFERABLE QUOTAS (ITQ'S) IS THE LIMITED ACCESS SYSTEM THAT NMFS HAS BEEN TRYING TO GET THE RED SNAPPER FISHERY TO ACCEPT IN THE GULF OF MEXICO.**

A. The ITQ limited access system gives individual fishermen the right to harvest a certain percentage of the allowable quota of fish.

## Albert King Testimony

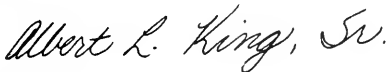
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- B. The individual fisherman can sell, give, barter, and transfer all or any part of his catch to any other individual.
- C. The ITQ allows a fisherman to have a vested interest and a personal property right in what has always been a public resource.
- D. The duration of this individual percentage share has to be in perpetuity if it is a true property right.
- E. Questions that have been asked while holding workshops for ITQ's around the Gulf of Mexico: Who gets the certificate? Shall it be the boat owner? The boat's captain? What about crew members? If it should be divided into shares, who gets what and in what amount?
- F. Fishermen want to know what their share will be before they decide to consider and support the system.
- G. What if the government decides to take back the shares?
- H. Does the government have the right to give a public resource to individuals?
- I. Should the government base the shares on the historical landings of the fishermen? If so, how many years back shall be included in the average?
- J. Will the fisherman have an avenue of appeal in hardship cases for injury and sickness?
- K. Who gets the share if the father dies during the issuing process should there be two or more children and a widow?
- L. User fees are of great concern to the individual fisherman. Will it be based on the allowable catch? If not, what will the criteria be?

I have attempted to list some of the concerns that I have heard discussed. I am sure I will hear others as I am writing this prior to the Gulf Council's meeting beginning May 8 in Tampa and ITQ's are on the agenda.

The preceding observations, opinions, and perceptions have passed my test of time, and, therefore, represent the truth as I perceive it. Most of this was written without the knowledge that I was going to be allotted only five minutes for testimony before this panel. It is my hope that this committee will at least read the parts which I have been unable to cover verbally.

Respectfully yours,



Albert L. King, Sr.

Senator STEVENS. We will talk a little bit more about it. We want you to manage them to preserve the reproductive capability of the fishery, species by species.

Mr. KING. How do you allocate that among the people? How many people do you want to take out? That is my whole point, Senator. In other words, give us the criteria, and that is all I ask for.

Senator STEVENS. All right. Thank you.

Ms. Williams?

**STATEMENT OF H. KAY WILLIAMS, REEF FISH CHAIRPERSON,  
SAVE AMERICA'S SEAFOOD INDUSTRY COALITION**

Ms. WILLIAMS. Mr. Chairman and Senator Breaux, my name is Kay Williams. I am Reef Fish Chairperson for Save America's Seafood Industry. We have members in all five Gulf states. I would like to offer the following recommendations for consideration.

In the way of background, I have served on three advisory panels to the Gulf of Mexico Fishery Management Council. I attend all meetings of Council: Scientific and Statistical Committee meetings, public hearings and other committee meetings. My family members are recreational fishermen. My husband's family has been in commercial fishing for over 60 years and currently participates in the reef fish fishery regulatory discards in the U.S. fisheries. Under the Magnuson Act, many fisheries are under a quota designed to prevent overfishing. From a practical position, the fishermen feel that, when they are under quotas, they should be allowed to keep what they catch; we feel that release morality may be higher on some species in regard to the depth of the waters the fishermen are fishing.

Consequently, for those fisheries which have the safety net of a quota, I feel the fishermen should be allowed to retain all sizes that they desire to keep. In my opinion, this will promote efficiency, economy and conservation because the quota is a built-in safeguard.

Regulatory discards would be reduced, economic gain would occur due to a reduction in time for culling, and less mortality would occur because marketable fish would be utilized that are now partially wasted.

With respect to individual transferrable quotas, we feel that ITQs are not desirable for all U.S. fisheries. Before an institution of ITQs, several things should be taken into consideration, including: the size of the fishery quota; recreational participation, if any; costs to administer and to the fishermen; the degree of support for ITQs by industry; geographical range of the stock; and foreign imports of the species.

Having considered all of the above, it is our opinion that the ITQs are not appropriate for the red snapper fishery; however, some type of limited entry is appropriate for the red snapper industry. Our position is that a license limitation should be our choice at this time. Limiting licenses does not prevent going to an ITQ system at a later date, and it would be less burdensome and costly to administer. I looked up the figures on the red snapper fishery. They said the ITQs were going to cost us the first year \$2,176,884 on a 3-million-pound quota. Under license limitations, it is \$886,884. These are figures from NMFS. If I have got to pay for a system, I do not want to pay \$2,176,000 on a 3-million-pound



quota; give me the \$886,884 one, I mean, if you are going to charge me for it. Then annually, it was going to cost \$1,749,000 for the ITQ and \$524,000 for license limitation. Give me the one that costs less; let us see how that works out.

I would ask you today to support a moratorium on all new ITQs that have not been fully implemented by June 1, 1995. The Gulf of Mexico Fishery Management Council will not listen to industry; they will not listen to the advisory panels which I have sat on.

We have rejected ITCs three different times; the SSC rejected them twice and finally got wore out and accepted them on the last one. We have been going to these meetings for the past 3 years saying, We do not want them. We do not want them. They are under the assumption, You are going to get them whether you want them or not.

Conflict of interest on the councils has been the subject of much debate for several years. In our opinion, conflict of interest is not a serious problem on the Council. To some degree, there will always be some conflict of interest due to the fact that we need knowledgeable people from all sectors in fishery; many times, these are the actual participants in commercial and recreation fisheries. If instituted the recusal process should be the least burdensome as possible. We are concerned that the NMFS Regional Director is a voting member of the Council and sits in review on Council actions; in essence, he has a built-in conflict of interest. Some consideration should be given to his voting status.

It is our opinion that the executive director or his designee of the marine fisheries commission for the geographical area concerned, if any, should be a voting member of the council. The executive director attends the committee meetings, serves as chairman or vice chairman of committees and votes fully in all committee actions.

The executive director also attends and is active in the debates in the full Council but cannot vote in the full Council. The interstate commission brings a regional state perspective to the deliberation and discussions of the Council, which we feel is proper for full consideration of management measures that the Council imposes.

We support the language in Senate Bill 39 concerning a new national standard and special consideration for fishery-dependent communities. Further, we do not see any additional language in the Magnuson Act to prevent overfishing; current provisions are more than adequate.

We support the designation of certain areas as essential fish habitat in the wetland areas and provisions for Federal and state agencies' consideration in their actions with regard to fish that utilize these habitats. Gulf coastal wetlands comprise about half the national total.

We feel that there should be some type of economic assistance where there is a commercial fishery failure for the vessel owners, operators and crew members, if dependent on that fishery.

Thank you, Mr. Chairman, for the opportunity to share our opinions on this important legislation which is up for reauthorization. I will be happy to answer any questions you might have.

[The prepared statement of Ms. Williams follows.]

Testimony of

H. Kay Williams

on behalf of

Save America's Seafood Industry Coalition

regarding

**Reauthorization of the  
Magnuson Fishery Conservation and Management Act**

presented to

The Subcommittee on Oceans and Fisheries  
of the

Senate Committee on Commerce, Science, and Transportation

New Orleans, Louisiana

May 13, 1995

Mr. Chairman and members of the Subcommittee, my name is Kay Williams. I am Reef Fish Chairperson for Save America's Seafood Industry Coalition. In response to your request for input and on behalf of Save America's Seafood Coalition, I would like to offer the following recommendations for consideration in reauthorization of the Magnuson Fishery Conservation and Management Act.

In the way of background, I have served on three advisory panels to the Gulf of Mexico Fishery Management Council. I attend all meetings of the Council, Scientific and Statistical Committee meetings, public hearings, and other committee meetings. My family members are recreational fishermen and my husband's family has been in commercial fishing for over 60 years and currently participates in the reef fish fishery regulatory discards in U.S. fisheries.

Under the Magnuson Act many fisheries are under a quota designed to prevent overfishing. From a practical position, the fishermen feel that when they are under quotas, they should be allowed to keep what they catch; we feel that release morality may be higher on some species in regard to the depth of water the fishermen are fishing. Consequently, for those fisheries which have the safety net of a quota, I feel fishermen should be allowed to retain all sizes they desire to keep. In my opinion, this will promote efficiency, economy, and conservation because the quota is a built-in safeguard. Regulatory discards would be reduced, economic gain would occur due to a reduction in time for culling, and less

mortality would occur because marketable fish would be utilized that are now partially wasted.

With respect to Individual Transferable Quotas (ITQs), we feel that ITQs are not desirable for all U.S. fisheries. Before the institution of ITQs, several things should be taken into consideration including size of the fishery quota, recreational participation (if any), costs to administer and to the fishermen, the degree of support for ITQs by industry, geographical range of the stock, and foreign imports of the species. Having considered all of the above, it is our opinion that ITQs are not appropriate for the red snapper fishery. However, some type of limited entry is appropriate for the red snapper fishery. Our position is that a license limitation should be our choice at this time. Limiting licenses does not prevent going into an ITQ system at a later date, and it would be less burdensome and costly to administer.

Conflict of interest on the Councils has been the subject of much debate for several years. In our opinion, conflict of interest is not a serious problem on the Council. To some degree, there will always be some conflict of interest due to the fact that we need knowledgeable people from all sectors in fisheries. Many times these are the actual participants in commercial and recreation fisheries. If instituted, the recusal process should be the least burdensome as possible. We are concerned that the NMFS Regional Director is a voting member of the Council and

sits in review after Council action. In essence, he has a built-in conflict of interest. Some consideration should be given to his voting status.

It is our opinion that the executive director (or his designee) of the marine fisheries commission for the geographical area concerned, if any, should be a voting member of the Council. The executive director attends the committee meetings, serves as chairman and vice-chairman of committees, and votes fully in all committee actions. The executive director also attends and is active in the debates in the full Council but cannot vote in the full Council. The interstate commissions bring a regional state perspective to the deliberations and discussions of the Council which we feel is proper for full consideration of management measures that the Council imposes.

We support the language in Senate Bill 39 concerning a new national standard and special consideration for fishery-dependent communities. Further, we do not see any need for additional language in the Magnuson Act to prevent overfishing. Current provisions are more than adequate.

We support the designation of certain areas as essential fish habitat in the wetland areas and provisions for federal and state agencies consideration in their actions with regard to fish that utilize these habitat.

We feel that there should be some type of economic assistance where there is a commercial fishery failure for the vessel owners, operators, and crew members, if dependent on that fishery.

Thank you Mr. Chairman for the opportunity to share our opinions on this important legislation which is up for reauthorization. I will be happy to answer any questions you might have.

Senator STEVENS. Thank you.

Mr. Claverie, we are going to go back to you now for another 8 minutes. And then I want to give Mr. King a little time to finish his statement, too.

Mr. CLAVERIE. Thank you, Mr. Chairman.

I want to address the work you all have done on bycatch. I think it is a good idea to address that issue, but, when looking at the definitions that were put in the bill, I can see that almost every fish is bycatch but is what I want to catch. So this—if Rollie Schmitt's goal is to stop bycatch fisheries, I do not like that.

And it is just a matter of getting the words right, really. In one of the papers up there, I think, someone has—

Senator STEVENS. Well, tell me what you mean by that:

The fish you catch is bycatch, but that is what you wanted to catch.

Mr. CLAVERIE. The definition of bycatch in the bill—let me find it so I can speak to it. Where is that?

Senator STEVENS. "Fish which are harvested by a fishing vessel which are not sold or kept for personal use, including but not limited to economic and regulatory discards."

Mr. CLAVERIE. All right. I go out—when I go billfishing, I know I am going to release the billfish I catch; it is what I am targeting, but I tag it and release it. By this definition, that is bycatch because it is not kept.

Senator BREAUX. Because you do not keep it.

Mr. CLAVERIE. You see? But it is not what I am there for. I mean it is not bycatch in the normal sense of the word, but, in—as defined here, it is bycatch. And when you look at the definitions of those discards, that could fit, also.

In fact, on one of the papers, I have the graph of the three bull's-eyes. And it shows, in 1993 and 1994, the percentage of billfish that was released by recreational fisheries in the Gulf. And it is, I think, only 10 percent that were killed. Well, then 90 percent was bycatch.

But the only reason we were out there was to catch those fish and release them. You see? So it is a matter of semantics, of getting that squared away so that you do not have a problem with—

Senator STEVENS. Well, tie that in with what you said before about changing the Act in terms of using "reduced."

Mr. CLAVERIE. OK. Reduced is a word that you have in the S.—

Senator STEVENS. I understand that. But if we—

Mr. CLAVERIE. OK. If you say—

Senator STEVENS. By the way, we may define "bycatch" as we just discussed, but we are only requiring the minimization of "mortality caused by bycatch, not every single type of bycatch. How does your issue with the word "reduced" tie into this?

Mr. CLAVERIE. Oh. "Reduced" was in the definition of optimum; it was not in the bycatch section. "Reduced," instead of "jeopardized." "Jeopardized" is a word that is used in the definition of overfished and overfishing.

Senator STEVENS. Yes.

Mr. CLAVERIE. And it says—

Senator STEVENS. Well, is white marlin overfished now?

Mr. CLAVERIE. Well, it is according to the MSY theory. It is not according to the theory that you can fish them down until they are endangered and it is still—you know. And the Magnuson Act, I thought, embodied the MSY theory.

Senator STEVENS. I did, too.

Mr. CLAVERIE. ICCAT embodies the MSY theory. They call it "maximum sustainable catch," instead of "yield," but the biologists view that as the same.

Senator STEVENS. That is a point he raised that I have mentioned.

Senator BREAUX. Yes.

Mr. CLAVERIE. So the difference there is the difference.

Now, when bluefin tuna went through the discussion by the scientific community about are they doing the science right and in NMFS on Atlantic bluefin tuna, and Rollie Schmitt issued a press release—it was the Department of Commerce; and it was last year, and I could not find it to show it to you—but it basically said that no matter which science is correct, they all say that the bluefin tuna population is but a fraction of its former self, but it has stabilized this population level at the current kill rate, which—kill is not the word to use—fishing mortality level, or whatever those things are.

But the point is that it looked like an endorsement by the Agency that this lower population level of fish is OK and their guidelines say so.

Senator STEVENS. Well, it should not—

Mr. CLAVERIE. But the Act does not say so.

Senator STEVENS. You are right. And that is why I wanted to get back to you. I do not understand why you have any ability to keep a blue marlin or white marlin if those charts are right, because—

Mr. CLAVERIE. Well, that is why the recreational fishery is voluntarily releasing so many: because they realize that. And the commercial fishery is doing the best they can. We—the recreationalists say it is not good enough. But they have said they are doing the best they can, at least the U.S. long-line fleets, to release alive as many as they can. They cannot keep it—

Senator STEVENS. What is the extent of the commercial fishery in both of those now?

Mr. CLAVERIE. I am sorry? I could not hear the question.

Senator BREAUX. It is all that bycatch. There is no commercial fishery targeted on those stocks.

Senator STEVENS. What is the extent of the domestic commercial fishery for blue and white marlin now?

Mr. CLAVERIE. It is zero now because it is illegal to sell Atlantic white or blue marlin in the United States.

Senator STEVENS. But there is international—

Mr. CLAVERIE. There is international, and it is—

Senator STEVENS [continuing]. An international fishery on both?

Mr. CLAVERIE. It is large.

Senator BREAUX. Yes.

Senator STEVENS. Yes.

Mr. CLAVERIE. Some of it is directed; they sell them and eat them. Some of it is bycatch; they do not need to go further to kill them. But this was not meant to talk about blue marlin.



Senator STEVENS. I understand that.

Mr. CLAVERIE. This was meant to show the difference between MSY and what NMFS has been doing and why we are where we are. What happened in the northeast is they were going along on this, "As long as we have still got some, it is OK," and it got out of hand.

It slipped away from them too fast. And that is why you do not want to manage them like that: because they can slip away from you. So that is the point I want to make.

On council membership, there is a thrust to change council membership, and I just wanted to tell you that, personally, I am happy with the council membership as long as there is an equal balance between recreational and commercial representation on the councils. And this has been true in Alaska because, in Alaska, 98 percent of the fishing is commercial. But that is not true in the Gulf.

As long as there is a balance in the voting power, then you have good fishery management, because they have to agree on how to allocate and do all these things that the Act asks them to do. And if they agree, it works out all right.

But it seems to me that the thrust afoot to put people on the council who are not fishermen overlooks two things. One is that one of the reasons for the council system is so that those fishermen who were going to be affected by the regulations that came out of the system would feel more comfortable with them if they were in on getting the regulations done. That is why you have fishermen on the council.

And the other is that traditionally and historically, fisheries have always been managed for the benefit of the primary users, which is the fishermen. And they should be the people that are in on managing the fishery.

You do have, possibly, nonfishermen, for instance: the agency person from each state's agency; the National Marine Fisheries Service Regional Director; the coast guard representative, who does not vote, but he is in there giving advice; and the Fish and Wildlife person who is in there and does not vote but gives advice.

And the Commission—the Gulf States Marine Fisheries Commission or the other two commission people who are aboard, theoretically, could be professionals instead of fishermen. But, for the major part of the voting members of the council, it seems to me that it should be left as fishermen.

Your bill does not tamper with that, but there is—your bill, rather, does not tamper with that, but there is a move afoot to do that, and everybody has spoken on it in one way or another. And I want you to know that I feel that way, too.

Mr. CLAVERIE. If your hands do not smell like fish, you should not be managing fish. That is what I say.

And that is the bulk of the major part of my comments. I have a whole lot more, but it is in the written record. And I would be glad to work with staff or answer anybody if they have any questions.

Senator STEVENS. Thank you, very much.

Mr. King, you did not finish, either. Do you want a few more minutes?

Mr. KING. I appreciate that, Mr. Chairman.

The basic problems when you get into the individual transferrable quota and limited access system is who gets the fish. That is the real crux of the problem. It is not so bad. We can allocate between the commercial sector, by gear, by area, by how or whatever it takes, or by their catch.

But what we have the problem and the difficulty with has been alluded to earlier: we have a 6-million-pound red snapper quota; the commercial harvest of that is 3.04 million; the recreational harvest is 2.96. And the opportunity of monitoring the commercial quota is there. It is done. We go from 77 days in 1994 to 50 days harvest now.

That is limited in every way that you can want to mention. It is in the testimony, in the written, as to what we do.

And then your other quota is merely a guesstimate through this Marine Recreational Fisheries Statistical Survey, and that is a crapshoot, you know, as to how you count the fish. I do not give any credibility to it. I am sure Mr. Claverie and the recreational community do not give any credibility to it. But it still shows that there is 2-million-pounds overrun in those quotas.

The next point is the bycatch issue drives the stock assessment of this specie. I have attempted every way—I have letters here that I would be glad to share with you—I will make it part of my testimony that I will add to, and this time, I want a return receipt requested when I send it in—to show that I have begged to revisit the shrimp effort data.

That is used to extrapolate—the landings are used to extrapolate effort. And if your effort is wrong, everything is wrong. I mean, you know, that is how it has reacted to the juvenile red snapper, both in, you know, the quantification and everything.

On the bycatch issue of observers I was concerned when it came up.

I said, What are they going to do to us now? I took my small motor home, I drove to Galveston, I spent 9 days and went through the observer school; I am qualified. I have got the paper that says that I passed the test.

They told me I could not identify the 60-some-odd species, but I only missed one, and I think it was a bay whiff or something; I never did know what he was. I know you could not eat him or sell him, or I would have. [Laughter.]

Mr. KING. But anyway, the point is that these are the issues that I have asked about shrimp effort data. We had an effort data ad hoc workshop that was chaired by Dr. Walter Keithley. And he came back to our council in May, 1994, and said there could be as much as a 20-percent bias in the shrimp effort data.

I have written letters to Dr. Kemmerer and I have written letters to Brad Brown to say, When is that going to be addressed in the stock assessment?

Oh, we are going to get to it; We are going to talk to it.

I go to Scott Nichols, who handles the counting of the numbers for the bycatch in Pascagoula: Oh, we are going to get to it, I promise you.

The fishermen ask me questions, and I am embarrassed; I cannot answer. I try, and that is where the frustration comes from.

So, actually, those are the issues that I really wanted to bring forth to you all. And that is more of—I ask questions more than I can give answers. And when I have the opportunity to ask these questions to you all, I think that you all then will go back, you will think about them.

I do not expect you all to answer me directly. I expect you all to answer me in the law so that it is defined and it is definitive in a way so you all can tell us how you intend for these laws to be passed and how you want us to regulate that fishery.

And I pledge to you: If you give me something with your intent known, it will be done, according to my vote, as long as I am on the Council. And I thank you.

Senator STEVENS. Oh. Well, you have been involved in this a long time, and some of the others, like Mr. Perret, have. Please give us a list of the things that you think are ambiguous in our law, and we will try to address them.

Mr. KING. I certainly will.

Senator STEVENS. I am surprised sometimes, when I look at it, and try to remember who wrote it, and then I remember I wrote it. [Laughter.]

Mr. KING. Well, I certainly will, Senator.

Senator STEVENS. These things, they do not look right after a few years, I will agree. But they looked awful good when we first wrote them. But experience shows that some of these things do have an ambiguity; but they might be—have an ambiguity to you, but not to my people.

Mr. KING. Right.

Senator STEVENS. And I hope I do not have to make it cloudy for them so we will understand it down here.

Mr. KING. That is the reason I said regional autonomy. I do not see any other way, Senator. I—if we cannot address this from a regional basis, we will never get there.

Senator STEVENS. That was the intent. Thank you.

Senator Breaux, do you have any questions?

Senator BREAUX. Just a comment, and a question, too.

I thank the panel, No. 1. I think we have gotten some really terrific thoughts. I know you represent a lot of people out there, and you are doing a good job in your testimony.

The purpose of all of these things we do in the Magnuson Act and our fishery management program, as I think the Chairman has correctly pointed out, is to make sure that this national fish resource is managed in a fashion that allows it to be used by the people in our country in a way that does not put in danger the stocks and reproductive production of those fish. In other words, our goals is to manage them properly.

Management does not mean you never take fish, and management certainly does not mean you take all of the fish. It means coming up with an amount of fish that can be taken that does not put in danger the conditions of the stock.

There have been great success stories and there have been great failures as a result of how we have managed and have not managed fish.

The problems become political problems that we have to wrestle with when there is a shortage of the resource. And then the ques-

tion becomes: How do we manage those fish that are in short supply, and how do we do it equitably?

When you have competing interests trying to go after a product that is in short supply, we have the conflicts that we now are wrestling with. You represent the commercial interest, and you represent the recreational interest. And those are the two principal conflicts with regard to Gulf fisheries.

Now, Mr. King's testimony outlined this problem on page 2. You point out that, if it is necessary for us to allocate or assign fishing privileges among U.S. fishermen, the allocation has to be fair and equitable to all such fishermen. Now, with regard to snapper—

And, Mo, maybe you can comment about this, because I am not sure things are working as they should.

Mr. King's testimony says that, "The present method of management supported by NMFS is to control the commercial harvesters as follows: limit the number of participants, apply size limits, apply restrictive annual catch quotas, deny efficiency by imposing trip limits, and refuse to expand the quota as the fishery improves.

"These management measures have resulted in a 3.01-million-pound commercial quota of red snapper being landed in 95 days in 1993, 77 days in 1994." And then it was cut to 50 days in 1995.

On the other hand, the recreational harvest, Mo, is restricted by size limit, and bag limits, as well. A quota of 2.9 million pounds is allocated. NMFS estimated that, for the fishing years of 1993 and 1994, the recreational fishery for red snapper has exceeded its quota by as much as 2 million pounds in each year.

My staff memo says the recreational sector has exceeded its allocation by about 2 million pounds in 1993 and 1994, while the commercial harvest has been closed before its allocation was completely harvested. What is happening?

Mr. CLAVERIE. Senator, if I could speak to that?

Senator BREUX. Yes.

Mr. CLAVERIE. I have not kept up with the snapper situation, so the numbers, I do not know; but the theories, I do.

Senator BREUX. Assume the numbers are correct. What is the comment?

Mr. CLAVERIE. OK. The Marine Recreational Statistical Survey way overstates the number of fish caught. The commercial counting system way understates the number caught. The scientists think they are both accurate, so they compare the two as if they were accurate; the fishermen know otherwise. In—

Senator BREUX. So you say that they underestimate the commercial take—

Mr. CLAVERIE. Right.

Senator BREUX [continuing]. And overestimate the recreational take?

Mr. CLAVERIE. Well, there was testimony by the commercial fishermen before the Louisiana House Natural Resources Committee a few years back that they are only counting 10 percent of the actual fish caught, which makes the Louisiana fishery much larger than the Alaska fishery if the Alaska fish count is correct.

Senator BREUX. Well, who said that?

Mr. CLAVERIE. The—well, T. Tee John and Harlan Pearce. And when they ran the sting operation on the 35,000-pound red fish

quota in Mississippi—Mississippi allows 35,000 pounds a year in red fish commercial. Louisiana allows zero.

So what they were doing was taking fish caught in Louisiana, trucking it into Mississippi and getting the paper work and selling them back in Louisiana, or wherever they went. And the Wildlife and Fisheries Department's sting operation was—laundered more than 35,000 pounds through that. So—

Senator BREAUX. So your response to my question that I have outlined here is that the statistics are just not correct?

Mr. CLAVERIE. But that is only part of my response.

Senator BREAUX. OK. And what is the other part?

Mr. CLAVERIE. We assume that the statistics are constantly incorrect. OK? In other words, if it is 10 percent here, it has been a constant 10 percent and, if it overstates by 200 or 300 percent on the recreational fishery, it is a constant 200 or 300 percent.

So what the problem is: It is not necessarily with the data-gathering system; it is with the use of the data-gathering system when you convert it to management.

In the early eighties, when I was on the Council, I was in charge of the King Mackerel Committee. And we had to put an amendment on the King Mackerel Plan, called Coastal Pelagics, because the scientists said they were being overfished.

So we looked at how we were going to do it. And the scientists said, You have choices.

You can totally stop fishing and then rebuild to a healthy thing in 1 year. But that is kind of—that puts everybody out of business.

If you reduce the kill by 22 percent, it will rebuild the stock to the healthy level in 3 years. And that is the one we chose. So we hit—

Senator BREAUX. I appreciate that information. But what I am saying, I have got a—

Mr. CLAVERIE. All right. So when we hit the road—

Senator BREAUX. I have got 3 million pounds of missing fish here that I am concerned about.

Mr. CLAVERIE. I am not sure it is missing; that is the point. But—

Senator BREAUX. You are questioning the numbers then?

Mr. CLAVERIE. If the management regime, instead of saying "million pounds," said "percent reduction," then you reduce the recreational fishery the same percentage on their counting system as you reduce the commercial fishery the same percentage on their counting system, and you do not worry about how many million pounds that is. OK?

If the commercial says that the commercial count has been that they have been catching historically a million pounds a year, and you say we are going to reduce the kill by 22 percent, their allocation then is 78 percent of 1 million pounds.

The recreational fishery, the scientists figure out on their computers; the reduced bag limits, and the size limitations reduces their take by 22 percent. And then you play catchup. And that—

Senator BREAUX. Mr. Claverie—

Mr. CLAVERIE. That is a management regime that works in accordance with what the data-gathering systems are designed to do.

If you stretch it, it is like trying to fix a Mercedes with a monkey wrench; it just is not built for that.

Senator BREAUX. Do other members of the panel agree, or disagree?

Ms. JOHNSON. I totally disagree, Senator. Can—

Ms. WILLIAMS. Totally disagree, Senator.

Senator BREAUX. What are your comments on it?

Ms. JOHNSON. I totally disagree, Senator. Can I address this, please?

Senator BREAUX. All right.

Ms. JOHNSON. First of all, let us look at the commercial sector. We have to put our lives on the line to get a permit. We have an open book: we have no right to privacy, we have to submit income tax forms, we have to submit everything. We have to prove that 50 percent of our income comes from the harvest of commercial fisheries; if we do that, we get a permit.

In order to be eligible for a red snapper permit, you had to have proved that you landed more than 5,000 pounds in 2 out of 3 years, in 1990, 1991 and 1992. This is dumb. You are reduced to 124 boats.

We never had a cap of how many pounds we could catch; we never had a cap of how many boats could catch it. We now have to report to the Agency within 24 hours of landing our resource what region we fished, how many lines we fished, how many crew members we had aboard, how many lines were in the water, how many hooks were, and how many hours were actually fished to harvest our 2,000 pounds of resource.

They have pulse fishing. They cannot accurately give you the 1994 figures. I called Silver Springs to get the estimated figures for the recreational sector, and they told me that it was 2,914,000 pounds, excluding the state of Texas, excluding all charter and head boats.

Only 20 percent of the reports are required by the charter and head boat industry. There is no pulse fishing.

This could be—money could be put into the Federal Government by implementing a Federal salt water license. Not expensive. Minimal. And I do not think anybody that can afford to go recreational fishing would have a problem with this.

Make it a Federal permit. Put the money in. Get on-the-water, accurate data. Let us have—let us get data in reality. Let us live in a virtual reality. Let us see what we see. Let us stop playing with paper fish.

Senator BREAUX. OK.

Let me get Mr. King's comments on this.

Mr. KING. Well, in Alabama, we have a lot of artificial reefs that we mentioned. We have a very productive charter boat/head boat fleet. At the present time, the charter boat fishermen themselves are attempting to enact limited access on themselves in the charter boat/head boat fleet.

This is one thing that needs to be understood when we talk about recreational fishery: there is a division of three groups that is in that category.

Senator BREAUX. And we do not define commercial versus recreational in the Act, do we?

Senator STEVENS. No.

Senator BREAU. Do you think we should?

Mr. KING. No. We are talking fisheries. And the point I am trying to make is that this is why a lot of the ambiguities that I wanted to—hoped to address for Senator Stevens to bring forth these things out. Now I know what you want, and we will deal with those.

But the point I am making: I went to some of the other charter boat people in Texas—and this was no later than day-before-yesterday afternoon—and I would be glad to call names: Ed Schroeder—John Williams was not there but—and then, also, Elliott Condiff—and said, Look, how many fish does it take for you all to run a reasonable, good, expandable charter boat/head boat operation?

I said, I do not know; You put it back on paper and bring back some numbers as to what you really feel you need. That is the only way I know to do. I mean, you know, I am not an economist. Neither am I a sociologist. But I do know that—

Senator BREAU. Well, do the charter boat—

Mr. KING. I do know that that charter boat/head boat fleet allows people all over this country to come in and share in this resource. And I want to protect their interest and their right to do that just as much as I want to protect Linda's and Donny Waters' and some of the others' that are in the back rights to harvest that food for the public.

Senator BREAU. Well, Albert, does a charter boat not have to report the type of information and data?

Mr. KING. Sometimes they do. And some—there is a percentage or something in that that they do report. That is better data than the other outside data. But still, that is a—Texas has their own reporting system. And this whole situation is one that needs to be addressed, Senator, I mean.

Senator BREAU. Yes.

Mr. KING. But like I say, I am not here, trying to point fingers at the recreational people. I am here, trying to get a handle on how this fishery resource should be managed.

But when we sit down at the table and say we have overcapitalization and we have an overfish resource, as the information comes from the National Marine Fisheries Service, let us all sit down to the table and all take our gulp. As Ms. Johnson has said, the commercial people have almost been choked to death with their gulp that they have had to take.

And we are not—I am not trying to take any punitive action against the recreational now, because I tried to increase the quota because the fishery has rebounded. NMFS will not accept it because they have not addressed that shrimp trawl bycatch, and that is the issue that is driving this whole issue.

And, I mean, you know, I have sense enough to see it; I have been around too long. And they cannot tell me that. You know, I was born at night, but not last night.

Senator BREAU. Ms. Williams, you have a comment?

Ms. WILLIAMS. My comment is that Dr. Phil Goodyear told our regional director that the 15-inch 5-fish bag limit would exceed the quota, that it would land an estimated 5 million pounds. Well, they are under 2.94. They close us down 49 days. They continue to let

them harvest. That is not fair. It is not equitable. I do not feel they are going by the guidelines that are set in Magnuson now.

And if we are there—I am there. I do want to support the resource. If we do not support it, we are not going to have it for future generations. But to shut down one sector over the other is wrong.

Mr. KING. Right.

Senator BREAUX. Well, I think—

Senator STEVENS. Well, up our way, I think we would limit the catch by area, or in some cases, bycatch limits for individual fisherman—

Senator BREAUX. Yes, we do.

Senator STEVENS. Reduce it, just automatically. We do it overnight. We have limits put on salmon or halibut, just by notice and radio and newspaper.

Ms. KING. I—

Senator STEVENS. Why do you not do that here?

Ms. KING. Excuse me, Senator. I asked our regional director. Our regional director said that he does not have the power to shut down recreational; he only has the power to shut down commercial.

Senator BREAUX. How would you all do it? In the mackerel plan the council provides for a zero bag limit, do they not?

Mr. CLAVERIE. No.

Senator BREAUX. No?

Mr. CLAVERIE. They used to. But the NMFS statistical survey was not accurate enough to put the recreational fishery on a quota situation. The theory on—

Senator BREAUX. You know, Mo, do you not agree that once a fish is taken, it does not care who has taken it? I mean—

Mr. CLAVERIE. Well, yes. But they cannot count accurately enough is what the deal is. The theory in the recreational bag limit fishery is—

Senator BREAUX. We cannot count the—

Mr. CLAVERIE [continuing]. If they exceed what they should kill this year, they have to make up for it next year. In other words, they have to reduce the bag limit. Now, if they have not done that, I do not know why they have not done it.

If what she says—if what Ms. Williams says is correct, the recreational fishery owes a payback to the resource.

Senator BREAUX. Well, it sounds like we are penalizing the commercial fishermen. Because we cannot count the amount of fish the recreational fisherman catches, we shut down the commercial fishery?

Mr. CLAVERIE. No, we do not shut down the commercial fishermen because of the recreational fishery. The recreational fishery wants to fish year-round because you get more people and more money into the system.

Senator BREAUX. Apparently, more fish, too.

Mr. CLAVERIE. Well, now, it depends on the limit. In other words, you can reduce what the recreational fishery can take each day to the point where they are meeting—they get their reduction that what they are supposed to kill is—all they are killing is what they are supposed to kill.



With the commercial fishery, the theory is you let them fish as efficiently as they can, so they can make their profit margin, until they reach their annual quota.

Senator BREAUX. Yes.

Mr. CLAVERIE. And then you shut them down. And it is two different, whole approaches to why you fish, so you have to manage them two ways. Now, if the commercial fishery catches too many fish 1 year and they go over their limit, they should make it up next year by having an allocation of less fish. And they generally do.

And the same thing applies to the recreational fishery. If they overkill 1 year, they are supposed to make it up the next. And the science is designed for that kind of management.

Senator BREAUX. Well, I understand where both sides are coming from.

I think that, you know, we need to look at this in greater depth, Mr. Chairman, as far as trying to make this fair.

Senator STEVENS: Yes.

You have been a very good panel, and we appreciate it.

We would appreciate it, Mr. King, if you would send us that list—anyone else, too—of ambiguities. We would like to take a look at that.

Mr. KING. Will do.

Senator STEVENS. Thank you all, very much.

Ms. JOHNSON. Thank you.

Mr. CLAVERIE. Thank you.

Senator STEVENS. Now I want to call up Ellen Peel, Special Counsel, Living Marine Resources, Center for Marine Conservation; Mr. Wayne Werner, owner/operator of a fishing vessel; Donald Waters, another owner/operator of a fishing vessel; Al Johnson, owner/operator of a fishing vessel; and Bill Wright, representing the National Fisheries Institute.

You will be our last panel. Let me ask the reporter.

Do we need any time off now?

Court Reporter: No.

Senator STEVENS. No?

All right. We will go through it. This will be our last panel. I am going to ask you to make comments in the order I spelled them out.

There is one person missing. [Pause.]

Senator STEVENS. There you go.

And we will set the clock at 8 minutes, but let us just see how long you want to talk. Ms. Peel?

We normally require written statements, but I do like to give people who just show up a chance to make comments for the record. We invite you all to follow up on your statements for the record with a written statement if you wish. Ms. Peel?

#### STATEMENT OF ELLEN PEEL, SPECIAL COUNSEL, LIVING MARINE RESOURCES, CENTER FOR MARINE CONSERVATION

Ms. PEEL. Thank you, Senator Stevens. I am Ellen Peel, as you said, representing the Center for Marine Conservation, from the Center's southeast regional office in Tampa. The Center certainly appreciates the opportunity to share with you our recommendations for S. 39 today.

And I would like to say, Senator Stevens, it is a particular pleasure for the Center to once again have an opportunity to work with you on another important marine issue; your record on regulating drift nets and protecting marine mammals is certainly exemplary.

Turning now specifically to S. 39, it is evident to the center that the Committee's work has produced a bill that takes significant steps toward conserving our nation's resources. However, the center sees five areas that we feel can be improved. And let me quickly share those recommendations with you.

Beginning first in the area of overfishing, we recommend amending the definition of OY to establish maximum sustainable yield as the ceiling, with social, economic and ecological factors used only to reduce OY to levels lower than MSY.

Second, in the face of scientific uncertainty, management provisions in this Act should provide a margin of safety that will ensure a level of production that can produce MSY.

Third, add a definition of "rebuilding program" to complement and further clarify and define the goals of a fishery recovery effort.

Fourth, we would like to see establishment of a nexus between council action within a fishery management plan, secretarial action, fishery recovery efforts and disaster relief to guarantee that we do not inadvertently create an incentive to overfish.

Moving to bycatch, first, we recommend that you reconsider the possibility of a national standard on bycatch by examining several options for language to create such a standard.

Second, incorporate specific requirements for bycatch assessment into the fishery management plan requirements.

Third, include fishery management plan requirements that the councils take action to implement use of bycatch reduction devices and other conservation measures to ensure recovery of overfished species, as well as protecting species that have not been overfished. Do not stop progress that has already begun by councils to address this bycatch issue.

Moving to habitat, one, we recommend amending the existing habitat language to reflect the negotiated language supported by the center, by the Marine Fish Conservation Network, by the American Fishery Society and by the National Fisheries Institute.

On the issue of council reform, we recommend that provisions be included that would provide the opportunity for more balanced representation on the regional management councils.

Second, we would like to see establishment of a clear and more rigorous conflict of interest rule and recusal requirements.

Finally, turning to highly migratory species, the center supports the change in language to promote the achievement of optimum yield in lieu of using the optimum utilization standard.

Second, the fact that the management of highly migratory species in the Atlantic, Gulf and adjacent waters is shared with ICCAT does not mean that the U.S. be prohibited from responsibly managing these fishery resources within our waters.

The Magnuson Act, as well as the Atlantic Tunas Convention Act, should include provisions that establish an option for implementation of more responsible measures in U.S. waters, particularly with such species as bluefin tuna, swordfish and marlin, which have not been protected by ICCAT.

Thank you, very much, for considering our comments today.

Senator STEVENS. Thank you.

[The prepared statement of Ms. Peel follows:]



## Center for Marine Conservation

STATEMENT OF ELLEN M. PEEL

Representing

THE CENTER FOR MARINE CONSERVATION  
GULF, SOUTH ATLANTIC, & CARIBBEAN REGIONAL OFFICE

Before the Subcommittee on Oceans and Fisheries  
Committee on Commerce, Science and Transportation  
U.S. Senate

FIELD HEARING  
NEW ORLEANS, LOUISIANA  
MAY 13, 1995

Mister Chairman and Members of the Subcommittee, I am Ellen M. Peel, Special Counsel for Living Marine Resources, representing the Center for Marine Conservation from the Center's Gulf, South Atlantic, and Caribbean Regional Office, located in St. Petersburg, Florida. The Center appreciates the opportunity to share with you our recommendations for reauthorization of the Magnuson Act through Senate Bill 39.

Before addressing Senate Bill 39, I would like to say to Senator Stevens it is a pleasure for the Center to once again have the opportunity to work with you and your staff on another important marine issue. Your past accomplishments with driftnet regulation and marine mammal conservation have set an example for others to follow.

Turning to the bill before us, it is evident that the Committee's work has produced legislation that takes significant steps toward conserving our nation's resources. However, the Center believes this legislation can be improved in five key areas: preventing overfishing, reducing bycatch, protecting habitat, reforming the Council process, and conserving highly migratory species, as follows.


### PREVENTING OVERFISHING

1. Amend the definition of Optimum Yield (OY) to establish Maximum Sustainable Yield (MSY) as the ceiling, with social, economic, and ecological factors used only to reduce the OY to levels lower than MSY.
2. In the face of scientific uncertainty, management provisions should provide a margin of safety that will ensure a level of production that can produce MSY.

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**Statement of the Center for Marine Conservation  
May 13, 1995**

3. Add a definition of "rebuilding program" to compliment and further clarify and define the goals of a fishery recovery effort.
4. Establish a nexus between Council action within a fishery management plan, Secretarial action, fishery recovery efforts, and disaster relief to guarantee that we do not inadvertently create an incentive to overfish.

**REDUCING BYCATCH**

1. Create a national standard on bycatch.
2. Incorporate specific requirements for bycatch assessment into the fishery management plan requirements.
3. Include fishery management plan requirements ensuring that the Councils take action to implement use of bycatch reduction devices and other conservation measures to ensure recovery of overfished species as well as preventing others from becoming overfished. Do not stop progress already made by the Councils to address bycatch reduction.

Review of the test results for both Turtle Excluder Devices (TEDs) and Bycatch Reduction Devices (BRDs) in the Gulf of Mexico will clarify that excluder devices are available that will not only exclude bycatch, but will not lose shrimp in the process. Even though this gear is available at relatively low cost, some shrimpers have opted to pull excluder devices that they know will lose shrimp. Neither endangered species nor overfished species should be penalized because the participants in the fishery elect to pull gear that is less efficient. The less effective gear is then used as an excuse to attack the requirement for excluder devices, regulations that protect resources upon which other fisheries are dependent. Such behavior should not be rewarded, but must be modified now. Otherwise, the situation for marine creatures and the fishing Industry will only worsen.

**PROTECTING HABITAT**

1. Amend the existing habitat language to reflect the negotiated language supported by conservation groups, fishery science professionals, and the commercial and recreational fishing industries.

**Statement of the Center for Marine Conservation  
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**REFORMING THE COUNCIL PROCESS**

1. Include provisions that will provide the opportunity for more balanced representation on the Councils.
2. Establish clear and more rigorous conflict of interest rules and recusal requirements.

**CONSERVING HIGHLY MIGRATORY SPECIES**

1. The Center supports the change in language to promote the achievement of OY, rather than using optimum utilization as the standard.
2. The fact that management of highly migratory species in the Atlantic, Gulf and adjacent waters is shared with ICCAT does not mean the U.S. should be prohibited from responsibly managing these species in U.S. waters. The Magnuson Act, as well as the Atlantic Tunas Convention Act, should include provisions that establish an option for implementation of more conservative management measures in U.S. waters, particularly with species such as marlin, swordfish, and bluefin tuna, which ICCAT has failed to protect.

Thank you for considering the Center's recommendations. We look forward to continuing to work with you as you conclude your deliberations on this important legislation.

**STATEMENT OF WAYNE WERNER, OWNER/OPERATOR OF A  
FISHING VESSEL**

Mr. WERNER. My name is Wayne Werner, owner/operator of the fishing vessel "Wayne's Pain" out of Galliano, Louisiana. First, I would like to say thank you for this opportunity to speak at this hearing, Mr. Chairman and ladies and gentlemen.

I am one of the individuals who was at the meeting in Tampa, Florida, who had my life voted on the other day. And I would just like to make a couple of comments.

I was not even going to testify here, until Mr. Schmitt made the statement that we had industry input. We had plenty of industry input; it just was not heard. I mean we had it, but it was not heard; no one was listening to what we were saying.

All we wanted was a comprehensive plan that we knew that we could bank on. Instead, what we got was a choice: ITQ or limited access—or limited entry. Excuse me. Now, given the two choices, we have no back side to those things; there were 1,000 different things that could have been done behind this. We did not have a comprehensive plan shown to industry any time.

They did not take into account the user fees; no one seemed to care. I do not see anything wrong with us having to pay for some of the enforcement, but we are the only group that is going to have to pay, the commercial sector, in the plan that the Gulf of Mexico Fisheries Management Council handed down.

We are the only group that is paying. This is unfair. This is inequitable. And soon as they implemented this ITQ, the way that we did it, we lost our 51/49 split, which we have not had over the past 5 years. We lost that 5 years ago.

I just want to make—I just think that you need to get a handle on this situation. I do not know how you plan on doing it, but you need to get a handle on this and make this more fair and equitable for the commercial fishermen, for the people who are making their living on the water.

And as far as the reporting, every time I leave the dock, I have to report every single pound that is landed. There is not an assumption of what I am landing; I fill out a report for every trip, to the pound, sometimes to the half-pound.

I just want you to know that I hope that you can get a grasp on this situation, because it has gotten far out of control. We are not getting a fair shake here. Thank you.

Senator STEVENS. Thank you.

Mr. Waters?

**STATEMENT OF DONALD WATERS, OWNER/OPERATOR OF A  
FISHING VESSEL**

Mr. WATERS. My name is Donald Waters. I am from Pensacola, Florida. I, too, was at the meeting there in Tampa. And I am also, I guess, what you—I was—also, in the last year, have watched my life just go down the tubes with the Florida net ban vote because half of—a big portion of my income was net fishing in the state of Florida.

I also snapper fish out of the state of Louisiana. I fish out of Leeville.

But anyway, they did not have industry support for ITQs. In fact, they never told us anything about ITQs except ITQs. We had—90 percent of the fishermen that came and put their input, we wanted a cap. We wanted no user fees. We wanted certain things that would protect the commercial fishing industry.

They never showed us anything, except a multiple-choice page, and told us to make a decision. In other words, to sign a contract before it was presented to me. We had to choose between two words; we had nothing in black and white in front of us. Nothing. As far as I am concerned, that was shoved down my throat, I mean actually shoved down my throat.

And they were designed to put the commercial fishermen out of business, in my opinion, to take a fishing industry which will have 1,050 boats and put it down to one boat or one corporation or one special-interest group. This is not fair. There is no protection written into this plan. I just do not understand how it can be done. It is out of hand.

I have been actually lied to by National Marine Fisheries—I mean just totally lied to. I spent days, hours and thousands of dollars trying to help develop a plan, and not one thing that I have done was listened to. I mean they did exactly what they wanted—they never looked toward the commercial fishermen's lives, their families or anything.

They did it just the way they wanted to from the first day. They never changed a thing. These things were promised to me by Andy Kemmerer: "Yes, we are going to do something."

Somehow or another, through—he was not even at this meeting. They buried him under the paper work and sent this—I do not know what you want to call it—they just sent a gang in there and did it just the way they wanted to do it.

And they did not have the support from the commercial industry. We were told all the way, We will not give you ITQs without support of industry. The support was not there. The council members were there.

And nobody knew what they were getting. I mean I watched grown men go up there and say, I do not know what I want because you are not giving me anything to choose from; You are giving me two words to choose from here.

They had the—as far as I was concerned, they had the cart ahead of the horse, and we had to tell them what we wanted and then they would write a plan afterwards. And I just do not see where that is fair. Thank you.

Senator STEVENS. Thank you.

Mr. Wright? Go ahead.

#### STATEMENT OF BILL WRIGHT, NATIONAL FISHERIES INSTITUTE, GOVERNMENT RELATIONS

Mr. WRIGHT. Thank you, Senator Stevens and Senator Breaux, for coming down to the Gulf. My name is Bill Wright. I grew up down here in south Louisiana and then spent the last 7 years working for Congressman Tauzin, handling fisheries issues.

I joined NFI in their Government Relations staff at the beginning of this year. We want to thank you all for going around to the different coastal areas and holding hearings on the Magnuson Act.



Several NFI members have testified at these hearings, and I think that they have provided more detailed, specific information from their regions. The NFI wants to continue working with you as you and your staff progress on the Magnuson Act amendments.

The key things that I wanted to focus on deal with data, working relationships, bycatch, essential habitat and then regulatory reform. Data, is the foundation that every one of these people's lives depends upon. It is important to have good data that is current and accurate, and data that is properly analyzed.

There is a need for that. There is some language in both the Senate bill and the in House bill that deals with trying to establish some systematic assessments and monitoring. And that is a good plan as long as it continues to involve commercial fishermen, recreational fishermen and other groups.

On working relationships, as you have heard already today, there is not a good working relationship at all between the Agency and the fishermen in this area. That has to be reversed. It requires both parties to come to the tables and deal with that. We started that process yesterday in dealing with the shrimp and turtle issue in a big meeting, in which Rollie Schmitt attended, and worked on some plans for the future of that issue.

Those types of meetings, those types of efforts need to continue. Legislatively, that may be very difficult, but, from your congressional standpoint in working with the agencies, I think it is a strong message that should be sent to the Agency and to the fishermen.

Bycatch: That should be based on legitimate conservation goals. We have a Gulf and South Atlantic Foundation that has been doing some very good work; they have got about a year left of doing some good testing on up to 84 different devices. The time is needed to finish that research before the Council and the Agency start implementing some bycatch devices on the fishermen.

Essential habitat is also key. It is interesting to watch how the budget increases have occurred in NMFS' budgets and where large percentage increases have occurred in other areas. Essential habitat is finally starting to increase.

As several members mentioned, the wetlands and estuarine areas in this area are key to those fishery habitats. It also should be developed and identified and managed properly, too.

The last thing is a figure that is unknown. It is the regulatory impacts that are caused on fishermen.

One of the key things that I do not think anyone has really totaled up is, What is it costing fishermen these days to go out and fish and abide by regulations?

What does it cost for TEDs? What does it cost for nets these days? What does it cost for regulatory changes, such as Coast Guard safety regulations? If that was totaled up, I would probably guess it would be a very large cost to each fisherman.

Now, if you add up his boats, his nets and other investments that he has made and the amount of money he is trying to make off of fish and—he no longer controls that price. When he comes to the docks these days, he is told, You can sell your fish for \$3 a pound; I cannot give you \$3.25.

As you can see, the fishermen is caught in this Catch 22. He spends a lot of money to stay in compliance with regulations. He gets to the dock, and he is put into a situation where he has got to sell it for \$3. It might cost him \$2.95. Under his cost, therefore, he is making 5 cents on a pound of fish. That may be very difficult for these people to survive.

That is probably why we have seen a large reduction in the number of fishermen in this area, or with the possibility of other things that have happened. I think that Congress should be looking at what are the regulatory cost impacts on the fishermen in this area or in any area.

Finally, as I said, NFI is ready to work with you and the staff on putting together very good Magnuson Act amendments for 1995. Thank you.

Senator STEVENS. Thank you, very much.

Mr. Johnson?

#### STATEMENT OF AL JOHNSON, OWNER/OPERATOR OF A FISHING VESSEL

Mr. JOHNSON. Good afternoon, Senator Stevens and Senator Breaux.

Senator Breaux, I would like to see about finding that 3 million pounds for you. In 1990, we had to pay by fishery. And if one side went over or the other side went over, they had to pay it the next year.

Well, with the hidden agenda of the council system and everything, they made it a no-pay by fishery because they saw that we were going to be severely restricted and recreation was not. So they took it out of the pay-by-fishery in 1990.

And on the bycatch issue, my last trip, I had to go past the 50-pound curve because that is where the beeliners, the scamps, the hammerjack, and stuff like that live. Well, unfortunately, there is a lot of snapper out there, and I probably threw back \$5,000 worth of snapper—1,500 pounds, or whatever.

And it just kills me that I can go fishing and pull up a fish that is dead, no way of surviving, and throw it back in the water, when I am having financial difficulty staying afloat. It just does not seem right to me that anybody should have to do this.

It has never been addressed, and the council system or the agents, they really do not want to talk about it, you know. It is an issue that they refuse to even address. And I would like to bring up that bycatch issue.

When we are shut down, we are forced to go out in the deep water. And snapper live out in the deep water, also. They are more abundant in the shallow water, but they do live out in the deep water. What are we supposed to do? I mean I have left spot after spot after spot because the snapper has taken over and actually displace the other fish, because they are a more aggressive fish.

And when we send down our hooks, we have no way of telling what kind of fish is down there. But when we pull them up, they are dead. And I have to throw them back over the side and watch them float off. It is just insane. Thank you.

Senator STEVENS. Thank you, very much.

The last witness is Mr. Raymond Dackerman.

**STATEMENT OF RAYMOND DACKERMAN, SEAFOOD  
WHOLESALE FROM NEW ORLEANS, LOUISIANA**

Mr. DACKERMAN. Thank you, very much, for the opportunity to speak. My background is as a seafood wholesaler in New Orleans for the last 10 years. Prior to that, I was involved as a recreational bluefin tuna fisherman before we started our business. Now, I am involved in the commercial sector of the industry. I am also a member of Blue Water Fishermen's Association, and I have also served on the U.S. ICCAT Advisory Committee for 2 years. I would like to speak specifically about highly migratory species, since that is our business, primarily bluefin tuna and swordfish.

And, in reference to the reauthorization of the Magnuson Act, I would like to state clearly that I am very much against any proposed language in the Act that will put U.S. industry and U.S. fishermen at a comparative disadvantage. And by that, what I am trying to explain is that I have experienced in our industry nine situations where U.S. domestic regulation has actually hurt U.S. industry, hurt U.S. fishermen; it also has hurt the species.

And I am speaking specifically in reference to the incidental bluefin category for bluefin tuna in the Gulf of Mexico, where there has been added domestic regulation that has forced a majority of our fleet to become deployed to countries, such as Mexico, which do not regulate bluefin tuna in any way whatsoever. This U.S. domestic regulation has actually created additional fishing mortality and has exported jobs out of this country.

I do not want to see that repeated again. Any language in the Magnuson Act that creates a situation where there can be domestic conservation programs beyond the ICCAT standards is unfair to the U.S. fishing industry and may, in fact, increase fishing mortality.

Once again, we are working with a small fraction of the fleet that we worked with 10 years ago in the Gulf of Mexico. That is a shame. I would feel a lot better about that if the species were rebuilding at the time we were working with a lesser fleet. In reality, unfortunately, the fleet is fishing in Mexico, unrestricted: some of the same vessels that we used to deal with 5 to 10 years ago here.

That is the point directly that I wish to make: If we are going to manage highly migratory species, we must manage them on a multilateral level, and not solely regulate the U.S. fishing industry by forcing the U.S. fishermen to take all the concessions without international cooperation, because we are not going to have any positive effect.

And, in fact, in reality and practice, we are going to have situations that develop where U.S. industry is going to get hurt and, actually, the species are going to get hurt, where our industry is pushed in other countries where there are not regulations at all. And that is my basic point. Thank you.

Senator STEVENS. Well, thank you all, very much. I appreciate those of you who have come and testified and the others who have come just to hear the testimony.

We are going to get a bill, I believe, this year. That bill is not a bill that is going to be written forever; it is a bill that will go through 1999. I hope that Congress will keep up the practice of requiring the Magnuson Act to be reauthorized periodically so that

we can make the changes that are needed to try to achieve the goals that we have set down.

I do not believe the goals ought to be changed. I still believe the goal we should have is to ensure the reproductive capability of the fisheries off our shores and take all the means that we have to take to protect that reproductive capability so that future generations can enjoy our fishery resource as we have.

There is a growing problem, I think, in the country. Thankfully, up our way, it is a lesser problem. We have been able to fairly stiffly regulate our commercial and charter boats to keep them within our limitations. And we have a smaller population base; that may make it easier for us than for you down here.

I appreciate your coming here on a Saturday. We apologize for the Saturday session, but there is no other way to do it, unfortunately. I would like to stay the rest of the afternoon, Senator Breaux, but I am catching the last plane that will get me back before Mother's Day. So it has to be.

Senator BREAUX. That is important.

Senator STEVENS. I hate to be rude, but I must leave in 10 minutes.

Senator BREAUX. Well—

Senator STEVENS. I appreciate your cooperation and hospitality.

Senator BREAUX. Well, I want to thank the Chairman for bringing the Committee to the Gulf, and particularly to Louisiana.

I thank this panel for their very constructive and helpful suggestions.

We want to thank, once again, Judge Maury Sear for letting us use the Federal Building and his courthouse and for his good staff and the Marshall Service that did such a good job of helping us put this together.

Mr. Chairman, I think we have had some interesting and, I think, very helpful suggestions from the panel members today. I assure you, I want to work with you and your staff to try and offer some helpful suggestions and, hopefully, constructive ideas. We will work with you to try and produce that product which we can all be proud of.

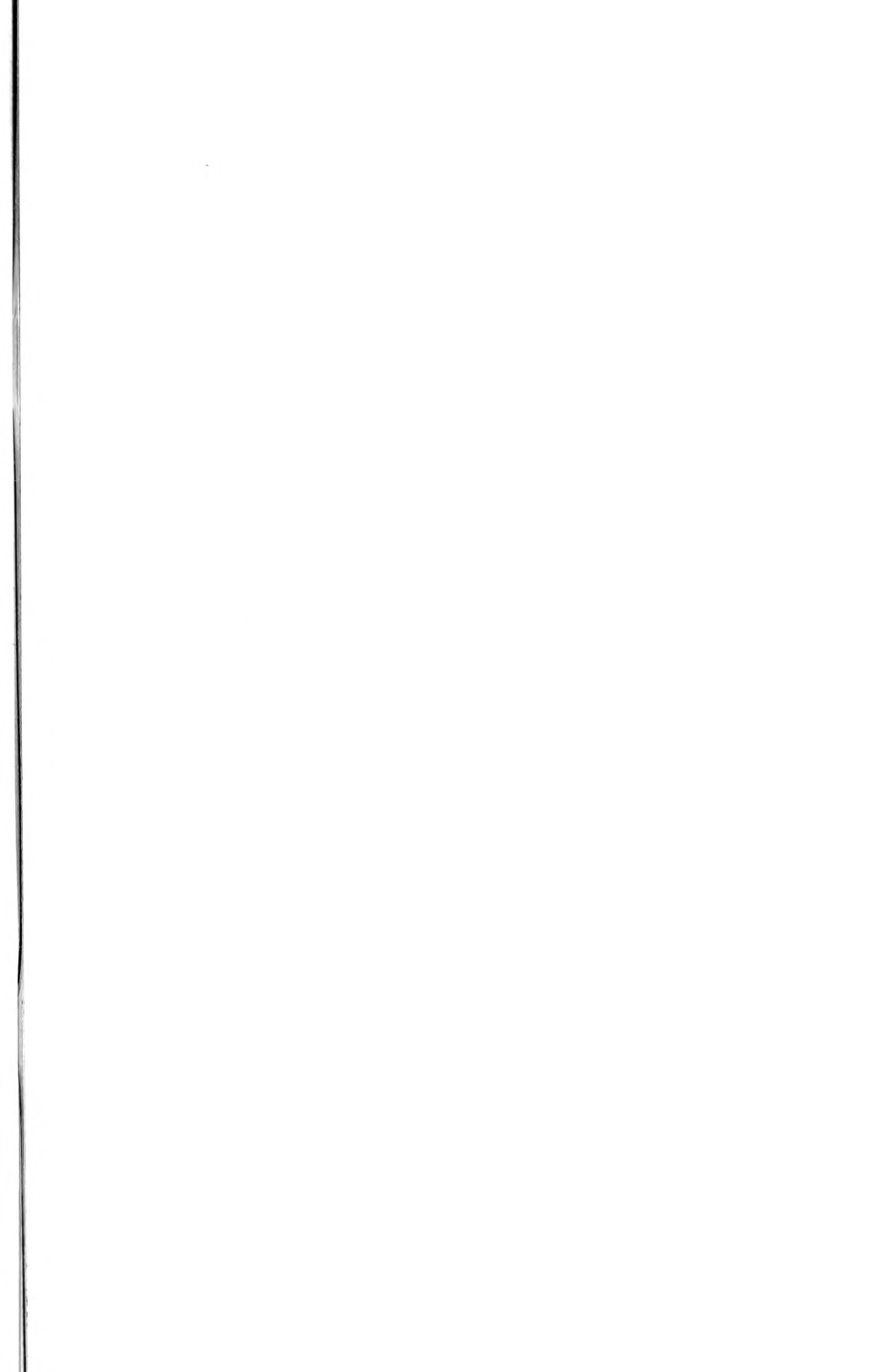
Thank you, Mr. Chairman.

Senator STEVENS. Thank you, very much.

And thank you, to all of you.

[Whereupon, at 1:22 p.m., the hearing was adjourned.]

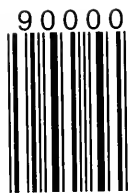




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