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REAUTHORIZATION OF THE MAGNUSON-STEVENS FISHERY CONSERVATION AND MANAGEMENT ACT

FIELD HEARING

BEFORE THE

SUBCOMMITTEE ON OCEANS AND FISHERIES

OF THE

COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION UNITED STATES SENATE

ONE HUNDRED SIXTH CONGRESS

FIRST SESSION

DECEMBER 14, 1999

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ONE HUNDRED SIXTH CONGRESS

FIRST SESSION

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REAUTHORIZATION OF THE MAGNUSON-STEVENS FISHERY CONSERVATION AND MANAGEMENT ACT

TUESDAY, DECEMBER 14, 1999

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

The Subcommittee met, pursuant to notice, at 9:03 a.m., in room 101, Training Resources and Assistive Technology Center, University of New Orleans, Hon. Olympia S. Snowe, Chairman of the Subcommittee, presiding.

Staff members assigned to this hearing: Sloan Rappoport, Republican Counsel; Rick Kenin, Republican Coast Guard Fellow; and Margaret Spring, Democratic Senior Counsel.

OPENING STATEMENT OF HON. OLYMPIA S. SNOWE, U.S. SENATOR FROM MAINE

Senator SNOWE. Good morning. The hearing will come to order.

STATEMENT OF BOB BROWN, VICE CHANCELLOR, GOVERNMENTAL AFFAIRS, ALUMNI AND DEVELOPMENT, UNIVERSITY OF NEW ORLEANS

Mr. BROWN. Good morning, ladies and gentlemen and the distinguished Senators Breaux and Snowe.

My name is Bob Brown, and I am the Vice Chancellor for Governmental Affairs, Alumni and Development here at the University. And it is an extraordinary pleasure for us to welcome you to our university.

It is particularly a good feeling because you are going to address, without question, some very powerful matters that have much to do with the state of the economy in Louisiana and Maine, and indeed, around the Nation and around the world. It is important in Louisiana, of course, because, like Maine, the industry is a very important and powerful one for us. And we are just delighted that you are here.

My boss, Chancellor O'Bryan, is away on a very important mission. I am the chief development officer, and he is actually asking someone for money this morning, and we consider that to be a very powerful thing.

I want to do just a couple of things before you get into the hearing. First of all, I want to introduce and acknowledge my colleague, Vice Chancellor Shirley Laskey. She is the senior administrator who has primary responsibility for our Federal relations, and

works extremely hard with our delegation in Washington, and particularly with Senator Breaux and with his staff.

Ms. Naomi Moore, the lady in blue, is the woman who handled, and will continue to handle, all of the logistics for you as you go through your day. And she said to me that I should make a very important announcement. The ladies' and men's rooms are outside of this room and turn right and go down the hall, and they will be the last two doors on your left.

So we hope you have a very productive day. We hope that it leads to some very important work down the line as the two Senators move these efforts through the Congress. And we hope, finally, that you have very happy holidays.

Thank you very much.

Senator SNOWE. Vice Chancellor Brown, I want to thank you on behalf of the Subcommittee and Senator Breaux for allowing us to be here today, and for lending us your beautiful facilities. We thank you for your hospitality and your staff who have helped to assist us in making this possible. I wish you well for all that you do on behalf of the people of Louisiana.

Senator BREAUX. Thank you, Robert. We appreciate it very much. Thank you, Vice Chancellor.

Mr. BROWN. Thank you.

Senator SNOWE. Good morning. First of all, I want to thank Senator Breaux for inviting me and the subcommittee to this beautiful city of New Orleans, and his State, to discuss the future of our fisheries. Maine and Louisiana have a lot in common. We both have many miles of beautiful coastline, proud fishing traditions that date back for generations, and crustaceans that we are very proud of.

But, be that as it may, we are very fortunate to have someone of Senator Breaux's capabilities and in-depth knowledge, leading back to his tenure as chair of the Fisheries Subcommittee in the House of Representatives. Senator Breaux has been a leader on fisheries issues for almost 30 years and he has a remarkable ability to work across party lines.

It has been a privilege to work with John on many issues, including the important issue of the health of our fisheries. It is not a Democrat issue. It is not a Republican issue. We work together on this, and many issues of concern to the people of this country, and certainly to our respective States.

We must continue the tradition of bipartisanship on fisheries issues. And I am going to be working with Senator Breaux and other members of the Subcommittee on the reauthorization of the Magnuson-Stevens Act. And I know that John, over the years, has played an integral role in past reauthorizations of the Act.

I want to welcome all of you here today, our witnesses in particular, and everybody else who has taken the time to be here. Let me note that many of you have travelled long distances to offer your views and positions on this reauthorization.

I do not have to tell you that Magnuson-Stevens is the principal Federal law governing marine fisheries management. This is the third hearing to be held by the Subcommittee as part of an exhaustive review of the statute and its implementation by the administration.

The enactment of the Fishery Conservation and Management Act of 1976 began a new approach to Federal marine fisheries management. The Act, as you know, is administered by the National Marine Fisheries Service and eight regional fisheries management councils. Their actions establish the rules under which the fishing industry operates. They determine the harvest quotas, season length, gear restrictions, and license limitations, decisions which have serious implications for those of you who fish and work in the Gulf.

That is why difficult management decisions cannot be made in a vacuum. You are the ones whose livelihood is at stake. Your voice must be heard in the decisionmaking process. As such, it is critical that all sectors of the fishing community receive fair and balanced representation, to ensure that you play a strong role in the management of this process.

In July, in Washington, D.C., we met to examine a broad array of issues concerning fisheries management. Mr. Wayne Swingle, who is Executive Director of the Gulf of Mexico Fishery Management Council, provided us with an overview of the topics that we will have the opportunity to discuss in more detail today.

In September, the subcommittee held a hearing in Maine. We heard about how the implementation of the Act affected fishermen in New England. And I will be holding additional hearings next year, in Seattle, Alaska, and Massachusetts, to help us obtain a consensus on what changes should be made to help ensure a healthy future for our fisheries. After all, there is no doubt that fisheries are very important for many States and the Nation as a whole.

In 1998, commercial landings by U.S. fishermen were over 9.2 billion pounds of fish and shellfish, worth $3.1 billion. Further, the recreational fishing catch was 195 million pounds. In my own State of Maine, fishing is more than a job; it is a way of life. Up and down the Maine coast, our communities have long and rich fishing heritage. As a result of my work with Senators Breaux, Hutchison, and Lott on the Commerce Committee, I have learned that the same could be said of the Gulf Coast.

The Gulf produces a substantial amount of seafood. In 1998 alone, Gulf States landed over 1.5 billion pounds of fish, worth over $700 million. Louisiana has four ports in the top ten nationwide in terms of landings. And then, of course, you have Mississippi, Alabama, Texas, and Florida, all of which have fishing ports with substantial landings, worth millions and millions of dollars.

While many regions are dependent on commercial and recreational fisheries that are strong and robust, others have not fared as well. Their fish stocks have declined, and communities in those regions are feeling the economic impact. And throughout the reauthorization process, we will examine ways to bring about healthy fisheries and healthy fishing communities.

As you all know, one of the goals of the Magnuson-Stevens Act was to provide a mechanism to determine the appropriate level of catch to maximize the benefit to the Nation, while still protecting the long-term sustainability of the fisheries. It is a balancing act among competing interests of commercial and recreational fisher-

men. And we will also hear of the need for participation of non-fishing interests when managing public resources.

The Sustainable Fisheries Act was enacted in 1996. And the goals and objectives of that Act reflected significant changes to the original legislation. Proper implementation of these provisions is of great concern to many different groups. Accordingly, there is considerable interest in the activities of the regional councils in the National Marine Fisheries Service.

The most substantial change that occurred in the 1996 Act was the mandate to stop overfishing and restore overfished stocks. The councils were given a timetable to achieve this goal. And today's witnesses will be able to give firsthand reports about the level of success the Gulf Council has had in meeting this requirement.

Finally, the councils and the National Marine Fisheries Service were also told to increase the emphasis on the socioeconomic impacts that regulations have on fishing communities. Because of the high level of overfishing, management measures will be required in a variety of fisheries. It is essential, therefore, that we remember to preserve the fishermen as well as the fish.

There have been numerous criticisms that the National Marine Fisheries Service and councils have not taken adequate measures to address the financial hardship that tough management will inevitably cause. Today, we will hear the impact that this has had on fishermen and fishing communities here in the Gulf.

The Sustainable Fisheries Act also imposed a moratorium on the creation of new individual fishing quota programs. Today's witnesses will offer recommendations to address such programs in the future.

The final paradigm shift that was incorporated in the 1996 Act included provisions to minimize bycatch and to restore and protect fish habitat. Based on concerns that certain fish stocks have declined due to loss of their surrounding habitat, the Act established a national program to facilitate long-term protection of essential fish habitats. Many have argued that these provisions have not been properly implemented, and we will be discussing this problem with our witnesses here today.

During my trips home to the State of Maine, and during the recent hearing on the Magnuson-Stevens Act, many people affected by this legislation have indicated to me time and again that there is too little flexibility in the Act, that it is not being properly implemented by the National Marine Fisheries Service, and that contrary to its mandate, the best science is not being used in management decisions. And I know from reviewing the testimony that will be presented here today, many of you share similar concerns.

As we move forward in this process, we must make sure that sustainable fishing and good management becomes the norm and not the exception. Clearly, this reauthorization will have major implications for the future health and management of our fisheries, in all of our communities throughout this country.

So I welcome all of you here today. I appreciate your ability to be here to express your concerns. It will be an evolving process throughout this next year. But we obviously have a timetable to reauthorize the Magnuson-Stevens Act, so we are going to embark on

an ambitious program. We need to make sure that we hear all of your concerns throughout the reauthorization process.

With that, I would like to recognize my good friend and colleague, Senator Breaux.

STATEMENT OF HON. JOHN BREAUX, U.S. SENATOR FROM LOUISIANA

Senator BREAUX. Thank you very much, Madam Chair. And welcome to New Orleans and welcome to the Gulf. We are delighted to have our Chairperson of the Subcommittee in the Senate for a hearing in our area to hear firsthand of the concerns, and all of the potential and actual problems that we have experienced since the last time that Congress visited this area.

I think we are fortunate to have Senator Snowe as Chair of this important Subcommittee, because she also comes from a maritime area, the State of Maine, with a great history of both fishing and maritime industry. And while we are many miles apart in geographic distance, we are very close together on many of the concerns the people of our respective areas share.

I have got to tell the story, Madam Chair, of the two Cajuns who won this ice fishing trip, all expenses paid, to the State of Maine, to go ice fishing in Maine in the middle of the winter. These two South Louisiana Cajuns had never been north of Shreveport before, but they took the trip up to Maine in the dead of winter. And they went to the local sporting goods store to buy equipment so that they could go ice fishing, which they had never done before.

So they go into the store and they buy gloves and they buy hats and they buy boots. And they ask if the owner had any ice picks. And he said, sure, and they said, we'll take a dozen. So they went out and came back about three hours later, and they said, we want another dozen ice picks. And the store owner said, well, yes, I guess I can sell you another dozen. So he sells them the second dozen ice picks.

And then, about two hours later, they come back in. They want another dozen ice picks. The store owner just had to ask them, he said, men, I do not understand you all. You come to the store and you buy three dozen ice picks. You all must be catching a lot of fish. And the two Cajuns said, catching a lot of fish—heck, we ain't even got our boat in the water yet.

[Laughter.]

Senator BREAUX. So while we have a lot in common, there are some differences as well. And what we are trying to do is to get the boats in the water and keep them fishing, from both a commercial and a recreational standpoint. It is an absolute challenge. I have been involved in these issues for such a long time, and to try and properly manage the resources of this Nation for all of the legitimate users is indeed an absolutely complicated, and almost impossible, task.

I see some of these people in the room who have been friends of mine for so long, representing all sides of the issues. I know that fisheries management has always been a very difficult thing to do. We created the regional fishery management councils because we wanted the decisions to be made on a local level, closest to the people, as opposed to having them all made in Washington by bureau-

crats who often do not have firsthand knowledge of what is happening.

So it is a delicate balance to have a Federal role, a local role, and a private sector role and to make it all work. No one is ever going to be satisfied. Our job is to make sure that everybody is treated fairly, knowing that the end results will never be to the liking of any particular group, each of which would of course like to have decisions more tilted toward their particular interest. I know that our job is very difficult—and that the Council's job is very difficult—in trying to carefully balance all of these considerations.

Let me just conclude by saying, as Senator Snowe has acknowledged, how important this Gulf fishery is to this region. Larry Simpson, who has been around for a long time, had some really interesting statistics attached to the end of his testimony. And just for the benefit of everybody, the coastline of the Gulf of Mexico is 1,630 miles. That is longer than the Pacific coast. That is longer than the coastline from California to the State of Washington. And it is equivalent to the distance from Newport, Rhode Island, to Miami, Florida.

Nearly 40 percent of the total U.S. commercial fishing landings come from the Gulf. For the whole United States of America, 40 percent come right from the Gulf of Mexico. It is really an absolutely amazing area that we have. At the same time that we have one of the greatest fishing areas in the world, we have also one of the most productive areas for energy, which also creates conflicts between these groups.

So much of the oil and gas for this Nation is produced right here in the Gulf of Mexico, and provides energy for people all over the United States and all over the world. Ninety-seven percent of all offshore gas production is right here in the Gulf. And the shrimp industry is the second most valuable fishery in terms of dollars, only next to Alaska salmon—however, I prefer shrimp, of course.

[Laughter.]

Senator BREAUX. But, anyway, those are the statistics.

Senator SNOWE. Did you tell that to Senator Stevens?

Senator BREAUX. Yes, quietly.

[Laughter.]

Senator BREAUX. We are delighted our Chairperson is here, and we welcome her knowledge of this issue. And we are delighted for all of the people who are participating, particularly our first panel, and we look forward to hearing your testimony.

Thank you.

Senator SNOWE. Thank you.

Before I welcome our first panel, I would like to introduce to you our staff: Sloan Rappoport and Rick Kenin, from my Subcommittee staff; Margaret Spring from the Subcommittee minority staff. They have traveled from Washington to be here today. Also John Flynn from Senator Breaux's D.C. staff, and Steve Kozak, from Senator Kerry's office, is here as well.

So if you have any additional problems, they are sitting right behind us.

Senator BREAUX. With the real answers.

Senator SNOWE. Right, with the real answers.

I would like to welcome the members of our first panel: Ms. Penny Dalton, Assistant Administrator of the National Marine Fisheries Service. She is accompanied by Bill Hogarth, National Marine Fisheries Service Southeast Regional Administrator. We also have John Roussel, Assistant Secretary of the Office of Fisheries, at the Louisiana Department of Wildlife and Fisheries.

The next witness will be Mr. Larry Simpson, Director of the Gulf States Marine Fisheries Commission. And our final witness on panel one will be Dr. Shipp, who is Chairman of the Gulf of Mexico Fishery Management Council.

We welcome all of you here today. Thank you. We have a number of witnesses here today. We ask that you limit your oral presentations to about five minutes so that we can proceed, and we will place your full written statements in the record. Thank you.

Ms. Dalton.

STATEMENT OF PENELOPE DALTON, ASSISTANT ADMINISTRATOR FOR FISHERIES, NATIONAL MARINE FISHERIES SERVICE, NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION; ACCOMPANIED BY WILLIAM HOGARTH, PH.D., SOUTHEAST REGIONAL ADMINISTRATOR, NATIONAL MARINE FISHERIES SERVICE, NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION, AND JOSEPH POWERS, PH.D., SOUTHEAST SCIENCE CENTER

Ms. DALTON. Good morning. Thank you for inviting me to New Orleans to testify on the Magnuson-Stevens Act and on issues of concern to fishermen in the southeastern United States. I am Penny Dalton, Assistant Administrator for Fisheries of the National Oceanic and Atmospheric Administration. Accompanying me is Dr. Bill Hogarth, our Southeast Regional Administrator. Also with us is Dr. Joe Powers, from the Southeast Science Center, in case there are technical questions.

As you know, marine fisheries make a significant contribution to coastal economies of the Gulf and South Atlantic. Senator Snowe has given the statistics on the importance of commercial fisheries. And in addition, Southeast recreational fisheries are the largest in the Nation. In 1998, 5.8 million saltwater anglers around the United States took 53 million trips and caught 284 million fish.

Sport fishermen in the Southeast accounted for more than 60 percent of those trips, and more than 44 percent of the fish caught nationwide. While these figures are substantial, they are less than they could be. Current harvest levels are about 18 percent lower than the long-term potential yield.

Today, over 334 species of fish, corals, crabs, and other shellfish are managed under 19 fishery management plans developed by the Gulf of Mexico, South Atlantic and Caribbean Fishery Management Councils. Of these stocks, about 8 percent are overfished or approaching overfished status; 7 percent are not overfished; and there are another 85 percent whose status is unknown.

Our 1994 report to Congress lists four species managed by the Gulf Council, by the South Atlantic Council, one jointly managed species, and three species managed by the Caribbean Council as overfished. The councils have submitted amendments to existing

fishery management plans to rebuild these overfished species and increase long-term yields of all fisheries under their management.

Their efforts are starting to pay off, with signs of recovery for some overfished stocks. For example, South Atlantic king and Spanish mackerel recently were removed from the list of overfished species. Gulf Spanish mackerel also have been taken off the overfished list. These improvements are a result of close coordination by the councils of State and Federal efforts to reduce fishing mortality.

The Gulf of Mexico shrimp fisheries also have benefited from cooperative management. Although the annual yield is governed in part by environmental factors, two cooperative closures—the Tortugas shrimp sanctuary in Southern Florida, and the brown shrimp closure off Texas—have contributed to increases in shrimp landings.

The Tortugas closure provides for a reserve for pink shrimp adjacent to harvest grounds, thus ensuring availability of the resource during the fishing season. The Texas closure enhances total landings by delaying the opening of the season until shrimp have attained a larger size. These closures were developed by the Gulf Council, Florida and Texas, and implemented by NOAA Fisheries in Federal waters.

The Magnuson-Stevens Act provides a national framework for conserving and managing the wealth of fishery resources found in U.S. Federal waters. In 1996, Congress revised the Magnuson-Stevens Act, in the Sustainable Fisheries Act, to address such issues as assessing the social and economic impacts of management, rebuilding overfished stocks, minimizing bycatch, and identifying and protecting fish habitat.

One of NOAA Fisheries' highest priorities is to improve our social and economic analyses. The Magnuson-Stevens Act requires a fishery impact statement. And a new standard on fishing communities makes clear our mandate to consider the social and economic impacts of management programs.

In addition, analyses are required by other laws, such as the Regulatory Flexibility Act and the National Environmental Policy Act. This is an important part of the decisionmaking process, and affects our choice of fisheries management actions. For instance, the South Atlantic Council's snapper/grouper plan reduced quotas for snowy grouper and golden tile fish by 40 percent. But to lessen the impact on fishermen, the plan phased in the reduction over a three-year period.

In the Gulf of Mexico, the red snapper fishery has become the focal point for both overfishing and bycatch discussions. The management of red snapper is complicated, because the species is long lived and requires a very lengthy rebuilding program. In addition, bycatch of juvenile fish in shrimp trawls has reduced the capacity of the red snapper resource to recover.

To stop overfishing in the red snapper fishery, we now have limited entry in the commercial sector and closures when commercial and recreational quotas are reached. This past summer, we met with stakeholders to discuss options for managing red snapper and reducing bycatch in the shrimp fishery.

Based on the meetings, the Gulf Council now has proposed an interim final rule that would allow the recreational season to extend from mid-April to the end of October, with a four fish bag limit. The commercial season would run for ten days monthly, starting in February, until the quota is met. I just got word this morning that the rule has gone to the Federal Register.

Since 1998, shrimpers have used bycatch reduction devices, or BRDs, to reduce their bycatch of red snapper by about 40 percent—a significant achievement. Over the next three years, we would like to see reductions of 50 to 60 percent through improvements in BRD technology.

NOAA Fisheries will work closely with the industry and the Gulf and South Atlantic Fisheries Development Foundation to develop new and more effective BRDs to minimize both bycatch and shrimp loss. In addition, we are working with the councils to revise the BRD certification process, so that a larger variety of BRDs are available, allowing fishermen to select one that fits their specific fishing conditions.

Yet, despite these continuing efforts, we still have a long way to go to rebuild red snapper. A recent assessment indicates that further harvest and bycatch reductions are likely to be necessary because of poor recruitment and other factors. On the positive side, in the past two years, fishermen have reported red snapper catches along the west Florida coast, an area where fish had not been caught for many years. This expansion of the range of the fish could be a response to reductions in fishing mortality.

Turning to highly migratory species, this past April, NOAA Fisheries completed a fishery management plan for Atlantic tunas, swordfish and sharks. Several groups have filed suit, challenging the bycatch and rebuilding provisions of the HMS plan. A stay of the suit has been negotiated if NOAA Fisheries publishes a proposed rule by December 15th, to reduce bycatch in these fisheries.

That rule has been filed and, over the next few months, we will gather public comments, including extensive public hearings so that a final rule can be published by May 1. The time and area closures in the proposed rule are similar to those in the legislation recently introduced by both of you, Representative Saxton, and others.

Another issue is continuing constituent concerns about Magnuson-Stevens Act provisions to conserve and enhance essential fish habitat. Responding to those concerns, NOAA Fisheries has worked to build on existing environmental review processes to implement the provisions. NOAA Fisheries has conducted close to 2,500 consultations to date with Federal agencies on EFH. The majority of these consultations have been in the Southeast, mostly in Florida and Louisiana.

In addition, we are working closely with marine industries, such as oil and gas, to identify locations and construction methods that minimize any habitat damage and mitigate impacts. Our results so far have been to minimize the regulatory impacts on both the agencies and the public.

The EFH program is complemented by our efforts to restore and maintain healthy fisheries and coastal habitats under the Coastal Wetlands Planning, Protection, and Restoration Act. CWPPRA has

directed many millions of dollars to projects that have improved habitats used by young shrimp.

With respect to reauthorizing the Magnuson-Stevens Act, we are still working to understand and effectively implement the changes to fishery management policies and procedures made in 1996. Consequently, we would propose no major changes to the Act at this time. However, we have established an internal agency task force that has identified some changes to the law that may be useful to make the management process more efficient and to resolve some relatively minor problems. These revisions are discussed in my written statement.

In addition, we look forward to working with congressional members on high-priority policy issues, such as observer programs, individual fishing quotas, and funding and fee authorities. We will continue to work closely with fishermen, the councils, and our stakeholders to resolve problems affecting our Nation's fisheries.

Thank you.

[The prepared statement of Ms. Dalton follows:]

PREPARED STATEMENT OF PENELOPE DALTON, ASSISTANT ADMINISTRATOR FOR FISHERIES, NATIONAL MARINE FISHERIES SERVICE, NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION; ACCOMPANIED BY WILLIAM HOGARTH, PH.D., SOUTHEAST REGIONAL ADMINISTRATOR, NATIONAL MARINE FISHERIES SERVICE, NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION, AND JOSEPH POWERS, PH.D., SOUTHEAST SCIENCE CENTER

Madame Chair and members of the Subcommittee, thank you for inviting me to New Orleans to testify on the implementation and reauthorization of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), and to speak on issues of concern to fishermen in the Southeastern United States. I am Penny Dalton, Assistant Administrator for Fisheries for the National Oceanic and Atmospheric Administration.

Building a Foundation for Sustainable Fisheries—Southeastern United States

As you know, Southeastern commercial and recreational fisheries are valuable national resources. In 1998, Southeastern commercial fishers harvested close to 1.8 billion pounds of fish, shellfish, and crustaceans, producing over $722 million in dockside revenue. The Southeastern recreational fisheries are the largest in the Nation. Nationally, in 1998, 5.8 million saltwater anglers took 53 million trips and caught 284 million fish. Southeastern recreational fishermen accounted for more than 60 percent of the number of trips and more than 44 percent of the number of fish caught nationwide. While the seafood and marine recreational fishing industries make substantial contributions to the Southeastern economy, current harvest levels are less than what they potentially could be. Current production is about 18 percent less than the long-term potential yield.

From a regional perspective, consider that as of 1998, over 334 species of fish, corals, crabs, and other crustaceans are managed under 19 fishery management plans developed by the Gulf of Mexico, South Atlantic, and Caribbean Fishery Management Councils. In the 1999 Report to Congress, four finfish species managed by the Gulf Council, 15 by the South Atlantic Council, one jointly managed by the Gulf and South Atlantic Councils, and two finfish and one mollusk species managed by the Caribbean Council were declared overfished. The Councils have submitted amendments to their existing fishery management plans governing these overfished species with the goal of rebuilding these stocks and increasing long-term yields of all fisheries under their management.

In the Southeast, state and federal fisheries management efforts are starting to pay off, with initial signs of recovery for some overfished stocks. For example, South Atlantic groups of king and Spanish mackerel have recently been removed from the list of overfished species in the Southeast region. This was possible through close coordination by the Gulf and South Atlantic Councils of state and federal efforts using traditional fisheries management to reduce fishing mortality. Spanish mackerel in the Gulf of Mexico have undergone a similar and favorable transition and Gulf group king mackerel are in the process of recovery.

The Gulf of Mexico shrimp fisheries have also benefitted from cooperative state and federal management actions. Although the annual yield is somewhat governed by environmental factors, two cooperative shrimp closures, the Tortugas shrimp sanctuary off southern Florida and the brown shrimp closure off Texas, have contributed to increases in shrimp landings. The Tortugas closure provides a safe haven for pink shrimp adjacent to the harvest grounds and thus ensures availability of the resource during the harvest season. The Texas closure controls harvest by delaying the opening of shrimp season until shrimp have attained a larger, more economically valuable size. Consequently, total landings are enhanced. Shrimp landings in the Gulf of Mexico were higher in 1998 by 12 percent over 1997. These closures were developed by the Gulf of Mexico Fishery Management Council, Florida, and Texas, and implemented by NOAA Fisheries in the exclusive economic zone (EEZ).

In the Gulf of Mexico, red snapper is an important recreational and commercial fishery. An overfished stock, the management of red snapper is complex and controversial, and the completion of the rebuilding process is not expected for many years. NOAA Fisheries has recognized over the years that the bycatch of juvenile red snapper in shrimp trawls has impacted the health, stability, and rebuilding of that resource. Bycatch reduction devices (BRDs) required in the fishery since 1998 have reduced bycatch by about 40 percent, which is a significant achievement. Over the next three years, we hope to realize greater reductions of up to 50 to 60 percent through improvements in BRD technology. NOAA Fisheries is working closely with industry and the Gulf and South Atlantic Fisheries Development Foundation to develop new BRDs and to refine existing BRDs such as the Jones-Davis BRD, which can achieve reductions of 60 percent. In addition, NOAA Fisheries is working with the Councils to revise the BRD certification process so that a larger variety of BRDs is available to industry, and fishermen can select devices most appropriate to specific fishing conditions, thus optimizing efficiency and cost effectiveness.

Yet, in spite of the fact that fishing mortality has been reduced through state and federal management efforts using a combination of BRDs, limited entry in the commercial fishery, and closures when commercial and recreational quotas are reached, we still have a long way to go. A recent assessment of the health of the stock reports that further harvest reductions are likely to be necessary, given poor recruitment classes and other factors. NOAA Fisheries scientists estimate that without further reducing bycatch mortality of red snapper in shrimp trawls, red snapper populations cannot be rebuilt to sustainable levels. On the positive side, over the past two years, fishers have reported red snapper catches along the west Florida coast—an area where fish had not been caught for many years. This expansion of the range of the fish could be a population response to the reduction in fishing mortality, including bycatch reductions, in both the commercial and recreational sectors.

In the waters off the Southeastern United States, installation of BRDs in shrimp trawls also is being used to recover the overfished Atlantic weakfish stock. This action, combined with restrictions on the directed Atlantic weakfish fisheries, is producing early signs of recovery for this species.

Recognizing that serious problems remain with some fishery resources, we are cautiously optimistic about the future of Southeastern fisheries. We must protect the gains certain fish stocks have made, focus on improving yields over the long term, and identify additional measures that would move depleted stocks toward recovery. It is clear that fishery management can work. When we reduce mortality, biomass increases; and at some point, when nature cooperates, good year classes enter the fishery. However, we remain cautious as we face the challenges before us. We must work with the Councils, States and fishermen to maintain management plans that work, adjust our course where plans are not effective, and minimize to the extent possible the impacts on communities and the fishing industry as we make the transition to sustainable fisheries. I appreciate the commitment of members of the Southeast delegation and Southeastern fishing communities to this transition. I look forward with you to restoring fish stocks that support a vibrant fishing industry and healthy coastal economies.

Implementation of the Sustainable Fisheries Act

As we approach the close of the 20th Century, we are at a crucial point in fisheries management, with considerable work ahead of us. In the 23 years since the enactment of the Magnuson-Stevens Act, we have seen the complete Americanization of fisheries in federal waters, the expansion of the U.S. fishing industry, declines in many fishery resources, and the rise of public interest in fisheries issues. We have seen some successes from our management actions, including rebuilding of Spanish mackerel, the initial rebound of a few depleted stocks like Gulf of Mexico red snapper and Georges Bank haddock, and the continued strong production of fish stocks off Alaska. However, as of 1999, 11 percent of U.S. living marine resources

are overfished or are approaching overfished, 14 percent are not overfished, and there is another 75 percent whose status is unknown. In the Southeast, about 8 percent of living marine resources are overfished or are approaching the overfished status, 7 percent are not overfished, and there is another 85 percent whose status is unknown. We at NOAA Fisheries are working to rebuild fish stocks to levels that could sustain fisheries of greater economic value. From a national perspective, scientists estimate that we could increase U.S. fishery landings up to 6.8 billion pounds by rebuilding all fisheries and maintaining harvests at optimal yields.

The Magnuson-Stevens Act provides the national framework for conserving and managing the wealth of fishery resources found within the 197-mile-wide zone of federal waters contiguous to the United States (except for the coastal waters for Texas and the Gulf of Mexico coast of Florida where state waters extend out to 9 nautical miles). In 1996, Congress ushered in a new era in fisheries management, making significant revisions to the Magnuson-Stevens Act in the Sustainable Fisheries Act (SFA). The SFA addresses a number of conservation issues. First, to prevent overfishing and rebuild depleted fisheries, the SFA caps fishery harvests at the maximum sustainable level and requires fishery management plans to rebuild any overfished fishery. NOAA Fisheries now reports annually on the health of marine fisheries and identifies fisheries that are overfished or approaching an overfished condition. Second, the SFA refocused fisheries management by emphasizing the need to protect fisheries habitat. To enhance this goal, the SFA requires that management plans identify habitat that is necessary to fish for spawning, feeding, or growth. The new law also clarifies our existing authority to comment on federal actions that affect essential fish habitat. Third, to reduce bycatch and waste, the SFA adds a new national standard requiring that conservation and management measures minimize bycatch and the mortality of bycatch that cannot be avoided. It also calls for management plans to assess bycatch and to take steps to reduce it.

The new conservation requirements may have far-reaching effects on recreational and commercial fishing and on fishermen, their families and communities. To address this concern, the SFA establishes a new national standard 8 that requires, consistent with conservation objectives, that fishery management plans ensure sustained participation of fishing communities and minimize adverse impacts. In addition, a national standard has been added to promote the safety of human life at sea. Finally, the SFA provides a number of new tools for addressing problems relating to the transition to sustainable fisheries, including amendments to provide for fisheries disaster relief, fishing capacity reduction programs, vessel financing, and grants and other financial assistance.

Implementation of the Sustainable Fisheries Act

NOAA Fisheries takes seriously its new mandates under the SFA. We are continuing to work to ensure that SFA requirements are implemented, and that conservation and management measures fully protect the resource and provide for the needs of fishing communities and the Nation. A great deal of work remains to be done. We are laying a better foundation for future fisheries management, yet the benefits of the changes made by Congress in 1996 will take years, perhaps decades, to realize. In addition, the management decisions that we face are becoming ever more complex and contentious, and good solutions are hard to come by. We need to direct resources and effort to the scientific and technical aspects of our work. We also must build consensus with the public and among various stakeholders to facilitate progress in developing management programs that will move us toward the goal of healthy and sustainable marine resources.

The SFA imposed a deadline of October 11, 1998 for amendments to each of the 39 existing fishery management plans to implement its changes. Despite the Councils' best efforts, there were some proposed amendments that did not satisfy the requirements, for which the analyses were inadequate, or that did not minimize socioeconomic or environmental impacts to the extent possible and achieve management objectives. NOAA Fisheries disapproved or partially approved those amendments and is working closely with the Councils to improve them, particularly in the areas of assessing social and economic impacts, rebuilding overfished stocks, minimizing bycatch, identifying and protecting fish habitat, and improving the scientific basis for management. I will outline some of the work we are doing in each of these areas:

Social and economic analysis: One of NOAA Fisheries' highest priorities is to improve our social and economic analyses. These analyses are required by a number of laws in addition to the Magnuson-Stevens Act, including the Regulatory Flexibility Act, the National Environmental Policy Act, and Executive Order 12866. The requirement of the Magnuson-Stevens Act to include a fishery impact statement, and the new standard on fishing communities, also make clear our mandate to consider the social and economic impacts of any management program. This consist-

ently has been an important part of the decision-making process and has affected our choice of fisheries conservation and management actions. For instance, in the South Atlantic Council's Snapper Grouper FMP, Amendment 6 reduced the quotas for snowy grouper and golden tilefish in the EEZ by 40 percent in each case. To lessen the impacts on fishermen, the amendment phased in the reduction over a 3-year period (13.33 percent a year). In the South Atlantic and Gulf king mackerel fishery, the use of varying trip limits is proving effective in keeping the season open as long as possible and stabilizing prices.

To strengthen our social and economic analysis capabilities, we will issue revised Regulatory Flexibility Act guidelines to our employees at the end of the year, hire more economists, sociologists, and anthropologists, and work with other federal agencies and states to improve our data collection. As a result, economic, social, and biological considerations will be better integrated to assist fisheries managers in making the best possible decisions to balance conservation, the fishing industry, and community needs.

Rebuilding overfished stocks: NOAA Fisheries is committed to ending overfishing and rebuilding stocks. This has proven to be a very difficult task, in part because of the complex biological structure of fisheries and complicated calculations of maximum sustainable yield, and other fishery parameters. In the Southeast, 16 fishery management plans are in effect with three more in the development stage. For each of the species covered by these plans, NOAA Fisheries scientists are working hard to determine measurable biological population parameters, based on biomass, on which to base appropriate targets for managing toward long-term sustainable population levels.

Also, NOAA Fisheries has taken the lead in preparing management plans and rebuilding programs of wide-ranging fishes like tunas and billfish. This past April, NOAA Fisheries completed a fisheries management plan for Atlantic tunas, swordfish, and sharks (HMS Plan) and an amendment to the billfish fishery management plan (Billfish Amendment) that contained rebuilding programs. Numerous and substantial changes were incorporated in the final rule to implement the HMS Plan and Billfish Amendment, based on the thousands of public comments received by the agency. Several groups have filed suit challenging the bycatch and rebuilding provisions of the HMS FMP and Billfish Amendment. A proposed rule designed to reduce bycatch in the HMS fisheries is part of the requirements of the negotiated stay, and should be published by mid-December. We will be making a considerable effort to gather public comments on the proposals, including extensive public hearings. The time and area closures in the proposed rule are similar to those in the legislation recently introduced by Senators Breaux and Snowe, Representative Saxton, and others.

Minimizing bycatch: Minimizing bycatch continues to be a very high priority for NOAA Fisheries in the Southeast. The Gulf of Mexico, South Atlantic and Caribbean Fishery Management Councils are in the process of amending their respective fishery management plans accordingly. NOAA Fisheries believes that outreach and education are a critical component of reducing bycatch, and is working closely with industry to develop new gear, and to promote clean fishing practices in all of the fishing sectors. For instance, the Southeast Region conducted workshops this year, through the South Atlantic and Gulf of Mexico Fisheries Development Foundation, to improve the dissemination of information on the construction and use of BRDs in Atlantic and Gulf fisheries. These workshops, designed to encourage dialogue among fishermen and with NOAA Fisheries personnel on various aspects of BRD use (e.g., solving BRD installation and use problems, BRD certification protocol, and measuring methods for bycatch reduction), have included discussion of NOAA Fisheries-sponsored observers to monitor and assess the progress in reducing finfish bycatch in the shrimp fishery.

Essential Fish Habitat: I am well aware of your constituents' concerns over the increased emphasis of the Magnuson-Stevens Act on conserving and enhancing essential fish habitat (EFH). I wish to emphasize the agency's intention to minimize impacts on fishermen and non-fishing industries, while ensuring the long-term viability of the fish stocks. In the Southeast, EFH was designated for over 400 marine species, under 19 fishery management plans, managed by the Gulf of Mexico, South Atlantic and Caribbean Fishery Management Councils. In addition, EFH has been identified for species managed by the Mid-Atlantic Council that range as far south as Florida. Additionally, highly migratory species, whose range includes the Southeast, are managed directly by NOAA Fisheries. Where data were available, EFH was identified for each individual species and life stage using the best available scientific information. Because of the great number of managed species and the wide diversity of habitats utilized by the various life stages of those species, habitats

identified as EFH range from low salinity marsh and estuarine habitats to the limits of the EEZ.

Within the categories of EFH, subareas have been designated as "habitat areas of particular concern" or HAPCs. The Gulf of Mexico, South Atlantic and Caribbean Fishery Management Councils did an excellent job of using available scientific information to identify areas that provide extremely important habitat for federally managed fisheries or that represent resources that are unique or critical to sustaining the production of important fisheries. Examples of HAPCs include the Apalachicola National Estuarine Research Reserve, Flower Garden Banks National Marine Sanctuary, the Florida Keys National Marine Sanctuary, and habitats or regions of particular ecological value, such as seagrass and coral reef habitats and the Oculina Bank reef area. Such areas do not always require restrictions on fishing, but we must carefully examine potential threats and, where appropriate, take management actions to avoid adverse impacts.

The EFH provisions of the Magnuson-Stevens Act address impacts from both fishing and non-fishing activities. In response to fishing gear threats, each Council has considered measures to reduce the adverse impacts of fishing activities to EFH. Past management measures have included prohibitions in the use of certain or all gear types in areas of sensitive marine habitats or restrictions to size and number of some gear types in selected habitats. To address non-fishing activities, NOAA Fisheries has conducted close to 2,500 consultations to date with federal agencies whose actions may adversely affect EFH. The majority of those consultations have been in the Southeastern states, mostly in Florida and Louisiana. These reviews have been accomplished by integrating EFH consultations into existing environmental review processes as a way to minimize regulatory impacts on federal action agencies and the public. We expect the number of consultations to increase as outreach efforts with federal agencies continue to build awareness of the EFH statutory requirements. In addition, we are working closely with such industries as the oil and gas industry in planning the least damaging locations, construction methods, and the minimization and mitigation of impacts.

NOAA Fisheries is using all of its habitat mandates to protect and restore EFH. The EFH consultation authority included in the SFA has improved interagency coordination, with benefits to fish habitat. For example, negotiations with the Minerals Management Service on oil and gas exploration activities in the western Gulf of Mexico yielded an agreement that is good for all Gulf species and that is more efficient for both agencies.

Our restoration authorities are also important to rebuild and maintain healthy fisheries and coastal habitats. The Coastal Wetlands, Planning, Protection and Restoration Act (CWPPRA) has directed many millions of dollars to projects that have improved estuarine and coastal habitats used by young shrimps and red drum. The Big Island and Atchafalaya Sediment Diversion Projects, sponsored by NOAA Fisheries, have resulted in the creation of 1,200 acres of delta wetlands by restoring freshwater and sediment delivery processes to the northwestern portion of the Atchafalaya River delta. Designed to promote natural delta expansion over time, the projects over the next 20 years should create an additional 3,000 acres of wetlands.

The newer Community Based Restoration Program (CBRP) offers us opportunities to work with private partners to test restoration techniques and to restore priority sites. In an effort to restore lost wetland habitats in Florida, NOAA Fisheries formed a partnership with the Tampa Bay Watch to fund the Tampa Bay High School Wetland Nursery program. This innovative program recruits high school students to build wetland nurseries on-campus to grow salt marsh grasses for Tampa Bay restoration efforts. Offering students hands-on experience in habitat restoration activities, the program also provides a free source of salt marsh grasses, and a pool of enthusiastic volunteers. New funds in fiscal year 2000 will enable the CBRP to evaluate options and to focus on highest-priority community restoration opportunities as a major step toward enhancing Gulf of Mexico habitats important to managed species. Whether restoration is a large CWPPRA project or a community-based effort, much of our work relates directly to species and habitats of interest to Gulf fisheries and fishing communities.

Improving technical and scientific information and analyses: NOAA Fisheries is committed to using the best possible science in the decision-making process, and to incorporating biological, social, and economic research findings into fisheries conservation and management measures. Meeting our responsibilities under the Magnuson-Stevens Act and other applicable laws requires collection of a considerable amount of data. We will continue to support a precautionary approach in the face of scientific uncertainty. At the same time, we are expanding our own collection efforts and our partnerships with the states, interstate commissions, industry and others to collect and analyze critical data. Within the Southeast, NOAA Fisheries

is active in two innovative state-federal partnerships to improve the quality and quantity of information for marine resource stewardship. One of these partnerships is the Fisheries Information Network, a cooperative state and federal data collection and management program for the Southeast region. The Gulf States Marine Fisheries Commission coordinates this program within the Southeastern United States. The second is the Atlantic Coastal Cooperative Statistics Program (ACCSP), a cooperative effort among federal and state fisheries managers, scientists, and commercial and recreational fishermen to coordinate and improve data collection and data management activities on the Atlantic coast. The Atlantic States Marine Fisheries Commission coordinates this program within the Atlantic coastal states. Such federal-state partnerships are an important mechanism for providing reliable fisheries statistics while sharing resources and reducing duplicative efforts. Reliable fisheries statistics will allow the management process to work successfully, increasing commercial and recreational fishing opportunities and ensuring jobs for fishermen—not only for today, but for years to come.

Reauthorization Issues

We are still working to understand and effectively implement the changes to fishery management policies and procedures made by the SFA. Consequently, we would not propose major changes to the Magnuson-Stevens Act at this time. However, we have established an internal agency task force to evaluate SFA implementation, and the group has identified some revisions of existing provisions that may be useful to make the management process more efficient and to resolve some relatively minor problems. We currently are reviewing various issues raised by the task force, the Councils, and some of our stakeholders. Among the issues identified are the following:

Review process for fishery management plans, amendments and regulations: The SFA attempted to simplify and tighten the approval process for management plans and regulations. However, one result of that effort has been two distinct review and implementation processes—one for plans and amendments and another for implementing regulations. This essentially uncouples the review of plans and amendments from the process for regulations, and as a result, the decision to approve or disapprove a plan or amendment may be necessary before the end of the public comment period on the implementing regulations. We are considering amendments that would modify the process to address this issue.

In addition, the Committee may wish to consider reinstating the initial review of fishery management plans and amendments by the Secretary. Considerable energy and staff resources are expended on plans or amendments that are ultimately disapproved because of serious omissions and other problems. At present, two to three months must elapse before the Secretary makes his determination, and if the amendment is then disapproved, it can be months or longer before the Council can modify and resubmit the plan or amendment. While the initial review was eliminated by the SFA to shorten the review process, reinstating Secretarial review may actually provide a mechanism to shorten the time it takes to get a plan or amendment approved and implemented.

Restrictions on data collection and confidentiality: The Magnuson-Stevens Act currently restricts the collection of economic data from processors. Removal of this restriction could improve the quantity and quality of information available to meet the requirements of the laws requiring social and economic analysis. In addition, the SFA changed the term "statistics" to "information" in the provisions dealing with data confidentiality. The change has raised questions about the intended application of those provisions, particularly with respect to observer information, and Congressional clarification would be useful.

Coral reef protection: Special management areas, including those designated to protect coral reefs, hard bottoms, and precious corals, are important commercial resources and valuable habitats for many species. Currently, we have the authority to regulate anchoring and other activities of fishing vessels that affect fish habitat. Threats to those resources from non-fishing vessels remain outside agency authority except when associated with a Federal action that would trigger EFH consultation or where addressed in regulations associated with a national marine sanctuary. We suggest amending the Act to clarify, consolidate, and strengthen NOAA Fisheries' authority to regulate the actions of any recreational or commercial vessel that is directly impacting resources being managed under the Magnuson-Stevens Act.

Caribbean Council jurisdiction: The current description of the Caribbean Council limits its jurisdiction to Federal waters off Puerto Rico and the U.S. Virgin Islands. As a result, the Council cannot develop fishery management plans governing fishing in Federal waters around Navassa Island or any other U.S. possession in the Caribbean. Jurisdiction of the Caribbean Council could be expanded to cover Navassa Is-

land, by including "commonwealths, territories, and possessions of the United States" within the description of that Council's authority.

Council meeting notification: To meet the notification requirements of the Magnuson-Stevens Act, Councils spend tens of thousands of dollars a year to publish meeting notices in local newspapers in major and/or affected fishing ports in the region. By contrast, fax networks, mailings, public service announcements, and notices included with marine weather forecasts are much less expensive and could be more effective in reaching fishery participants and stakeholders. The Committee may wish to consider modifying notification requirements to allow Council use of any means that will result in wide publicity.

We look forward to working with Congressional members on high-priority policy issues such as observer programs, individual fishing quotas, and funding and fee authorities, although, at this time, we have no specific recommendations for changes in the Magnuson-Stevens Act to address these issues. We will continue to work closely with the Southeast delegation; Gulf of Mexico, South Atlantic, and Caribbean Fishery Management Councils; and our stakeholders to resolve problems affecting Southeastern United States fisheries.

Madame Chair, this concludes my testimony. Thank you for the opportunity to discuss the implementation and reauthorization of the Magnuson-Stevens Act. I am prepared to respond to any questions you and members of the audience may have.

Senator SNOWE. Thank you.

Mr. Roussel.

STATEMENT OF JOHN E. ROUSSEL, ASSISTANT SECRETARY, OFFICE OF FISHERIES, LOUISIANA DEPARTMENT OF WILDLIFE AND FISHERIES

Mr. ROUSSEL. Chairman Snowe, welcome to Louisiana. And Senator Breaux, welcome home.

My name is John Roussel. I am the Assistant Secretary of the Louisiana Department of Wildlife and Fisheries, Office of Fisheries. Thank you for the opportunity to appear before you today.

My testimony addresses six issues, the first of which I feel is the biggest fisheries management challenge facing the councils, the States, and the Nation; that is the need for sound science. The foundation of sound science is long-term, reliable data generated from well-designed data collection programs.

Although we have improved our data collection efforts over the years through State and Federal cooperative efforts, we are far from where we should be. Virtually every discussion regarding the status of fish stocks at all levels of the council process include much debate about the assumptions that must be made in the absence of scientific information.

The five Gulf States, in concert with their Federal partners and the Gulf Council Marine Fisheries Commission, have developed a comprehensive data collection program for the Gulf of Mexico region called GulfFIN, which has been partially funded for the past two years. If this program were fully operational, it would provide a solid foundation for sound science in the Gulf and we strongly support full funding for this program.

We all know that compliance with regulations is an essential component for the success of any fishery management program. We feel that the most efficient way to achieve a sufficient level of compliance with Federal fishery programs is through enhancement of State enforcement programs, working cooperatively with the National Marine Fisheries Service, law enforcement, and the United States Coast Guard.

Currently, the States in the Gulf receive no Federal funding for enforcing regulations associated with the Magnuson-Stevens Act.

Yet, State enforcement agencies produce more than 70 percent of all the cases initiated for violations of the Act. All of the Gulf States support very large commercial and recreational fisheries within their waters, and have clearly demonstrated their expertise and effectiveness at enforcing State-managed fisheries.

The existing State enforcement programs are best postured to provide increased officer presence, which we think is a key factor in ensuring regulation compliance. The reauthorized Act should include language establishing a mechanism for joint State enforcement agreements in the Gulf region and authorized funding for such agreements.

Currently, there is continuing confusion regarding the definitions of overfishing, overfished, and the application of maximum sustainable yield, or MSY, as used in the Act. Both overfishing and overfished are defined the same in the Act. And MSY is not defined in the Act. It is essential that the reauthorized Act make a clear distinction between overfishing and overfished if Congress intended there to be a difference. MSY must also be consistently defined and applied. We recommend that a national panel of fisheries experts should be convened to develop definitions that clearly express Congress' intent regarding the use of these terms.

Red snapper is one of the high-profile species in the Gulf, and reauthorization of the Act must include measures that will stabilize regulation of this fishery. The recent history of red snapper management has provided anything but a setting in which a reasonable person could understand what the current regulations are and what the near-future regulations will be.

One major problem caused by the Act is the required use of the recreational allocation as a quota, and the automatic closure of recreational fishing when that quota is reached. This portion of the Act should be rescinded until the Federal Government funds an appropriate recreational quota monitoring program.

The reauthorized Act should not contain a prohibition on the Gulf Council's consideration of individual fishing quota programs for red snapper. This tool, and any others that may be helpful in the management of this fishery, must be allowed full study and debate.

Recent stock assessments indicate that recovery of red snapper will be difficult without further significant reduction of red snapper bycatch by the shrimp industry. This will be the struggle of the next decade in the Gulf. Adequate funding must be made available to, first, further examine the bycatch impact; and, second, to continue technology development for bycatch exclusion and shrimp retention.

The Louisiana Department of Wildlife and Fisheries is supportive of the concepts contained in the 1996 EFH provisions of the Act, which highlight the importance of preserving fish habitat when balancing developmental needs with environmental needs. We support and encourage the use of existing procedures for review and consultation, whenever possible, to implement these provisions. We think that it is important to use the existing procedures.

The 1996 amendments to Section 306 added language that addresses a State's authority to regulate fishing vessels outside the boundaries of the State. However, there is still an impediment to

a State regulating vessels operating in Federal waters off its shores in the absence of a Federal management plan. Language similar to that in Section 306(a)(3)(c) should be considered to address this situation.

This concludes my testimony, and I thank you again for the opportunity to share these views regarding reauthorization of the Act.

[The prepared statement of Mr. Roussel follows:]

PREPARED STATEMENT OF JOHN E. ROUSSEL, ASSISTANT SECRETARY, OFFICE OF FISHERIES, LOUISIANA DEPARTMENT OF WILDLIFE AND FISHERIES

My name is John Roussel. I am the Assistant Secretary of the Louisiana Department of Wildlife and Fisheries, Office of Fisheries. Thank you for the opportunity to appear before you today and welcome to Louisiana.

My testimony today will address five issues: Sound Science, Law Enforcement, Definitions of Overfishing/Overfished/MSY, Red Snapper/Shrimp Management, Essential Fish Habitat and State Jurisdiction.

SOUND SCIENCE

The Act recognizes that collection of reliable data is essential to the effective conservation, management and scientific understanding of the fishery resources of the United States, however, this is the biggest challenge facing the councils and the states. Developing measures to eliminate overfishing is relatively easy. Determining whether a fish stock is overfished or if overfishing is occurring is not so easy. Many years of data are required to adequately determine the status of a fish stock and to evaluate the effects of management measures. Although we have improved our data collection efforts over the years through state and federal cooperation and coordination we are far from where we should be.

The Act specifies that conservation and management measures shall be based on "the best scientific information available." Although this may appear to be a high standard, in practice it is high only if well-designed and fully funded data and information collection programs are in place. Sections 401-407 provide for data collection and there has been recent partial funding of the GulfFIN initiative. However, all of our fishery management plans identify the need for improved data collection. Virtually all discussions of the status of fish stocks at all levels of the Council process include much debate about the assumptions that must be made in the absence of scientific information. There must be a full commitment to adequately funding well designed data collection programs, otherwise we will not be able to fulfill our obligation to the nation to realize the full potential of the nation's fishery resources. Full funding of the GulfFIN initiative, at $7 million annually, would go a long way towards addressing our data and information needs in the Gulf.

STATE BASED LAW ENFORCEMENT

Compliance with regulations is essential for the success of natural resource management programs. The only efficient way to achieve a sufficient level of success and compliance with federal management programs is through an enhancement of state enforcement programs, working cooperatively with National Marine Fisheries Service law enforcement and the United States Coast Guard.

Currently the States in the Gulf receive no federal funding for enforcing regulations associated with the Magnuson-Stevens Act, yet state enforcement agencies produce more than seventy percent of all the cases initiated for violations of the Act. By comparison, the United States Coast Guard receives upwards of $25 million annually for Magnuson-Stevens Act enforcement for only a portion of the Gulf, while initiating only thirty percent of the cases. This funding discrepancy threatens the existence and effectiveness of the Act. The National Marine Fisheries Service (NMFS) enforcement is severely understaffed with 10 to 12 federal agents and therefore is capable of providing only minimal impact in the Gulf of Mexico. The United States Coast Guard (USCG) serves as a multiple mission agency whose priorities often preclude them from emphasizing fishery enforcement.

All of the Gulf states support very large commercial and recreational fisheries within their waters and have clearly demonstrated their expertise and effectiveness in enforcing state-managed fisheries. The enforcement efforts of the states should be sufficiently federally funded on a long-term basis to increase compliance with this important Act. The failure to supply adequate enforcement funding sets the stage for management failure.

Enforcement officer presence is the key factor in ensuring regulation compliance. The level of officer presence must be adequate to detect a sufficient number of violations to deter any purposeful violations of the law so that the effects of undetected violations are insignificant. Additional officer presence will increase compliance by fishery participants, increase monitoring of landings, increase effectiveness of dockside inspections, and provide increased ability to respond to complaints of illegal activities. The existing state enforcement organization and infrastructure is best postured to provide increased officer presence. Providing long-term enforcement funding to the states represents the greatest value in spending the federal tax dollar.

Language calling for joint enforcement project agreements tailored specifically to the Gulf of Mexico region, but similar to that contained in Section 403 of S. 1420 should be implemented. Funding for the Gulf of Mexico region joint project law enforcement agreement should be authorized to be appropriated for $18 million for each of fiscal years 2000 through 2004.

DEFINITIONS OF OVERFISHING/OVERFISHED/MSY

Currently there is confusion regarding the definitions of overfishing, overfished and MSY. Both overfishing and overfished are defined the same in the Act and Maximum Sustainable Yield is not defined in the Act.

It is essential that the reauthorized Act make clear the distinction between the definitions of overfishing and overfished. Maximum Sustainable Yield (MSY) must also be consistently defined. A national panel of fisheries science experts should address these key definitions.

RED SNAPPER/SHRIMP MANAGEMENT

Red snapper has been one of the high profile species managed in the Gulf. Reauthorization of the Act must include measures that will stabilize regulation of the red snapper fisheries and allow the species to recover from its overfished status.

Fisheries management is best accomplished with long-term, consistent regulations that the public can learn, plan for and comply with. The recent history of red snapper management has provided anything but a setting in which a reasonable person could understand what the current regulations are and what the near future regulations will be. Much of the instability has been the result of the 1996 amendments to the Act. The Louisiana Wildlife and Fisheries Commission is empowered to set seasons and size limits for this species and has attempted to maintain a high degree of consistency with federal regulations. Our Commission has considered red snapper action items on its monthly agenda more than a dozen times in the three years since the passage of the Sustainable Fisheries Act - more than any other single species of fish or wildlife. Most of these actions have been size limit changes, bag changes and season changes. The public relies on the Louisiana Department of Wildlife and Fisheries' annual commercial and recreational fishing pamphlets to guide its lawful fishing behavior. These have become out of date for red snapper almost as soon as they become available. For a state with only a 3-mile territorial sea and minimal red snapper catch in state jurisdiction, this instability has become excessively burdensome.

One major problem caused by the Act is the required use of the recreational allocation as a quota and automatic closure of recreational fishing when that quota is reached. This portion of the Act should be rescinded until the federal government funds an appropriate recreational quota-monitoring program.

The reauthorized Act should not contain a prohibition on the Gulf Council's consideration of individual fishing quota programs for red snapper. This tool and any others that may be helpful in the management of this fishery must be allowed full study and debate.

The management of red snapper under the provisions of the Act includes the management of the shrimp fishery of the Gulf. The recent stock assessments indicate that the recovery of red snapper to healthy levels will be difficult without further significant reduction of red snapper bycatch by the shrimp industry. This will be *the struggle* of the next decade. Louisiana stands to bear some of the largest impacts of management decisions as we account for forty percent of the Gulf shrimp landings and sixty five percent of the Gulf commercial red snapper landings. Adequate funding must be made available to further examine the bycatch impact and to continue technology development for bycatch exclusion and shrimp retention.

ESSENTIAL FISH HABITAT

The Louisiana Department of Wildlife and Fisheries is supportive of the concepts contained in the 1996 EFH provisions. Proposed habitat modifications that may significantly impact essential fish habitat are being scrutinized with the value of these habitats in mind. It has been our experience within the last year that existing pro-

cedures of review and consultation have generally been used to satisfy these guidelines. It seems that the EFH amendment has helped to make the importance of preserving fish habitat one of the issues to be taken into account in the larger picture of balancing developmental needs with environmental needs.

STATE JURISDICTION

The 1996 amendments to Section 306 added language to address a state's authority to regulate a fishing vessel outside the boundaries of the state. However, there is still an impediment to a state regulating vessels operating in federal waters off its shores in the absence of a federal management plan.

An example of the problem occurs in an area off the central coast of Louisiana, beyond our state territorial waters, which from time to time is a productive oyster area. This area is generally productive when our more traditional inshore and nearshore oyster producing areas are experiencing reduced productivity. Louisiana has successfully regulated vessels registered and licensed by our state, but continues to be unable to regulate vessels not registered or licensed by our state. Because of the relatively limited occurrence of oysters in the federal waters of the Gulf there is little incentive for federal management plan development. Similar situations with other species, which predominantly occur in state waters and for which there is no federal management plan, may occur. Language similar to that in Section 306(a)(3)(c) should be considered to address this situation.

This concludes my testimony and I thank you again for the opportunity to offer these views regarding the reauthorization of the Magnuson-Stevens Act.

Senator SNOWE. Thank you very much, Mr. Roussel.

Mr. Simpson.

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

Mr. SIMPSON. Thank you. Good morning, Madam Chair and Senator Breaux. My name is Larry Simpson. I am Executive Director of the Gulf States Marine Fisheries Commission.

Thank you for the opportunity to speak again with you today regarding the need for a regionally based, State-Federal cooperative programs for the collection and management of data for marine and estuarine fisheries resources. This issue has really been the top priority of the Commission for the last 10 years. And it is evident by the Fisheries Information Network, the so-called FIN, which has been established during that time.

Most recently, Congress has been supportive of our efforts, by providing partial funding to implement this regional program. And while we have currently demonstrated improvements to data collection efforts in the Gulf recreational data collection programs, if we are able to strengthen the appropriation to the full amount required, we could provide the data tools necessary to address the many complex technical, infrastructural, and administrative issues associated with collecting and managing fisheries data that face us now and into the future, which both of you mentioned in your opening comments.

The Commission predates the Magnuson-Stevens Act of 1976, having been created in 1949 by Public Law 81-66 and State legislation. I have personally served on the Gulf Council as a nonvoting member since 1978. This is the longest continuous service in the Nation by a council member. Only Wayne Swingle, who you mentioned, of the Gulf Council staff, has been around the system longer than I have, and only by one year. Now, I only say that just to indicate that I have been around and have seen and worked with State agencies, NMFS, and the council with regard to marine resources and their management needs.

In 1996, the Sustainable Fisheries Act provided for the establishment of a national program for fisheries data by requiring the development of vessel registration systems, VRS, and fishery information systems, FIS. And I would like to comment on the report that Congress submitted in 1998, entitled Proposed Implementation of the Fishing Vessel Registration and Information System.

It is important to remember that in the Gulf of Mexico region, the Commission began development of such a program well in advance of that SFA language. And, to a great extent, the FIN forms a backbone of what I consider the proposed actions contained in the report. I would also like to point out that we largely agree with the content of the report. We commend Congress for the foresight in passing these measures.

I want to inform you where we are taking action on items contained in that report and the current status of those actions, and highlight areas where we have resolved issues identified in the report, or disagree with items. The Commission feels that FIN should serve as a vehicle through which VRS and FIS is implemented. And, pretty much, NMFS is recommending the same implementation strategy.

Regarding confidentiality, there was a concern in the report. The Commission developed a memorandum of agreement on data confidentiality which came into force in 1993. And we think that addresses the concerns raised.

We strongly endorse the development and management of a vessel registration system. However, we are on record as not necessarily endorsing the mechanism of using the U.S. Coast Guard as a data base management entity for that system. We have concerns that fisheries needs would maybe, not quite adequately be addressed with the Coast Guard handling that system, since their mission is a little bit different.

Regarding commercial data improvements, FIN has determined that trip level resolution should be the basis for commercial data collection. Florida and Louisiana have implemented a trip ticket program, and efforts are underway in Texas and Mississippi and Alabama, in preparation for implementation of those kinds of programs.

I think it is important to mention that no efforts to fundamentally change any program for data collection are free. And we support, obviously, increases for data collection and management—mainly emphasis, as well as money. We think that the biological sampling component is a very important part of the overall data collection program. And you get primarily age data and you get hard parts, otoliths (ear bones), scales, length and weight measurements. Those play into what is needed in the management arena.

The Commission and the member States have begun an initiative to establish standardized protocols for this. And let me hasten to say that in a fully State-Federal cooperative program, State and interstate species both should be prioritized highly.

It indicates in the report that the data base design and architecture has not quite yet been developed. At the time of the report, that was partially true, but we are working closely with our counterparts in ACCSP, the Atlantic Coast, and we are currently work-

ing with Mr. Roussell's office, in Louisiana, for commercial trip ticket integration of their data into this system.

Of significant importance is that the Commission should serve as the centralized data management center for the Gulf of Mexico. Enhanced enforcement, as Mr. Roussell said, is very important. And I will wind it up by saying that the Commission is committed. That is evidenced by the actions we have taken over the last several years. And we continue to conduct activities that will lead us to full implementation.

We ask you to support the issues of sound and timely data for the future difficult decisions. And it is safe to say that all of the easy stuff has been done. The hard questions are before us. And that is going to require a wealth and depth of data that we have not seen heretofore.

Thank you.

[The prepared statement of Mr. Simpson follows:]

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

My name is Larry B. Simpson and I am the Executive Director of the Gulf States Marine Fisheries Commission. Thank you for the opportunity to speak with you today regarding the need for regionally based, state-federal cooperative programs for the collection and management of data for marine and estuarine fisheries resources. This issue has been a top priority of the Commission for the last 10 years and is evident in the Fisheries Information Network structure that has been established during that time. Most recently, the Congress has been supportive of our efforts by providing partial funding to implement this comprehensive regional program. While we have currently demonstrated improvements to data collection efforts in the Gulf, if we are able to increase the appropriation to the full amount required, we could provide the data tools necessary to address the many complex technical, infrastructural, and administrative issues associated with collecting and managing fisheries data that face us all now and into the future.

The 1996 Sustainable Fisheries Act (SFA) provided for the establishment of a national program for fisheries data by requiring the development of a Vessel Registration System (VRS) and a Fisheries Information System (FIS). I would like to comment on the Report to Congress, submitted in 1998, entitled "Proposed Implementation of a Fishing Vessel Registration and Fisheries Information System." It is important to remember that, in the Gulf of Mexico region, we began the development of such a program well in advance of the SFA language, and to a great extent the Fisheries Information Network forms the backbone of the proposed actions contained in the VRS/FIS report.

It should be pointed out that we largely agree with the content of the VRS/FIS report. I want to inform you where we are taking action on items contained in the report, the current status of those actions, and highlight areas where we have resolved issues identified in the report or disagree with items contained therein.

- With the establishment of the FIN several years ago, the GSMFC passed a formal resolution to the effect that the FIN should serve as the vehicle through which the VRS/FIS is implemented. As you will note in the report, NMFS is recommending that same implementation strategy.
- The GSMFC developed a Memorandum of Agreement on data confidentiality, which came into full force in 1993, including as signatories the States of Texas, Louisiana, Mississippi, Alabama, and Florida; the GSMFC, and the Southeast Regional Office of the National Marine Fisheries Service (NMFS). This agreement largely addresses confidentiality concerns raised in the report.
- We strongly endorse the development and management of a vessel registration system; however, we are on record as **not endorsing** the mechanism of using the U.S. Coast Guard as the data base management entity for the system. While we are on record as objecting, we are not raising this issue again for resolution. I just felt that you should be aware of our concerns and position.
- Through the FIN, the partners determined earlier that trip-level resolution should be the basis for commercial data collection. That means that we agree to establish trip ticket programs in each state. Florida and Louisiana have im-

plemented trip ticket programs, and efforts are underway in Texas, Mississippi, and Alabama in preparation for implementation of trip ticket programs.

- As a general comment, we agree that substantial increases in funding will be required to fully implement a national program. Having said this, I am not totally sure that the funding levels used in the report accurately reflect reality. I know that the funding made available to the GSMFC and states in the Gulf region has an effect on the funding levels in the report, but I am unsure what that effect is. Suffice it to say, the funding issue probably needs to be revisited on an annual basis, as things evolve. Let me also say that we support substantial increases for data collection and management.
- We agree that the biological sampling component of our data program needs to be supported. Additional funding and resources are required to adequately address the required level of biological sampling, primarily age data. Regarding techniques used to analyze otoliths for age data, the GSMFC, its member states, and the NMFS have begun an initiative in the Gulf region to establish standardized protocols for collecting otoliths and preparation and interpretation of otolith samples. Completion of that task should adequately address aging issues for stock assessment purposes. Additionally, we are moving toward the development of a statistically based biological sampling procedure; however, the three species listed, king and Spanish mackerel and red snapper, are all federally managed species. In a fully state-federal cooperative program, state and interstate species should also be prioritized highly.
- The report states that the Gulf region has not yet begun to consider data base design and architecture. At the time of the report, that was partially true; however, we have since established that the FIN will work cooperatively with our Atlantic coast counterpart (ACCSP) to use largely the same data management system. We have recently implemented a project to establish the data management system in the GSMFC office and will be integrating Louisiana's trip ticket data into the system. Assuming success of this initial effort, the other state trip ticket programs will be added as soon as they are implemented.
- Of significant importance is the decision on the part of the GSMFC and its member states that the GSMFC will serve as the centralized data management center for the Gulf of Mexico. This decision was based largely on the model provided by the Pacific Fisheries Information Network (PacFIN) and the Pacific Recreational Fisheries Information Network (RecFIN). We have already begun to pursue this approach with computer hardware and software purchases and technical staff to manage the system.

I would also like to comment on several sections of S. 1420 as they are relevant to fisheries management. Section 402. Information Management System is of extreme importance to the Commission and its member states, and directly relates to the development and implementation of the FIN. As stated early, the GSMFC has been intimately involved in coordinating the collection and management of both recreational and commercial fisheries to improve management, providing to the public better stewardship of the nation's valuable marine resources. As you know, cultural and economic impacts emanate from fishery management actions. It is our goal to provide sound data, through the FIN, for not only federal management actions but state management as well. Fisheries are shared with respect to jurisdiction and authority, and it is most important that these revenues are directed to commonly held programs and issues.

In addition, the GSMFC, through the endorsement of our Law Enforcement Committee which is made up of the Chief Officers in each state and our federal partners, supports Section 403 of the bill, calling for enhanced enforcement and prosecution of state and federal regulations in the Exclusive Economic Zone (EEZ). This additional presence and manpower will have positive effects on nationally held marine resources, thereby increasing the contribution back to U.S. citizens who hold ultimate ownership of these resources that are held in the public trust by state and federal fisheries agencies.

In closing, the GSMFC and its member states have exhibited significant leadership in establishing a state-federal cooperative program for the collection and management of fisheries data for the Gulf of Mexico. Our commitment is evident in the actions taken over the last several years, and we continue to conduct activities that will lead us to full implementation. As mentioned earlier, additional funding will be necessary to realize our full potential. Thank you again for the opportunity to speak with you today, and I look forward to working with you in the future to improve fisheries management in our Nation's coastal waters.

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 percent 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 percent 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 percent and 121 percent, 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 percent of all estuarine area in the 48 contiguous states, and 55 percent 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 percent 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 percent 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 percent 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 commercial 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 percent.

Senator SNOWE. Thank you, Mr. Simpson.

Dr. Shipp.

STATEMENT OF ROBERT SHIPP, PH.D., CHAIRMAN, GULF OF MEXICO FISHERY MANAGEMENT COUNCIL

Dr. SHIPP. Thank you, Senator Snowe and Senator Breaux. It is a genuine honor to speak to you this morning.

I have been in fisheries biology for nearly 30 years now. I have been on the Council for eight and a half years, twice as the chair. But in addition to that, I do have another job. I also chair the Department of Marine Sciences at the University of South Alabama, which is a graduate program heavily oriented toward fisheries statistics and marine ecology and systems ecology. I also am a science advisor for the Coastal Conservation Association of Alabama, which is a recreational group.

And I heard some of you talking about eating at Emeril's last night. I want to point out that when Emeril comes to Mobile, he eats at Justine's, which is my son's restaurant. My son owns the restaurant. I own the debt. And the restaurant is heavily dependent on a source of fresh Gulf seafood. So I have a perspective from academia, from recreational fisheries, as well as commercial fisheries.

This morning I want to focus, because time is limited, on but a single issue regarding reauthorization of SFA. And that issue is the relationship between the intent of Congress and the guidelines as developed by the National Marine Fisheries Service, and the resultant actions and burdens put on the councils.

During the last reauthorization, Congress did pass a number of laudable changes, which were designed to prevent stock collapse. And I do not think anyone argues with the intent of those. However, the implementation of those changes, through the guidelines developed by NMFS, have proven totally unrealistic and practically impossible to achieve in many instances.

I believe the guidelines do not reflect the intent of Congress, but rather a theoretical exercise in fisheries management to test the validity of various simulation models. This, combined with a strict, literal legal interpretation of these guidelines, has forced the councils to enact management measures that have imposed severe hardship on practically every user group and stakeholder, at least in the Gulf of Mexico.

I will cite but a couple of examples, but I am prepared to cite many, many more if necessary. The first example is the require-

ment that stocks be rebuilt in 10 years if biologically possible. And admittedly, in NMFS's defense, that language is pretty clear in the Magnuson-Stevens Act, that if these stocks can be built within 10 years, the guidelines state that all actions, including a total moratorium on harvest of that stock, must occur. And yet, if the biology necessitates more than 10 years, then there is a great deal of flexibility that can be put into place.

I do not think Congress meant that you needed to close an entire fishery if it could be built in nine years, but if you were given three more years to do it, there would be very minimal impact on the various user groups and the associated economies. This is one of those examples where we are really in a box because of the strict legal interpretation.

The second example, though, is one that is really close to home, and you have already heard it alluded to by the previous members of the panel. And that is the rebuilding of the red snapper stocks. This is a difficult and a complex issue. But let me reduce it to the problem of the projected MSY, maximum sustainable yield, as defined by the guidelines.

Depending on which model one employs, the biomass needed to support this MSY is from two billion to four billion pounds, and an annual maximum sustainable yield of well over 100 million pounds. But never in the history of that fishery has the yield approached even one-fifth of that number, even in the 19th century, when it was virtually a virgin stock. Nevertheless, the draconian measures necessary to attain this theoretical goal in about the year 2033 would cut the current yield by more than half and virtually eliminate the fishery, both commercial and recreational as we know it, and in the process cost the associated coastal tourist industry well over $100 million annually.

To the credit of the Council's stock assessment panel and the Council itself, the lack of the appropriate stock recruit relationships for red snapper has been recognized, and projections based on better studied stocks have been used as proxies, giving a somewhat more realistic scenario. But even this will be invalid when the more stringent NMFS interpretation for MSY under guidelines is put in place. Incidentally, red snapper stocks have been improving for almost a decade with the less stringent measures that are currently in place.

For this most fundamental problem, I think the solution is simple. The councils and Congressional staffers, as well as NMFS, all need to be involved in interpretation of the congressional intent. The guidelines should be a product of these groups to avoid placing the councils in the untenable role of implementing impossible management measures.

Thank you, both.

[The prepared statement of Dr. Shipp follows:]

PREPARED STATEMENT OF ROBERT SHIPP, PH.D., CHAIRMAN, GULF OF MEXICO FISHERY MANAGEMENT COUNCIL

Mr. (Madame) Chairman and committee members:

My name is Bob Shipp, and I chair the Gulf of Mexico Fishery Management Council.

It's an honor to speak to you. I offer a brief background on myself, so you'll know where I'm coming from. I hold a Ph.D. in fish biology, and have been a fishery sci-

entist for more than 30 years. I chair the Department of Marine Sciences at the University of South Alabama, serve as a science consultant for the Alabama Coastal Conservation Association, and have been on the Gulf Council (twice it's chair) for eight and a half years. I fancy myself a great seafood chef, and my son, who really is a great professional chef, owns a fine dining restaurant in Mobile, serving primarily fresh seafood. I don't own the restaurant, only all the debt. Thus I have an academic, recreational, and commercial perspective on marine fishery resources.

I want to focus on but a single issue regarding reauthorization of SFA, and that is the relationship between the "intent of Congress," the "interpretation" of that intent by the National Marine Fisheries Service, and the resultant role and actions of the Councils.

During the last reauthorization phase, Congress passed some truly laudable changes in the SFA, aimed at preventing collapse of severely over fished stocks as well as continuing the rebuilding of those stocks that had bottomed out and were on the road to recovery. The goal, of course, was to ultimately reach a level of optimal productivity and sustainability, for which the principle of MSY (maximum sustainable yield) was adopted.

However, put briefly, the implementation of those changes, through the "Guidelines" developed by the NMFS have proven totally unrealistic and practically impossible to achieve. I believe the "Guidelines" did not reflect the intent of Congress, but rather a theoretical exercise in fisheries management to test the validity of various simulation models. This, combined with a strict literal legal interpretation of these guidelines, has forced the Councils to enact management measures that have imposed severe hardship on practically every user group and stakeholder, at least in the Gulf region.

I will cite but a couple of examples to demonstrate, but am prepared to offer many more if requested.

First, if the biology of a stock is such that rebuilding can occur within ten years, then, according to NMFS Guidelines, all means necessary must be taken to accomplish this. All means necessary includes a total moratorium on harvest of any type. Did Congress intend that a stock that can be rebuilt in, say, eight years, must be rebuilt in eight years, with total cessation of all harvest, even if an entire economy, recreational, commercial, and associated industries be destroyed? I don't think so. If rebuilding in, say, twelve years would accomplish the same rebuilding objectives but with minimal economic impact, would that not be Congress' intent?

Second, (an issue close to home), the rebuilding of red snapper stocks. This is a difficult and complex issue, but let me reduce it to the problem of the projected MSY. Depending on which model one employs, the Bmsy (biomass needed to support maximum MSY) is from 2 to 4 billion pounds, and the annual MSY well over 100,000,000 pounds. But never in the history of that fishery has the yield approached even one fifth of that number, even in the nineteenth century when it was virtually a virgin stock. Nevertheless, the draconian measures necessary to attain this theoretical goal (in about the year 2033) would cut the current yield by more than half, and virtually eliminate the fishery, both commercial and recreational, as we know it, and in the process cost the associated coastal tourist industry well over a $100,000,000 annually. To the credit of the Council's Stock Assessment Panel and the Council itself, the lack of the appropriate stock/recruit relationship for red snapper has been recognized, and projections based on better studied stocks have been used as proxies, giving a somewhat more realistic scenario. But even this will be invalid when the more stringent NMFS interpretation for MSY under the "Guidelines" is put in place. Incidentally, red snapper stocks have been improving for almost a decade with the less stringent measures that are currently in place.

For this most fundamental problem, I think the solution is simple. The Councils and Congressional staffers, as well as NMFS, all need to be involved in interpretation of Congressional intent. The "Guidelines" should be a product of these groups to avoid placing the Councils in the untenable role of implementing impossible management measures.

My time is up, but I would be pleased to elaborate or answer any questions you may have.

Senator SNOWE. Thank you, Dr. Shipp.

Let us start right there. Ms. Dalton, I would like to have you respond to Dr. Shipp's statements. The underlying issue here, of course, is the fact that there is a lack of good science. We are talking about science that will be the foundation for all of these decisions. There is a lack of data collection.

I noticed in your statement that you did mention the fact that this was going to be one of your priorities. But the question is, is it a priority for the National Marine Fisheries Service to provide the strong support for good data collection to make sure that we have a sound decision? Now on red snapper stock assessment, in reviewing everybody's testimony, it is clear that there is a very strong difference of opinion as to what drives the goal under the MSY. And we recognize that.

But, again, it goes back to credibility. My fishermen say that all the time. We need to have the very best science to make these very difficult decisions. So what is the agency doing? I would like to have you respond to Dr. Shipp's question. I think it is a very important one, and one that is fundamental to what I think is going to drive this process. That means having the agency behind the process, not driven by lawsuits, but rather by the best science available to make the best decisions possible for the fisheries and the fishing community.

Ms. DALTON. I think if it was possible to do a moratorium on lawsuits, no one would be happier about it than I would be. Unfortunately, that is part of the reality of the world that we are living in.

It is interesting with red snapper, because we probably have more data on red snapper than we do on many other stocks in the Southeast Atlantic. About 85 percent of the stocks that we manage in the Southeast Atlantic actually are in the unknown status.

The issue of the guidelines and MSY is a really difficult one for me. I spent many years on the other side of the table. And as a lot of the staffers know, I had some disagreements with those guidelines when they were developed. When I came to the agency, I had a choice. I could either struggle to try to deal with the guidelines or treat them as exactly what they are—guidelines.

In most instances when we are dealing with or establishing the overfishing definitions in the various different fishery management plans, we have tried to agree to things like the use of SPR as a proxy for fishing mortality and to go back to the council and tell them that we also need to have a biomass estimate. We do not have the information for all the stocks to be able to do that, but we recognize the need to go ahead and manage fisheries.

So I guess that has been part of the way we have dealt with it. In recent months, with red snapper, we have a particular problem because, as Dr. Shipp has indicated, while the current harvest levels do not jeopardize the stock, they are not providing for adequate recovery. At the same time, we know that the stock is recovering.

Bill and I have talked about this a lot. We probably need to sit down with both the council and with the States that are involved and pull in technical staff and see how to deal with this pragmatically. The important thing is that the stocks are coming back and we continue to see progress.

Senator SNOWE. As I mentioned earlier, Senator Breaux and I have initiated a GAO investigation into the two standards, National Standard 2 and National Standard 8, one in science and one on the socioeconomic impacts. We have reached this point because of the level of frustration among all of our constituencies with re-

spect to these two particular issues and the agency's failure to enforce those two standards.

I do believe that the agency plays a very key role in advancing this issue and making sure that we do not put the cart before the horse when it comes to making these decisions without having the sound science to support the decisions. It is very important to the credibility of the issue, to the Act, and to everything that it represents.

I would like to hear from Mr. Roussel, Mr. Simpson and Dr. Shipp. What do you think we ought to do in this Act to ensure that the agencies get the best science possible for these decisions?

Mr. ROUSSEL. Madam Chair, I might make a comment. And it is going to get a little bit philosophical, but I think it may provide a framework to go forward in a positive fashion. One of the things that I think has happened recently with fisheries is we have relied on what is the true weakness of science and not actually focused our attention on what are the strengths of science. The strengths of science are understanding what has happened. The weakness of science is trying to predict the future. When you deal with complex systems, it is very difficult to predict the future.

I think the management structure that exists now, which is shooting for biomass targets and things that require prediction from models, which we cannot verify, has really focused all of our energy in the wrong direction. I think what we should do is take a step back and go to an adaptive management program, where you rely on observations of what has happened to drive your decisions for the next step.

Senator SNOWE. Do you think we should be funding observer programs?

Mr. ROUSSEL. I think data collection from the fisheries is a very vital component. When I talked about GulfFIN, it has a fishery dependent component. In fact, that is basically what it is, by and large. Observer coverage is really a small aspect, I guess, of the point I am trying to make.

I think if we learn by making observations and make incremental decisions based on what we know happened, that is a more prudent approach than what we seem to be taking now, which is predicting a projected target and trying to get there.

Senator SNOWE. Has it been your experience that the information that is used to make these decisions has not been up to date? I hear that a lot from my fishermen—that the information is not up to date. Generally, it is a year old or two years old. That is why observer programs, for example, are one good way to get the most up to date information available.

Mr. ROUSSEL. Well, one thing that is hard sometimes for lay people to understand is that the rigors of scientific study require that there be some constraints on how those data are collected. And that automatically interjects a lag in the information available. I am not sure there is a reasonable way to address that. But I do think, with technology advances that are made now, that process should be accelerated.

You may have situations where data collected on board a vessel can be transmitted almost instantly back to shore to be used. So there are some opportunities to do that. But we must recognize

that, at least from the scientific perspective, there are some rigors and some standards that you have to meet for it to qualify, basically, as scientific information. And that does create some lag.

Senator SNOWE. Mr. Simpson.

Mr. SIMPSON. Basically, going back to your broader question, Madam Chairman, I think the framework is basically there. I think the outline to get what you want exists within programs and laws and so forth. I think what has been lacking to some degree is involving the States a little bit more intimately in that cooperative data collection. And I think we are making some good strides toward that.

Going back to your comment about the timeliness and old data and so forth, I am not sure that the best interests of society, fisheries, and fishermen are served by having a complete census, real time, of all data. Weyerhauser does not go in and count every tree when they buy a tract of land, but they have some sophisticated sampling techniques that let them know how much money is going to come out of that general area.

So it is not necessary to burden, I think, everybody with a complete census. It is just a matter of emphasis and common sense, and some of the things that Mr. Roussell was mentioning, that needs to be addressed.

Senator SNOWE. And also confidence in the techniques that are used, whatever they may be?

Mr. SIMPSON. True. I am not going to get into the modelling. I will leave that to Dr. Shipp. That is specialized. I do not think it is a science but somewhat of an art, but that is a little beyond me.

Senator SNOWE. Dr. Shipp.

Dr. SHIPP. Thank you, Senator Snowe.

I agree totally with John on the adaptive management approach and what has happened in the past. I also want to suggest that we should set our goals more short term rather than long term. Bill Hogarth and I have talked about this.

I would like to make an analogy. Down here on the coast, as Senator Breaux knows, we live through a horrendous hurricane season every year. And when those tropical depressions form off the coast of Africa, you can get a model to tell you where it might hit in 14 days. And their data are really a lot better than the fisheries data. But you do not respond 14 days ahead. You wait till it is two or three or four days ahead to start making your plans. And I think that analogy holds with fisheries. It is ridiculous and absurd to look to the year 2033 and try to make projections out there.

The last point is that the dynamics of this snapper fishery, as well as many others, are changing radically. I brought with me the 1885 report to the Commissioner of Fisheries. And in that report, a year and a half was spent in the Western Gulf, looking for red snapper stocks. There were none there.

What has happened is the habitat change has been immense, due to the rigs to reefs program. The structure that has been put down, and now half the fishery is in the Western Gulf. And those sorts of information sources are really not being utilized to the full extent. So I really agree with John that adaptive management is the way to go.

Senator SNOWE. How do industry sponsored stock assessments work into the council process? I know one was done with respect to the red snapper, which contravened the assessment of the National Marine Fisheries Service. So how does that work? Can it fit into the process, or is it suspect and viewed as biased?

Dr. SHIPP. Well, it is a little bit suspect, but a number of years ago there was some independent analysis done on the stock assessment process. And, in general, people agreed with the theories behind it. And even, I think, the industry stock assessments do not disagree with the theories. It is really the lack of baseline data.

I mentioned the stock recruit relationship. And, put simply, that produces a graph that goes straight up. No one knows where that graph starts to bend over, where the stocks reach a maximum biomass—there are just no data for that. And the industry models as well as the NMFS models are pretty much in agreement—an agreement that they do not know where they go. They do not know, into the future, what is going to happen.

Senator SNOWE. Senator Breaux.

Senator BREAUX. Thank you, Madam Chair. And I thank the panel for their testimony. And I appreciate you all being here.

Ms. Dalton, I was extremely, deeply disappointed in the National Marine Fisheries Service's announcement yesterday of the proposed rulemaking to close areas of the Atlantic and Gulf to longlining. Not because of what you announced, but because it is right in the middle of an effort by Senator Snowe, myself and a significant bipartisan majority of our committee to have legislation, which has already been introduced, to close 180,000 square miles of these areas through a balanced buyback program with the longline industry, and in cooperation with many of the recreational industries. This legislative proposal attempts to achieve a result which I think would be extremely effective, much more effective than the NMFS rulemaking. And your agency issued its proposal without letting us know about this, and that is just unacceptable. I mean that is just not the way we do business, and I am deeply disappointed.

Number one, I do not think that your proposed regulations included any economic assessment of the industry, judging from this one-page announcement. Your closed areas will have a very severe economic impact on small businessmen. I do not think that you are going to be able to come anywhere close to achieving this type of a closure with your regulatory proposal once you consider, eventually, the economic impact. It is going to be dramatically reduced. It is going to be much less effective than our legislation.

So, having said all those nice things about it, why the heck did you all do it?

Ms. DALTON. Basically, again, litigation is driving it. I apologize for the communication.

Senator BREAUX. No, the lack of communication.

Ms. DALTON. The lack of communication on this. There certainly was no intent to keep the court order secret.

Senator BREAUX. Well, how did that happen? Let us be perfectly clear.

Ms. DALTON. I honestly do not know.

Senator BREAUX. You are the agency, you are right there in the same city I am. Senator Snowe is Chairman of this Subcommittee. We were working with your people on legislation, and I thought in good faith. We brought in recreational fishermen, sat down with longliners, discussed a buyback program, wrote the bill, introduced it. You all know that. And then, last night, we get a fax, saying you all pulled the rug out from everybody. What happened?

Ms. DALTON. Well, we have done briefings on the Hill.

Senator BREAUX. You did briefings on this announcement on the Hill?

Ms. DALTON. Yes.

Senator BREAUX. With whom?

Ms. DALTON. Last week, with most of the folks in back of you.

Senator SNOWE. May I just interrupt here?

These groups that John was referring to were working in a good faith effort—the agency included. Nobody was informed. It is after the fact. You proposed the rule yesterday, did you not, or last night?

Senator BREAUX. Last night.

Ms. DALTON. Well, the rule has been under development.

Senator SNOWE. But the point is your agency was working in consultation and concurrently with those groups.

Ms. DALTON. Well, we were not involved in drafting the legislation. We provided analyses early on to support some of those proposed areas initially.

And again, this HMS community is not a very large community. Certainly everyone in the community knew about the lawsuit. I quite honestly thought that most of the industry members knew about the court order. I was clearly wrong. And we clearly should have communicated it to you. And for that, I apologize.

Senator SNOWE. Let me just add one more thing. My staff was just telling me that the briefing occurred two months after the agency entered into the agreement, one week before the rule was published.

Ms. DALTON. When I realized that the folks on the Hill did not know that we had to do it, I scheduled a briefing for the next day. I know that this has been a problem, and we will try not to let it happen again.

At this point, I do not disagree with you on the economic impact assessment. The other thing is, when you look at the proposal, it is really interesting—closing a huge area doesn't necessarily get you the reductions that you want in bycatches of billfish. In particular, if you close some areas, the proposal that we came up with will do a good job at reducing the bycatch of small swordfish and bluefin tuna. It does not do a very good job of reducing the bycatch of billfish. You do get some reductions in sailfish, but not in blue and white marlin.

So it is out there now as a beginning because, you are right, we have no way to deal with the fishermen who fish in those areas. If they go to other places, which we have to assume that they will, then their bycatch of those species increases.

So we need to work over the comment period to try to refine these analyses. When we reduce the closed area, we actually reduced bycatch in some of the species. We had to look at other fac-

tors like the turtle bycatch, which also is affected whenever you displace this fleet, and marine mammals, which probably is not as much of a problem.

We did do economic analysis on it. We prepared an initial regulatory flexibility analysis. We will continue to refine that in the public comment period. So this was not intended to fly in the face of your legislative proposal. It was an agreement that we reached in order to stay the suit from moving forward. We were sued by environmental groups to implement bycatch reduction measures that we had already announced were necessary. And with our attorneys we determined this to be the best way to move forward with this. Again, I apologize for catching you off guard.

Senator BREAUX. There are two things here. Number one, I did not like the way it was handled. And we have discussed that. Number two, I do not like the substance of what you have done, because it is not going to stand up. When you said an economic study, have you done an economic study on the impact on the tuna industry? And what is the extent of it?

Ms. DALTON. Our initial economic analysis suggests that there will be significant economic impacts on the industry.

Senator BREAUX. And how do you balance that with Section 8 of the Act?

Ms. DALTON. This is a proposed rule, and we have to do public hearings. We will hear from the public.

Senator BREAUX. Were the rule and your preliminary analysis not totally inconsistent? I mean can you not tell me it is going to have major economic impacts on an industry? That is one of the things you have to balance in making a proposal. Your proposal does not do that. Does it have a buyback proposal in it?

Ms. DALTON. No.

Senator BREAUX. Does it reflect discussions with the tuna industry on this issue?

Ms. DALTON. Most of the discussions that we have had have been in recent days.

Senator BREAUX. I am sorry?

Ms. DALTON. Most of the discussions we have had have been recently.

Senator BREAUX. Were you in discussions with them before the proposal?

Ms. DALTON. They were in discussions. There was a lot of analysis done out of the Southeast region to provide some of the information.

Senator BREAUX. Who did you meet with in discussions before the proposed rule was made in the industry?

Ms. DALTON. Who were the discussions with? Some of the data analysis was done by the center.

Senator BREAUX. There were no discussions with the industry, right?

Ms. DALTON. On this proposed rule? No. We discussed the legislation.

Senator BREAUX. Were there discussions with the people who filed suit against you?

Ms. DALTON. Outside of the settlement discussions with the attorneys, no.

Senator BREAUX. Outside of the settlement discussions, no. But how about in keeping with the settlement discussions, did the lawyers for them, or the people who filed suit, discuss the proposed regulations?

Ms. DALTON. Not the content of it. The only discussions we had were in the context of reaching a stay on the suit.

Senator BREAUX. Well, what you were doing then, you were negotiating with the people who filed suit against you, and left out the people who are mostly affected by the decision to close the industry.

Ms. DALTON. But in the context of the proposed rule, the only discussions with them were on the timing of when we would come up with a proposed rule and when we would finalize that rule. We had already announced we would do a rulemaking. The content of the proposed rule was not discussed with them. The only part of it that was discussed was from the standpoint that it would address bycatch issues. That was the only thing.

Senator BREAUX. Well, I just think this is unacceptable. I think it is a bad procedure. I do not like the proposal because it is not going to work. It is not going to stand up to National Standard 8 of the Act, when it talks about the economic impact on the industry. What Senator Snowe and I tried to do was to reach an agreement legislatively that had an effective closure of 180,000 square miles of area, from longlining, but also address the needs of the industry for a buyback provision. That is by far a better and more sound way of handling this problem.

And I hope that Senator Snowe and others who have sponsored the legislation agree that that type of an approach is a far better approach than what you have initially suggested.

Ms. DALTON. I do not think that we disagree with you that the approach is a good one. And I think we tried, in the Federal Register notice, to acknowledge that approach and to say that we support those objectives. The bill also does some things, particularly in the Gulf area, that deal with gear conflicts that were outside of our ability to address. The analysis was based on bycatch and it did not deal with some of the gear conflict issues.

So the area in the Gulf is more different than the area in the South Atlantic in terms of the area that is closed. That is partly because you have more flexibility in what you took into consideration.

Senator BREAUX. Well, I predict that you will hear more on this issue legislatively.

Dr. HOGARTH. Senator, may I add just one thing? Back in I think it was January, this rule was handled by the highly migratory species division, which is done at headquarters. The regions do not have any authority over highly migratory species. It is handled by the Secretary through a division in Silver Spring, MD.

Back in I think it was January, when they put out the highly migratory species rule, it was a comprehensive rule. I think that was abandoned by the highly migratory group, because the comments suggested that the closed area was too small and did not do much good. Industry does have a part in the highly migratory rulemaking process; they did have an advisory panel, which they did discuss closures with, but I am not sure if it covered this detail.

We got involved, at Penny's request, to look at some of the science, looking at a more refined area, and we looked at the data and tried to help with that process. But I just wanted to be clear to you that this is not a regional issue, but there are two different mechanisms for domestic fisheries and highly migratory species.

Senator BREAUX. What I hear you saying is you did not do it.

[Laughter.]

Senator BREAUX. I got that in your first sentence.

Dr. HOGARTH. But it was a process that the highly migratory division went through to get comments. It was over different types of proposals. It was not, I do not think, something out of the clear blue or something that had been going on. But then the lawsuit put it in a timeframe that it had to be in the Federal Register by December 15th.

Senator BREAUX. Dr. Shipp, let me turn to another subject which is equally as important. Bad science or no science produces bad results. I think that is what we all can agree on. If we do not have good scientific information on what stock conditions are, you are going to end up with bad rules and bad regulations. In a lot of these areas, we have almost no science or some of the science is not good science. And the red snapper issue seems to be one that you mentioned and others have mentioned—the Texas Shrimp Association Executive Director, Wilma Anderson, talks about it extensively.

I was really interested in your concise testimony. You say, depending on which model one employs, the biomass needed to support the maximum sustainable yield is from 2 billion to 4 billion pounds, and the annual maximum sustainable yield on red snapper is well over 100 million pounds. But never in history have we ever approached even one-fifth of that amount.

It seems to me that anybody just reading that, it does not seem like it makes a lot of sense. We are looking at a maximum sustainable yield that is one-fifth of the amount we have ever produced. How can we make management decisions based on that?

Dr. SHIPP. Well, that is the box that the council has been put in by the projection models. The simulation models that are used are really probably only good for 2 or 3 years. And even the modelers will tell you that. But you can run them out as far into the future as you want, and the law requires that we do that.

And going back to your original statement about science, using this term "best available science" is a trap. I think inadequate science is worse than no science at all, because it forces you to make decisions that are bad decisions, just as you said. And this is a perfect example. Common sense tells you that if a virgin stock could not support one-fifth of this projected maximum sustainable yield, something is wrong with the science.

Senator BREAUX. Are you telling me that the decisions on the utilization of bycatch reduction devices, the BRDs, and the quota allocations on red snapper are, in your opinion, based on science that produces an MSY of well over 100 million pounds, and which is less than one-fifth of what we have ever caught in any one period?

Dr. SHIPP. I am not sure I totally understood your question. But if you are asking me, do I think the bycatch reduction devices are necessary——

Senator BREAUX. No, I am not asking that. Assuming that in order to reduce bycatch, we use these devices, and in order to save red snapper or produce more, we use those devices, and we also use quota allocations.

Dr. SHIPP. Right.

Senator BREAUX. Those are the two things we are doing. We say to fishermen, do not catch any more than 6 million pounds or 9 million pounds, and tell them to use BRDs on shrimp boats at the same time to reduce bycatch. But we make decisions to use those two mechanisms based on a number from a model that looks like it is out of whack.

Dr. SHIPP. That is correct. That is exactly correct. Not only that, but the council has defied the recommendations coming from those models because if the council had done what those models insisted needed to be done in 1990, we would have essentially closed the fishery back then. In 1990, they said that if we did not get the 60 percent reduction in bycatch and did not cut the quota to 2 million pounds, the stocks were going to collapse in five years. And the council, more or less, defied that, used a little wiggle room, a little common sense.

Now, instead of that 2 million pound quota, we have a 10 million pound, the bycatch reduction, along with the TED reductions that have accounted for far less bycatch reduction than was required in those models, and still the stocks continue to improve.

Senator BREAUX. You are right, there is a breakdown here. Is it because of the Act, the way it is structured? Is it because of the National Marine Fisheries Service guidelines? What is the problem?

Dr. SHIPP. It goes back to your original comment about inadequate science, good science, bad science. The science is inadequate. It is not necessarily bad. It is the only thing we have. When the Act requires that we project 30 years into the future—and that is basically what the Act says—and we do not have the science to do that, and we have only these models which defy all common sense and reason, but that is the only thing we have and that is what the lawyers tell us we have to use.

Senator BREAUX. Well, what can Senator Snowe and I do? If you were here where we are and you wanted to do something legislatively that would help address this problem of junk in and junk out, and concerns that bad science or no science produces bad results? What, if anything, could you do with your pen if you were in our place?

Dr. SHIPP. What I would do is set shorter-term goals, which is a euphemism for adaptive science. Let us implement these reasonable rules for three to five years. And then do a stock assessment and see where we are going. Rather than be constrained by a 30-year projection. That is what we should do.

Senator BREAUX. We operate under these 30-year timetables in the Federal Government. I tell you, it is a joke to project what the deficit or the surplus is going to be 30 years from now, or what Medicare is going to look like in the year 2035. Everybody who makes these sorts of estimates says that these are just taken from out of the blue, you know, pick a number.

Dr. SHIPP. But the estimates in this case impose regulations and impose limits on what we can do. That is the problem with it. We are bound by them.

Senator BREAUX. I think that is a very helpful suggestion.

I thank you, Madam Chair.

Senator SNOWE. I think it is an important issue that we have to figure out how to address. It seems to be a universal opinion, if there is anything universal in the fishing industry, that we need to do something on the science question to give it credibility. Where do you base it on the 30-year projections?

Dr. SHIPP. The way the legislation is written, it has to do with how long the maturity age of the species is, or generation times. Unfortunately, red snapper lives 52 years at least. And therefore the generation time is a long, long time.

Senator SNOWE. Ms. Dalton, let's go back to the original issue—which goes to the heart of a number of the problems that we are facing, not only in the implementation of the Act, but also the intent—of building trust and credibility between an agency, Congress, and more importantly, the people who have to live by the rules, regulations, and legislation.

For example, the fact that the agency failed to notify an important segment, on an issue that has been an unprecedented agreement between commercial and recreational fishermen to accept closures in an area, is really remarkable. To not consult, or even inform, the relevant industries is a betrayal of trust between an agency and the people who it affects most directly.

To be honest with you, I think the agency is driven by lawsuits. I know the agency has more than 100 lawsuits, and I am beginning to think the agency needs new lawyers. I will not get into all of the other issues and areas that we have had to deal with because of lawsuits.

There is no justification for not informing groups who were equally, if not more, affected by the decision and the agreement that you entered into. You keep saying there is a proposed rule, but you also entered into an agreement to publish a final rule by May 1st. So I do not want any rationalization here. And I think it is really unfortunate, because we are facing this time and time again with the agency. And it is all driven by these lawsuits.

The people who file lawsuits almost immediately supersede any other interest, which is what has happened here. It is not right and it is not fair.

Senator Breaux mentioned a very important issue—the buyout. This rule has the ability to undercut this legislation. That is the problem we are facing now. A buyout is important, we had to do that for the New England groundfish fishery. We had to make that commitment. There will be a significant economic impact on those fishermen who fish in the areas that are now going to be closed to the fisheries, without question.

So even though you cannot provide a buy-out in the rulemaking process, what you have done by entering this legal agreement is obviate the need for the buy-out. We are going to face the question of is the legislation necessary now. It is going to make our job extremely difficult. But it is the credibility and trust that concerns me more.

It is similar to disparate assessments. I realize people do not agree on the facts, but the fact is that the agency has not been behind its mission to get the facts and the best science. That is why we have had to order a GAO investigation into National Standards 2 and 8, on the science and the socioeconomic impacts. You say you are going to make those a high priority, but they simply have not been a priority for this agency. That is the problem we are facing.

Our job is to restore credibility. We have problems with this Act and we have to deal with them. But if you have got an agency that just keeps making decisions based on how to best defend lawsuits, then we have got some serious problems on our hands.

I have just one other area that I would like to explore, and then I have a number of other questions which I will submit. Some nonfishing entities have referred to the essential fish habitat consultation process as bureaucratic blackmail.

Now, I would like to know how the process works. I know that NMFS does consult with other agencies. But what has ultimately occurred, from what I understand, is that there have been complaints of potential delays in the permitting process as a result of this consultation requirement.

How do you think that NMFS should work to improve this process, so we do not have unnecessary delays, and so we have the appropriate consultation? Are you monitoring the time it takes to approve applications during the process of these procedures?

Ms. DALTON. We have other requirements under other laws, again, to assess the impacts on the environment. So we are trying to piggyback the EFH consultations on those existing requirements, for things like the Clean Water Act, and other statutes.

To date, we have done 2,500 consultations. Most of them have gone without noticeable complaints, at least not ones that have gotten back to my office. And we think that the process is going fairly well. One of the things that we are going to be trying to do is "one-stop shopping"—we have done a pilot program in California.

One-stop shopping would entail combining all of the permitting processes for activities that are going on in things like the marine sanctuaries with EFH consultations to try to bring them together so that it is not a painful process for the Federal agencies that are required to consult with us.

Senator SNOWE. Dr. Shipp, Mr. Simpson, Mr. Roussel, do you care to comment on this process, what could be done to improve it?

Dr. SHIPP. Your concerns are speed. And I think giving voice to the fish may necessitate giving a little more consideration. I appreciate the expedited views and so forth, but in the past the fish had not had a voice.

Senator SNOWE. And the fish are what this Act is all about. But the question is about balance. Do you think it is balanced now?

Dr. SHIPP. EFH?

Senator SNOWE. Yes.

Dr. SHIPP. Pretty much.

Mr. SIMPSON. I would agree.

Mr. ROUSSEL. I would agree. I am not aware of any specific delays. I have heard some people express concerns about delays, but actually seeing specific delays, I am not aware of them. Now, that does not mean that it does not exist. My agency is not actively

involved in that process, and that is why, in my testimony, I suggested that we try as much as possible to use existing review procedures and consultation procedures and not duplicate those procedures.

Senator SNOWE. And one other area I would like to discuss is habitat information. Now, I understand that in 26 of the 40 species that went before the Gulf Council, information was available but the NMFS was still in the process of getting more information on the remainder of the species. Is that correct?

Dr. SHIPP. I would have to defer to Dr. Hogarth, because I do not know.

Dr. HOGARTH. I am not sure I understood the question.

Senator SNOWE. As I understand it, when the Gulf Council submitted their amendment to NMFS, habitat information from NMFS was only available for 26 of the 40 species, so it was partially approved.

Dr. HOGARTH. Right.

Senator SNOWE. I understand that NMFS is now in the process of doing more research on the remaining species. Is that correct?

Dr. HOGARTH. That is correct. We are trying to get enough information.

Senator SNOWE. So what is the time line for that?

Dr. HOGARTH. Senator, I do not know. I can get that to you. But I am not aware, because we are working on several issues for the council.

Senator SNOWE. I see. Do you folks put a time line on getting that information?

Dr. HOGARTH. We usually try to give the council a deadline so that they can actually have a council meeting to work down the MSY and biomass. I am not sure of the timeframe, but we can submit that to you.

[The witness did not provide the information.]

Senator SNOWE. OK. Senator Breaux.

Senator BREAUX. I just have one other question for Mr. Roussel, our witness from Louisiana. I mentioned this issue to Senator Snowe. You said that the States in the Gulf receive no Federal funding for enforcement operations of the Federal Act. You also mentioned the Coast Guard receives up to $25 million for enforcement and only do about 30 percent of the cases. I am not knocking the Coast Guard, because their priorities are in a lot of other things, search and rescue, and they do a terrific, wonderful job in pollution control and everything else.

We only have about 10 to 12 Federal agents that are having an impact on the Gulf. We do a lot of work out there. How many people do we have from just our one State in the Gulf participating in enforcement activities and enforcing the Federal Act?

Mr. ROUSSEL. Senator Breaux, I could not quote you exact numbers. I can just tell you that it is dozens and dozens of people in strictly the coastal area that engage in those activities. I can mention this, that in Louisiana, our enforcement agents make 30,000 contacts with commercial fishermen per year, and 32,000 contacts, that is face-to-face contacts, with recreational fishermen.

Senator BREAUX. Is that dealing with the Magnuson-Stevens Act?

Mr. ROUSSEL. That is dealing with fisheries types of situations.

Senator BREAUX. And we get no compensation, the States do not get any compensation for the law enforcement activities under the Magnuson-Stevens Act?

Mr. ROUSSEL. No compensation whatsoever. There is no reason for a separation or division between Magnuson and State fisheries management and enforcement, because fishermen participate in both of those fisheries basically simultaneously. We feel like the State enforcement programs' presence in the field, their infrastructure and their organization, creates a tremendous springboard to get some efficient enforcement of Federal regulations.

Senator BREAUX. Do your agents do anything outside the 3 mile state waters boundary or do you wait until they come in?

Mr. ROUSSEL. Most of the enforcement activities are within the 3 miles. We do occasionally venture outside of the 3 miles. But recognize that a lot of the enforcement activities can be done dockside and can be done when those participants are returning back to dock.

Senator BREAUX. Well, there may be something we can look at in that area.

Thank you very much.

Senator SNOWE. Thank you.

One further question I want to explore, because it is one of the issues in this reauthorization, is the moratorium on ITQs which expires next October. Dr. Shipp.

Dr. SHIPP. I have very strong feelings that the ITQ is the way to go, certainly with the red snapper, the grouper, and the mackerel fishery in the Gulf. And I will just comment that I was on the council when we developed the ITQ system. The process began, and I would say probably 70 to 80 percent of the commercial fishermen were opposed to it. By the time the hearings process was over, they were almost all in favor of it, once they learned about it. In fact, for health and safety, it is almost a dire necessity that we do that.

Senator SNOWE: Mr. Roussel.

Mr. ROUSSEL. My only comment, Senator, is I do not support the prohibition on considering ITQs. I may not share Dr. Shipp's views that that is the way to go, but I think it should have full study and debate. The situation now is just that the Gulf Council is basically prohibited from even considering it.

Senator SNOWE. So it should be an option available to the councils?

Mr. ROUSSEL. Correct.

Dr. SHIPP. Yes.

Mr. ROUSSEL. I am a believer in preserving all of your options.

[Laughter.]

Senator SNOWE. Thank you. Yes, I think we could identify with that.

Thank you all very much, I appreciate it.

We will now proceed with our second panel of distinguished witnesses. Our first will be Ms. Wilma Anderson. Ms. Anderson is the Executive Director of the Texas Shrimp Association. Mr. Myron Fischer operates a charter boat and is a Louisiana member of the Gulf Council. We will hear from Mr. Wayne Werner, who is a commercial fishermen and also serves on the council's advisory panel.

And Mr. Pete Emerson, of the Environmental Defense Fund, who will be the final witness of the panel.

May we have some order, please.

We would like to limit your testimony to five minutes so that we can ask you questions. We will start with Ms. Anderson.

STATEMENT OF WILMA ANDERSON, EXECUTIVE DIRECTOR, TEXAS SHRIMP ASSOCIATION

Ms. ANDERSON. Thank you, Senator.

I am Wilma Anderson, Executive Director of the Texas Shrimp Association. And we are based out of Aransas, Texas. We have approximately 963 offshore trawlers, that is the big vessels, that is our membership, and about 38 of the shore-side facilities. Our membership does consist of boats throughout the Gulf of Mexico, mainly Texas-based boats though.

I think it is great that you all are here to let us all tell you what we think about what is going on with fisheries. There are going to be pros and cons. Generally speaking, for shrimp, shrimp is in a very healthy state. And that is generally a result of the management practices that have been implemented to manage it. Unlike other fisheries, because shrimps have productivity, there is no great threat to overfishing. And the greatest threat to shrimp reproduction is loss of habitat in development, pollution and subsidence.

TSA has long been an advocate for protecting the essential fish habitat for shrimp in Texas bays and the estuaries where our shrimp live. Despite the loss of approximately 9,800 square kilometers of the offshore shrimp fishery of trawlable bottom to a large dead zone, oil and gas platforms, bottom obstructions, natural and artificial reefs, sanctuaries and closed areas, the industry has viewed these adverse effects on our fishery, per se, as protected habitat and refuge areas from the various trawl fisheries for a large fraction of juvenile red snapper and other valuable species.

TSA has advocated enhancement programs for these areas of lost trawlable bottom as a more practical alternative to BRDs. We believe that the loss of these areas has and will continue to be a significant mitigation to bycatch reduction, a measure which the Gulf Council and NMFS have refused to recognize.

Economic Data: NMFS and the Gulf Council are really in the dark age of economics and have no concept of the economic value or how regulatory impacts affect the fisheries they manage. As an example, over the debate of the BRDs, researchers for the Gulf Council and NMFS stated that the profit margin of shrimp vessels was 51 percent, and therefore the industry could absorb the 7 to 10 percent shrimp loss caused by BRDs without difficulty.

First of all, we could not conceive that any business in the United States was operating on a 51 percent profit margin. When we filed data during the rulemaking process to correct this erroneous conclusion, NMFS refused to consider it because it was not presented to the council first. This response was ridiculous because the council had already approved the amendment on the 51 percent profit margin and had forwarded it to the NMFS for rulemaking.

Cumulative regulatory effects must be a part of the rulemaking process. This has become a high priority for all of the fisheries. For

the shrimp industry, cumulative impact is a major concern of the shrimp fishery because shrimp have but one-year life cycles. If not harvested within that timeframe, the resource and revenue is non-recoverable, creating a loss to the fishery and the Nation.

Cumulative regulatory impacts on the shrimp fishery, from turtle excluder devices and bycatch reduction devices, have reduced the profit margin of the typical shrimp vessel to about 3 to 5 percent of its gross income. Under cumulative regulations, the shrimp industry incurs yearly approximately 33 percent of a non-recoverable benefit of a consumable resource in revenue.

Peer-reviewed science or political science? We are kind of lost on that subject. Congress mandated that bycatch in marine fisheries be minimized to the extent practicable. In the early 1990's, it was stated that the red snapper population was severely overfished, and the primary cause for the decline was the directed fishery. It was then determined that the inadvertently caught red snapper in shrimp trawls must reduce bycatch mortality of age 0 and age 1 juvenile red snapper by 60 percent to assist in the recovery program and to avoid a shutdown of the directed fishery. Bycatch reduction devices became the focus and the shrimp fishery became the scapegoat.

To what extent do shrimp vessels inadvertently catch juvenile red snapper in areas of the Gulf? Shrimp trawl bycatch characterization studies revealed that red snapper represented .005 percent of the bycatch, a hairline crack on a graph. Bycatch studies revealed croaker and long spine porgy still dominate the shrimp trawl bycatch following two decades of fishing.

Our consultant prepared and submitted the following analysis and peer-reviewed reports to the Gulf Council and NMFS for consideration when the bycatch issue was coming down and debated. Our analysis revealed significant flaws in the manner in which NMFS estimated the impact and size of shrimp trawl bycatch. It was overestimated.

The calculation of the effectiveness of BRDs was over-exaggerated. The reduction in mortality by BRDs would be approximately 25 to 28 percent. The red snapper stock calculation, a biological estimate of the resiliency of the fishery, was wrong.

Overfishing objectives for the red snapper management plan, expressed either as OY or MSY, requires that the stocks should grow from the current level of about 30 million pounds to between 3 billion to 4 billion pounds.

There is no biological evidence that the red snapper fishery was ever this large. And we doubt, as we issued this statement to NMFS, that any credible scientist would be willing to stake his or her reputation that it could grow to this size or that the ecology of the Gulf could sustain such a stock biomass. Nonetheless, this stock objective, expressed as 20 to 26 percent SPR, is the legal mandate for this fishery.

In the early 1990's, when BRDs were being examined in laboratory conditions, NMFS decided that the red snapper population was growing, even without bycatch reduction. The council and NMFS continued to increase the TAC, from 4 to 9.12 million pounds, to meet the needs of the ever-increasing directed red snapper fishery.

Recently, the Gulf Council recommended, and it appears NMFS will support, a 9.12 million pound TAC for the year 2000, even though the stock assessment panel of scientists that serve the council recently advised that the annual quota should be set at no more than 6 million pounds and, under one scenario, at zero quota, for the next 30 years, in order to allow the stocks to achieve the specified MSY/OY.

If the 9.12 million pound TAC recommended for the year 2000 is not reduced to 6 million pounds, we, as an industry that is highly affected by this, plan to file suit challenging this conservation failure. It is wrong for the Gulf Council and NMFS to decide if the red snapper population is so depleted that the ineffective BRDs must remain a mandate at great expense to the shrimp fishery, but the directed red snapper fishery should not be curtailed to lessen their economic impact.

A mandate for ineffective BRDs has made the shrimp fishery a strong advocate for bringing the red snapper population to the point that it is no longer overfished. And we demand that responsible parties for the overfished state, the directed red snapper fishery, must be curtailed and equally share in the recovery program.

At this point, we have completely lost confidence in the ability of the Federal fishery management process to operate in a manner consistent with sound science and accurate information on a fair and equitable basis. The shrimp fishery is going to be subject to more bycatch restrictions and further mandatory actions, because BRDs are not meeting the mandate of what they have required. NMFS now advises the council that they must aggressively consider other means to achieve bycatch reduction in addition to BRDs, extending BRD coverage, bycatch quotas, closing areas and seasons.

For many years, the shrimp fishery has voluntarily carried observers and cooperated in data collection programs, economics, shrimp fishing effort, bycatch data, and gear technology. Now the council and NMFS are discussing making all of this mandatory, and the shrimp industry probably has the greatest data base of any fishery in the United States today.

We view what the council and NMFS are discussing as mandatory observers, logbooks for more data collection, vessel permits, operator permits, and a vessel monitoring system to enable tougher enforcement action against the shrimp fleet simply to be used in a sanctioning manner. This we highly disagree with.

We have had some bad experiences by being big cooperators, taking observers on board, but we now are facing an observer who has filed suit against one of our boats for a $950,000 settlement. Under essential fish habitat, because shrimp are highly dependent on the quality of our coastal environment, we supported changes to the Magnuson-Stevens Act that would improve protection of essential fish habitat. Unfortunately, the essential fish habitat program has been spun totally out of control.

Again, the major focus in the Gulf of Mexico is shrimp trawl damage to essential fish habitat. We have totally lost in this concept the loss of 9,800 square kilometers of trawlable bottom, and the fact that shrimp trawlers do not trawl beyond the 40 fathom contour voids the myth of such clear cutting of the Gulf floor.

Thank you for allowing me to testify. I would be happy to answer any questions.

[The prepared statement of Ms. Anderson follows:]

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

Madam Chairman and Members of the Committee:

My name is Wilma Anderson and I am the Executive Director of the Texas Shrimp Association ("TSA"). The membership of TSA is comprised of owners of approximately 963 offshore shrimp trawling vessels which operate throughout the Gulf of Mexico, and 38 associate member shoreside facilities, i.e., unloading plants, fuel and ice docks, processing plants, suppliers, repair and maintenance services, shipyard, propulsion equipment sales and service, lenders, grocery chains, etc. Consequently, the shrimp vessels and shoreside facilities in the Gulf of Mexico qualifies as small businesses subject to the protection afforded such businesses under the Regulatory Flexibility Act ("RFA"), as amended in 1996 by the Small Business Regulatory Enforcement and Fairness Act.

The most recent report available about the fishery is a 1989 report by Kearney/Centaur, under contract with the National Fisheries Education and Research Foundation, a report estimating that the Gulf shrimp industry generated direct annual impacts amounting to $2.95 billion in sales, resulting in $1.41 billion in income and supported 162,520 jobs. When both direct and indirect effects are taken into account, economic activities were estimated to be $5.21 billion in sales, $2.05 billion in income, and 189,653 jobs. The industry is especially important to small coastal communities as a source of employment, a generator of dependent support and supply business activity, and as a major contributor to the economic base of fishing port municipalities.

I wish to thank the Subcommittee for the opportunity to testify today on the implementation of the Magnuson-Stevens Fishery Conservation and Management Act. Perhaps no other segment of the American commercial fishing industry has felt the changes brought about by the 1996 Amendments to that Act as the Gulf of Mexico shrimp fleet. Based on our experience, we believe that we are in a unique position to offer meaningful criticism of just how well the marine fishery management process is working or is not working.

In summary, we have completely lost confidence in the ability of the federal fishery management process to operate fairly and in a manner consistent with sound science and accurate information. Based on our experience in the debate over whether bycatch reduction devices ("BRDs") are "practicable" for the protection of juvenile red snapper, TSA has found that the Gulf of Mexico Fishery Management Council ("GMFMC") and the National Marine Fisheries Service ("NMFS") (1) are unwilling to listen to any honest argument as to the need for BRDs, (2) are not committed to using the best scientific information available if it interferes with a preordained conclusion, (3) apply a double-standard to the management of fisheries in the Gulf of Mexico, and (4) have adopted overfishing goals that seek to increase fish stocks to levels never known in history, ignoring the environmental changes in the Gulf of Mexico ecosystem. Moreover, the Department of Commerce has allowed the fishery management process to be skewed such that the eastern Gulf now controls fishery management decisions in the Exclusive Economic Zone ("EEZ") to the disadvantage of other states, in particular the State of Texas. The decisions by the Gulf Council and NMFS have injured not only the shrimp fleet but also the recreational for-hire sector of the Texas recreational fleet.

Shrimp and Shrimp Fishing in the Gulf of Mexico

Before discussing the facts behind these experiences, let me first describe the current condition of the shrimp fisheries in the Gulf of Mexico. Shrimp are an annual crop, dependent on the environmental conditions in the bays and estuaries of the Gulf for their sustained growth. TSA has long been an advocate for protecting the essential fish habitat of shrimp in Texas. Each year, as the shrimp grow in size, they move out from the internal waters to the Gulf of Mexico. To prevent growth overfishing, waters in Texas and the EEZ (beach out to 200 miles) are closed to shrimping from May 15th—July 15th. This allows the shrimp to grow to a greater size and are thus more valuable when harvested. The shrimp are then harvested as long they can be caught. Unlike other fisheries, shrimp have no great threat of recruitment overfishing i.e., the overharvest of reproductive capacity. Reproduction

is dependent on environmental conditions in estuarine waters. Pollution and loss of nursery ground due to development is the greatest threat to shrimp reproduction.

Generally, as a result of current management practices, the stocks of shrimp are in relatively good health. And we also note that the condition of the marine environment in general, including birds, marine mammals, sharks, and other wildlife, appears to be quite sound at present, although we have lost considerable estaurine habitat due to developments, pollution and subsidence. Further, we have lost offshore habitat due to the very large dead zone (1800 sq kilometers) at the mouth of the Mississippi River.

The 3800 some-odd oil platforms, other bottom obstructions, natural and artificial reefs, sanctuaries and closed areas in the Gulf have rendered large areas (over 8,000 sq kilometers) of the Gulf bottom untrawlable. Despite the loss of trawlable bottom and its adverse effects on our industry, per se, we believe that these habitats are critical to maintaining healthy reef fish stocks. We further believe that these habitats have also been responsible for attracting and giving protection from the various trawl fisheries to a large fraction of the juvenile red snapper and other valuable species. TSA has advocated enhancement of these lost trawlable areas so that a larger fraction of the valuable species are afforded habitat and refuge, as a more practical alternative to BRDs. TSA also feels that the loss of trawlable areas is a significant mitigation measure by the shrimp fishery—a measure which the Gulf Council and NMFS have refused to recognize as a contribution to bycatch reduction.

It is now apparent that in the Gulf of Mexico, the Kemp's ridley sea turtle population, now listed as endangered, is on the road to recovery following a turnaround in 1985. The improvement of this sea turtle's status is a clear indication that progress has been made through substantial funding for the protection of the primary nesting beach at Rancho Nuevo, Mexico.

But in contrast, the Gulf of Mexico shrimp fishing industry, still one of the largest in the nation, has fallen on hard times. Competition from imports, cost increases, and pervasive government regulations have reduced the size and composition of the shrimp industry over the last ten years. We estimate that the offshore shrimp fishing effort today has been substantially reduced as compared to what it was in the 1980s. Furthermore, the cumulative regulatory effects have reduced the profit margin of the typical shrimp vessel to about 3-5 percent of its gross income. These numbers are based on a study of our industry being conducted by researchers at Texas A&M, using actual accounting data from our vessel owners. A few years ago during the debate over BRDs, researchers for the Gulf Council stated that the profit margin of shrimp vessels was 51 percent and therefore the industry could absorb the 7-10 percent shrimp loss caused by BRDs without difficulty. When we filed data seeking to correct this erroneous conclusion during the rulemaking process, NMFS refused to consider it because it was not presented to the Council first. It seems the agency just doesn't care.

In short, the membership of TSA feels it is under siege, a particular target of today's notion of political correctness, the desire of environmental and recreational interests to exclude commercial fishers from the nation's marine resources, and an indifferent NMFS which lacks the courage to insist upon good science and accurate information if it creates political problems. We constantly ask ourselves if this nation truly wants diversity in its economic activities or encourages many ways of life. We now see ourselves as a minority, subject to the increasing tyranny of the majority. Is the Magnuson-Stevens Act the vehicle for our industry's destruction? Is this what Congress intended in the Sustainable Fisheries Act?

Hard Science or Political Science?

Congress mandated that bycatch in marine fisheries be minimized "to the extent practicable." The first major fishery to test this issue is the red snapper fishery. Shrimp vessels inadvertently catch juvenile red snapper. To reduce this bycatch, the Gulf Council and NMFS determined that BRDs would be "practicable" if the devices could reduce age 0 and age 1 juvenile red snapper mortality by 44 percent when compared to the mortality during 1984-1989. At the time the Gulf Council and NMFS began considering BRDs in the early 1990's, it was said that the red snapper population was severely overfished. The shrimp fishery became suspicious of the data that was beginning to appear on shrimp fishing effort and shrimp trawl bycatch. At a substantial cost that was funded by the shrimp fishery, consultants were hired to review NMFS' data base.

During the debate over the status of the red snapper stocks, the actual impact of shrimp trawl bycatch, and the practicability of BRDs, we submitted scientific arguments based on the scientific work of Dr. Benny Gallaway of LGL Ecological Associates, Inc. All of Dr. Gallaway's presentations were then submitted to referreed scientific journals, were peer-reviewed and then published. Many of his analyses

found significant flaws in the manner in which NMFS estimated the impact and size of shrimp trawl bycatch (it was overestimated), in the calculation of the effectiveness of BRDs (NMFS has exaggerated their effectiveness), and the red snapper stock calculations (NMFS' biological estimate of the resiliency of the fishery was wrong). Moreover, Dr. Gallaway pointed out that the overfishing objectives for the red snapper management plan, expressed either as Optimum Yield ("OY") or Maximum Sustainable Yield ("MSY"), requires that the stocks grow from the current level of about 30 million pounds to between 3 and 4 billion pounds. Under NMFS' biological assessment, such growth is required before the red snapper stock will no longer be considered overfished.

The Subcommittee should note that there is no biological evidence that the red snapper population in the Gulf of Mexico was ever this large. We doubt that any credible scientist would be willing to stake his or her reputation that it could grow to this size or that the ecology of the Gulf of Mexico could sustain such a stock biomass. Nonetheless, this stock objective, expressed as 20 to 26 percent spawning potential ration ("SPR"), is the legal mandate for this fishery.

Despite our best efforts to contribute to this debate by improving the scientific basis for decision, the Gulf Council and NMFS have totally ignored Dr. Gallaway's peer-reviewed science. As of this date, NMFS has refused to recalibrate its computer program, which is the guiding force in the management of this fishery, to reflect Dr. Gallaway's corrections. We stand on the sideline, dumbfounded at the agency's stubborn behavior. NMFS employees have "circled the wagons" to protect a pre-ordained decision, and a promise to develop useful BRDs (with $14 million in expenditures) so that more fish could be made available for the directed fisheries.

Ironically, during the time during which BRDs were being examined in laboratory conditions, NMFS decided that the red snapper population was indeed growing, even without bycatch reduction. The agency then increased the total allowable catch of red snapper from 4 to 9.12 million pounds. The Gulf Council, dominated by recreational fishing interests, was jubilant. Then, in 1998, after mandating BRDs, NMFS conducted a study that demonstrated that BRDs are not as effective as predicted. In fact, the mortality reduction attributable to the shrimp fleet, which will suffer at least $100 million in cost to use BRDs, was only about 25-28 percent, a number that coincided almost exactly with Dr. Gallaway's prediction.

Where are we today? Today shrimp vessels must use BRDs, which are difficult to operate, cause considerable loss of shrimp ranging from 9 to 24 percent and increased fishing gear cost. NMFS has concluded that BRDs do not currently meet the required mortality reduction of 44 percent, and therefore, given this history, one would expect NMFS to be willing to abandon the BRD policy, and look for more realistic bycatch-reduction approaches. Not so. Their most recent recommendations to the Council included extending the BRD mandate to cover federal waters east of Cape San Blas, Florida. They also recommended that other actions be aggressively taken. These included things like imposing bycatch quotas and closing areas and seasons in addition to BRDs. The need to recommend these additional actions speaks to the ineffectiveness of BRDs and the fact that BRDs are a failed policy. Furthermore, it appears to be the general conclusion of the agency that BRDs, given the costs and expected benefits to the directed fisheries, do not create a net economic benefit to the Nation, but an economic loss. So much for the practicability of BRDs.

The Management Double Standard

A close investigation of the condition of the red snapper population will show that recreational fishing on the resource has been burgeoning in the eastern Gulf of Mexico. While the shrimp fleet has been declining and the commercial red snapper fleet held in check, recreational charter for-hire and private recreational fishing has expanded considerably. Between 1981 and 1998 just the charter boat sector that fishes in Federal waters has expanded from 516 to 1286 vessels. The number of charter boats only fishing state waters is unknown, but are no doubt growing in number as well.

The red snapper is a prize catch for recreational interests. Sadly, however, the resource concern that has led to BRDs and tight controls over the commercial fleet has not applied to recreational fishing. During the last ten years, the actual harvest of red snapper by the recreational fleet has regularly exceeded the quota for the fleet, sometimes by double. Congress finally mandated that recreational fishing on red snapper cease when the quota is reached. However, in 1997, the quota was exceeded by at least 17 percent according to NMFS calculations.

The Gulf Council and NMFS do not plan to reduce directed fishing on the red snapper, despite the heavily overfished status and the fact that BRDs which they said would assist in the recovery stage do not work. The Gulf Council and NMFS

also did not subtract the 1997 quota overrun from the 1998 TAC nor did they subtract the 1998 overrun from the 1999 TAC. The Gulf Council has recommended and it appears NMFS will support the Council recommendation for a 9.12 million pound TAC and that the TAC be set for a two year time frame (Year 2000-2001) rather then reviewed on an annual basis. The stock assessment panel of scientists that serve the Gulf Council recently advised that the annual quota should be set at no more than 6 million pounds and, under one scenario, at zero quota for the next thirty years, in order to allow the stock to achieve the specified MSY/OY. Despite telling a federal judge that the total allowable catch of red snapper could be safely set at 9.12 million pounds because BRDs would reduce juvenile mortality by 60 percent, NMFS has indicated support for continuing the annual catch level at 9.12 million pounds, despite the recommendations of the scientific panel. And the agency has now admitted that BRDs, even under the best of conditions (which haven't been seen yet), might only achieve about 40 percent reduction in mortality. Furthermore, NMFS has yet to approve the new, likely more stringent definition of MSY/OY for this fishery required by the Sustainable Fisheries Act.

What is wrong here? What is wrong that the Gulf Council and NMFS have decided that the red snapper population is so depleted that ineffective BRDs, that cost over $100 million, must be mandated for the shrimp fleet, but that the directed fishing should not be curtailed. The mandate for BRDs has made TSA a strong advocate for bringing the red snapper population to the point that it is no longer overfished, and we demand that the responsible party for the overfished state, the directed red snapper fishery must be curtailed and equally share in the recovery program. If the fishery is in bad enough shape that BRDs are necessary, then the excessive directed harvests must be stopped. That is simple conservation logic. But it is logic that the Gulf Council and NMFS, who seem to have a different political agenda, have refused to embrace by reducing the annual quota. Needless to say, we are outraged by this double standard and see no authority in the Magnuson-Stevens Act for such inequitable treatment.

I am sure that the Subcommittee will hear more about this sad state of events when NMFS announces its determination with respect to the annual quota for 2000. If it is not reduced from 9.12 million pounds to 6 million pounds, we plan to file suit challenging this conservation failure. We are totally bewildered that the environmental groups that advocate conservation are mute when it comes to the annual quota, but are strong advocates for BRDs.

Mandatory Observers: More Police Action

For many years, TSA has helped organize voluntary data collection programs for acquiring data on the shrimp fisheries and on the perceived bycatch problem. Now, however, the Gulf Council and NMFS have been discussing mandatory observers, logbooks for more data collection, vessel permits, operator permits and a Vessel Monitoring System (VMS) to enable tougher enforcement actions against the shrimp fleet. Here again, no comparable action is being considered for the recreational fishing fleet.

We believe that the system works best when we can play a role in data collection. Because we can share in the method and results, we feel confident that the agency will not use the data in order to support its own political objectives. However, observers create very difficult liability problems for our small vessels; a lawsuit by a NMFS observer is now pending against one of our vessels that seeks a $950,000 settlement.

Although we are probably the most heavily regulated fisheries in the world, our government has told us that more regulations are coming. We are going to be not much different than the peaceful demonstrators at the WTO meeting in Seattle when the riot police went to work in the streets. We do not see a comparable effort on the fast-expanding recreational fleet. Their bycatch, and it is significant because over 50 percent of the red snapper that must be discarded by the recreational fleet because of size limits, dies after release. This bycatch is not included in the quota. While NMFS and the Coast Guard are putting the shrimp fleet under a regulatory microscope, other sectors of the fishery are left alone. Did Congress intend that fishery management was to be conducted this way?

Essential Fish Habitat

Because shrimp are highly dependent on the quality of our coastal environment, we supported changes to the Magnuson-Stevens Act that would improve the protection of essential fish habitat. Unfortunately, the essential fish habitat program has spun out of control. In the first instance, everything has been defined as Essential Fish Habitat. Second, very little credible data is available to understand the impact of fishing activities on Essential Fish Habitat, or other activities. Nonetheless, envi-

ronmental activists have sued NMFS seeking to impose new fishing restrictions that they claim are necessary to protect Essential Fish Habitat. These groups are using what can only be described as "activist" or junk science—science that has not been peer-reviewed, and is primarily prepared to obtain contributions by claiming the most outlandish problems. We do not believe that Congress intended this kind of program when it embraced the Essential Fish Habitat provisions in the Sustainable Fisheries Act.

To give you some idea about what is happening on this subject, the Earth Justice Legal Defense Fund, on behalf of several environmental groups, sued NMFS claiming that nearly every Council's actions on Essential Fish Habitat has been deficient in their view. These groups then proposed a settlement of the case on the basis that NMFS would agree to new regulatory actions that address certain *pet* complaints of the groups. In effect, NMFS and the Justice Department have been asked to agree to a bypassing of the normal rulemaking process to give a small minority control of Essential Fish Habitat policy. We are participating in that suit and have advised the Justice Department that any such settlement is deeply offensive and denies to those who would be regulated the fundamental benefits of due process. We hope that this Subcommittee will not allow regulations to be implemented by judicial settlements agreed to only by the Justice Department and NMFS.

Magnuson-Stevens Act: Incidental Harvest Research

NMFS, in its 1995 Gulf Bycatch Report to Congress, shows the same species that dominated the bycatch in the shrimp fishery in the 1970s still dominate the catch following two decades of fishing. The Atlantic croaker dominates the bycatch in the nearshore white shrimp grounds, while the longspine porgy dominates offshore.

Over 99 percent of this shrimp trawl bycatch consists of organisms which, like the target shrimp, have a 1 or 2 year life cycle and are characterized by high rates of reproduction and annual mortality rates of 90 percent or more. These are the same life history attributes that enable the target shrimps to withstand high levels of take without loss of overall productivity.

Red snapper represents only .005 percent of the shrimp trawl bycatch. It is not but a hairline crack on the graph. It becomes impressive in numbers only when the low catch rates of red snapper are multiplied by NMFS' over estimate of 6 million hours of shrimp fishing effort. Not only are the effort estimates flawed but a majority of total fishing effort occurs in habitat where red snapper do not occur.

The imposed gear technology is a failure. BRD reduction in fish and shrimp catch generally occurs within minutes of when the shrimp and bycatch would otherwise be deposited on the deck. A majority of the catch loss occurs at the end of the tow when the vessel slows to haul in the net, and again at the surface when the codend is lifted. Thus, red snapper and most other organisms are expelled from the net at the end of the tow and at the surface. At this time, the expelled red snapper and other organisms show signs of stress and disorientation. The BRD functions simply as a hole in the net and an enticement for predators to aggregate and feed extensively on the catch as it is expelled. This chumming effect attracts large predators such as sharks that rip large holes in the net, sometimes tearing the entire codend from the net resulting in a complete loss of tow. Our crews are unable to observe when a BRD twists or flips closing off the codend resulting in a complete loss of tow. However, NMFS plays or ignores these problems.

Thank you for the opportunity to provide our views to you. I apologize for the fact that we do not have a lot of good news to give you. Instead, I can only offer the views of a group of people who feel under regulatory assault, and that no one in the fishery management process is willing to listen to them, even when we come equipped with better science and information than that used by the regulators. We only hope that our comments will lead to meaningful changes in the way the Councils and NMFS operate. However, at the moment, we are very pessimistic.

Senator SNOWE. Thank you, Ms. Anderson.

Mr. Fischer.

STATEMENT OF MYRON FISCHER, OFFSHORE CHARTER CAPTAIN, PORT FOURCHON, LOUISIANA

Mr. FISCHER. Thank you, Madam Chair, Senator Breaux. I would like to thank you all for giving me the opportunity to speak on issues pertaining to the Magnuson-Stevens Act. I appreciate this Subcommittee coming forward to listen to the views of those of us

who are making a living on water, to witness our fisheries firsthand.

My name is Myron Fischer. I am a full-time charter captain, operating out of Port Fourchon, Louisiana. I have been licensed by the U.S. Coast Guard since 1976. I am a graduate marine biologist, and I presently sit on the Gulf of Mexico Fishery Management Council.

I am going to address specific portions of the Act that I feel need attention. The first item, in Section 301, states: Conservation and management measures shall be based upon the best scientific information available—National Standard 2.

What is the best available science? Ms. Penny Dalton spoke a second ago, and said, "We do not know the status of roughly 75 percent of the species we manage." If we do not even know if they are overfished, much less have sufficient knowledge needed to plug into the intricate modelling necessary to make educated fishery decisions, what do we do?

If we do not have enough data to come to logical conclusions, and when the calculated conclusion appears illogical, what are fishery managers to do? The phrase echoed is: We have to use the best available science.

If the best available science is so incomplete it would result in management decisions that would be ludicrous, then should the science be omitted? I request your Committee elaborate on the phrase "best available science," and that it be used as a guideline in the absence of genuine data, rather than a rigid principle.

Section 403, on observers: Observers are an essential part in the gathering of solid data. I think last night or the night before, I was reading a draft on HMS. It stated that—and these people have to turn in a logbook, and it is required to be submitted and filled out within so many hours of the set—that when observers are on board the boat, the bycatch and various catches is substantially different than what they turn in, in normal instances. So observers are necessary.

But protocol is also necessary to guarantee that these observers carry themselves in proper conduct while aboard a vessel. Involved in the structure of the guidelines must be language assuring vessel owners that they bear no liability for injuries sustained by Federal employees. With the repressed profits in today's fisheries, many fishing vessels just simply sail without liability insurance. In the charter industry, insurance carriers specify a maximum amount of persons aboard a vessel. The addition of the observer may void your coverage.

I recommend to this Committee, in order for fishermen to better receive observers, that language be installed in this section, either removing the liability from vessel owners, which we cannot do, or that NMFS provide liability coverage for observers.

On bycatch: In the definition of bycatch, I think this is very important: We have a phrase under the definition, brief mention is made to the phrase "recreational catch and release fishery management program." To avoid confusion in the interpretation of this phrase, the Act should spell out the definition of a recreational catch and release program as intended, and not let various managers inject their own ideology into what Congress intended.

I pray that the intent of Congress was to allow recreational anglers to target various species and practice conservation by releasing that portion of their catch that they choose not to keep without the effects of bycatch and the ramifications of such dangling over them.

Quota versus allocation: I would request the Committee use caution in making changes to future amendments. Changing the word "allocation" to "quota" has impaled serious injury to the charter and recreational industry. If the intent of Congress was to manage the recreational sector under a quota system, then the mechanism to install such a system must first be in place. The use of the outdated MRFSS data collection methods fall very short of the goal involved in quota management.

As opposed to the commercial real count method, MRFSS data does not even surface until 6 months after collection. Using this data in real time projections is impossible. The present red snapper model uses a 4-year average to calculate fishery closure, and does not incorporate weather or other social changes. It is disgraceful to mandate quota closures without first installing accurate methods of calculating harvest.

On precautionary approach: For a term that does not even reside inside the Act, but possibly created by NMFS, we find ourselves burdened by this phrase. Sure, we all want to be precautionary, but to what degree? The commercial fishermen, the recreational fishermen, the conservationists and fishery managers may all have different ideas on the correctness.

If Congress intends for fishery managers to live by the phrase "precautionary approach," then define it and identify it. Otherwise let us remove it from the decisionmaking theory. We all want to be precautionary, but its usage precludes the social and economic needs along our coast. We all want to err on the side of caution, but Congress did not install this statement. And if you feel it should be a guideline for managers, then define its limits and illustrate its usage. Otherwise instruct NMFS not to create their own phraseology.

I have one last issue I would like to bring up. It is not a portion of the Act; it is a spinoff of the system. We hold hearings on an issue. People come forward and they testify. Science and socioeconomic panels insert their conclusions. Advisory panels add their perspective. The public makes its comments. Commercial and recreational recommendation, along with conservation groups, give their testimony.

After considerable deliberation, the council votes. The measure goes forward. And even if it is very timely, like this last framework on red snapper, it stalls. The public complains. Commercial and recreational fishermen lose faith in the process. And no one wins.

We have to have something a little more expedient on getting these measures out. A delay can just kill an issue that everyone works so hard on. All the sides came together, and it was killed by a delay in an office.

I have a few other items I was going to mention, but my time is coming up. So, Senator Snowe, Senator Breaux, I thank you all again for giving me the opportunity to address the Committee. I hope any guidance you may have received from my testimony will

direct you all into producing a better Act, which will allow harvest, while rebuilding the country's fisheries, without being detrimental to both the fish and fishermen.

Thank you all.

[The prepared statement of Mr. Fischer follows:]

PREPARED STATEMENT OF MYRON FISCHER, OFFSHORE CHARTER CAPTAIN, PORT FOURCHON, LOUISIANA

Madam Chair and members of the Committee, I would like to thank you for granting me this opportunity to speak on issues involving the Magnuson-Stevens Fishery Conservation and Management Act. My name is Myron Fischer. I am a full time charter captain operating out of Port Fourchon, Louisiana and have been licensed by the United States Coast Guard since 1976. At forty-eight years of age, I have been on water my entire life. I am a graduate Marine Biologist and I presently sit on the Gulf of Mexico Fisheries Management Council.

I appreciate this committee coming forward to listen to the views of those and myself that makes a living on water and witnesses our fisheries firsthand. My testimony will highlight present portions of the Magnuson-Stevens Act that need attention from your Committee.

Sec. 301 (a) 98-623 (2) Conservation and management measures shall be based upon the best scientific information available. National Standard 2.

What is the best available science? Ms. Penny Dalton spoke to this Committee in July and testified that we don't know the status of 64 percent of the species we manage. We do not even know if they are overfished, much less have sufficient knowledge necessary to plug into the intricate modeling necessary to make educated fishery decisions. When we don't have enough data to come to a logical conclusion, and when the calculated conclusion appears illogical, what are fishery managers to do? The phrase echoed is "we have to use the best available science". If the best available science is so incomplete that it would result in managing decisions that would be ludicrous, then should the science be omitted? I request your committee elaborate on the phrase "best available science" and that it be used as a guideline in the absence of genuine data rather then a rigid principle.

SEC 302 97-453, 99-659, 101-627, 102-582, 104-297 (b) VOTING MEMBERS (1)(B) The Regional Director of NMFS. . .shall be the voting member. 97-453, 101-627, 104-297 Emergency actions and Interim Measures.

(2) (A) the Secretary shall promulgate emergency or interim measures. . .by unanimous vote.

(2) (B) the secretary may promulgate emergency or interim measures. . .less then unanimous vote.

As long as the Regional Director votes on issues, this portion of the Act is useless. The Regional Director ALWAYS votes against emergency or interim measures to preserve the Secretary's ability to not be mandated into carrying out the measure. I am sure the original authors did not anticipate such a ploy by ranking officials of National Marine Fisheries Services and the Commerce Department. The Regional Director takes an active role in the approval or disapproval of practically all items voted on by the various councils. The participation of these directors in the deliberation of issues and policy is essential. However, I feel that either the director's vote should be totally removed from council process or at the least, their vote on issues involving Emergency or Interim Measures withdrawn.

104-297 SEC. 403 Observers

Observers are an essential part in the gathering of solid data. Protocol is necessary to guarantee that observers carry themselves in proper conduct while aboard a vessel owned by a citizen of this country. Involved in the structure of these guidelines must be language assuring vessel owners that they bear no liability for injuries sustained by such a federal employee. With the repressed profits in today's fisheries, many fishing vessels simply sail without liability insurance. In the charter industry, some insurance carriers specify a maximum amount of persons aboard a vessel. To maximize profits, typically every seat is sold to paying clients. The addition of an observer may violate insurance requirements and void insurance for the entire trip. Even with proper insurance, a boat owner or captain may spend much of his earned income litigating an injury case with someone he did not even want aboard his vessel. Without liability guarantees, vessel owners will always shun away from observers aboard their vessel. I recommend to this committee, in order for fishermen

to better receive observers, that language be installed in this section removing liability from vessel owners and operators in regards to observers or that NMFS provide liability coverage observers.

SEC. 301 (a) 104-297 Conservation and management measures shall, to the extent practicable, (A) minimize bycatch and (B) to the extent bycatch cannot be avoided, minimize the mortality of such bycatch. National Standard 9.

SEC 304 104-297 (g) Atlantic Highly Migratory Species—(2) Certain fish excluded from "Bycatch" definition. Fish harvested in a commercial fishery. . . that are not regulatory discards and that are tagged and released alive . . .shall not be considered bycatch for the purpose of this act.

Was this language instituted by the tuna lobby to insure that any billfish tagged and released are not counted as bycatch? When a recreational angler releases a billfish, it is usually done so with utmost care. These anglers are proud of both their catch and their release tactics. Stories of towing and supporting a billfish until sufficient oxygen is back in the fish's system are common among recreational circles. The survival rate of recreationally caught billfish is stated to be high. On the other hand, data illustrates very high mortality on longline caught fish due to the methods involved with the fishery. The catch rate realized in one set aboard one longline vessel could surpass the entire annual catch of the recreational industry. Ironic, language in the initial Billfish Amendment had these recreationally released fish listed as bycatch. The authors chose to define "recreational catch and release program" (104-297) in a manner that would count all recreationally released fish, even those tagged in research programs as bycatch. Fortunately, after considerable public input, the final language cleared up this matter. To avoid confusion in the interpretation of this phrase in the future, the act should spell out the definition of a "recreational catch and release program" as intended and not let various managers inject their own ideology into what Congress intended. I pray that the intent of Congress was to allow recreational anglers to target various species and practice conservation by releasing that portion of their catch that they do not choose to keep without the effects of bycatch and the ramifications of such dangling over them. Conversely, allowing billfish captured in the longline industry relief from inclusion in bycatch is total mismanagement. In addition to defining "catch and release program", I highly recommend removal of the portion of this act that permits the labeling of commercially caught billfish to not be considered bycatch.

Quota vs. Allocation

I would request the committee to use caution in making changes to future amendments. Changing the word "allocation" to "quota" has impaled serious injury to the charter and recreational industry. If the intent of Congress was to manage the recreational sector under a quota system, then the mechanism to install such a system must first be in place. The use of the outdated MRFSS data collection methods fall very short of the goal involved in quota management. As opposed to the commercial "real count" method, MRFSS data doesn't even surface until six months after collection. Using this data in real time projections is impossible. The present red snapper model uses a four-year average to calculate the fishery closure and does not incorporate weather or other social changes. It is disgraceful to mandate quota closures without first installing accurate methods of calculating harvest.

Precautionary approach

For a term that does not even reside in the Act, we certainly find ourselves burdened by this phrase. This is a phrase created by National Marine Fisheries Service in regards to their interpretation of National Standard 1. Of course managers should be precautionary, but how precautionary should their approach be? Precautionary enough to insure that a fishery will not be devastated? Precautionary as to allow participants to harvest fish and still have the fishery populations increase? Or precautionary to the point where we simply restrict all harvest until the population has reached some un-measurable arbitrary number? All these are precautionary, but at different levels. The commercial fishermen, recreational fishermen, conservationist, and fishery managers may all have different ideas of the correct approach. If Congress intends for fishery managers to live by the phrase "precautionary approach", then identify and define it; otherwise let's remove it from decision-making ideals. We all want to be precautionary, but its usage precludes the social and economic needs along our coast. We all want to err on the side of caution, but Congress did not install this statement and if you feel it should be the guideline of managers, then define its limits and illustrate its usage.

Section 303, 104-297 Individual Fishing Quotas

Congress choose very wisely to place a moratorium on the issuance of Individual Fishing Quotas. While it may be very unfair to have portions of the commercial sector engaged in a derby fishery, I hope the councils can seek other remedies other then IFQ's for this situation. The fishery in question on the Gulf Coast is the Red Snapper industry. Many state that this is one of the most mis-managed species under council jurisdiction. After sixteen amendments to the initial plan, one could speculate that analogy. To differ, the Red Snapper TAC has risen 400 percent, size limits have increased five times, commercial and recreational sectors are catching their respective quotas quicker, recruitment is up and the fishery is a true success story. The apparent problem is that those on water see this success quicker then the biologist and statisticians. The best available science is holding the reins back on fishermen by creating the commercial derby and recreational closures. I feel optimistic that science will catch up with the real world and the need for Individual Fishing Quotas will fade. Presently, I support the ban on IFQs as I feel there are many unanswered questions on this subject. As answers come forth, I may feel a need to change my perspective. Enforcement of IFQs is one hurdle we have to overcome. Another, in the light of possible limited entry into the charter industry, is involving IFQs into that sector. Unlike the commercial industry, a charter captain has to market himself and wait for the telephone to ring before he can make a trip. Open season, calm seas, and the fish biting don't guarantee charters. Conversely, the phone ringing during closed season doesn't help either. I am a charter captain. Could I expect you to delegate me an automatic "piece of the pie."

Senator Snowe and Senator Breaux, I thank you again for giving me the opportunity to address this committee. I hope any guidance you may have received from my testimony will direct you into producing a better act which will allow harvest while rebuilding this country's fisheries without being detrimental to both the fish or fishermen.

Thank you.

Senator SNOWE. Thank you, Mr. Fischer.

Mr. Werner.

STATEMENT OF WAYNE WERNER, COMMERCIAL FISHERMAN, GALLIANO, LOUISIANA

Mr. WERNER. Madam Chair, Senator Breaux, I would like to first thank you. I am the only commercial fisherman on any of these panels. So I really would like to thank you for that.

My name is Wayne Werner, from Galliano, Louisiana. I am an owner-operator of the fishing vessel Wayne's Pain. I would like to thank the U.S. Senate for the chance to speak on the Magnuson-Stevens Act.

When the red snapper season opens for the new millennium, the historical dependents in our fishery will be entering their 10th year of derby fishing. This means one more year of high mortality, dangerous fishing habits, low market prices, and profit margins being devoted to fuel supplies, ice plants and grocery outlets. These are atrocious conditions in which to make a living for our crews and families.

If weather is inclement, fishermen feel forced to fish their way through it. Just last September, the entire snapper fleet went fishing with a tropical wave in the Gulf of Mexico. NOAA Weather Service was reporting the conditions were favorable for tropical development in the next 24 hours. I was there, trying to get my share of red snapper, telling myself, this is a disaster waiting to happen. Fortunately, development did not occur that day. Believe me, it is just a matter of time.

The commercial red snapper industry needs a license limitation ITQ designed to protect the existing fishermen in our fishery. Financially depleted by regulations and derbies, our industry needs

an ITQ system with the same eligibility requirements as our license limitation system today. The qualifiers should remain in place for the first 5 years before becoming an open access ITQ. This would ensure financial stability throughout the system before going public.

With the average age of our captains being over 50 years, I cannot emphasize enough how unappealing a race for fish looks. The snapper industry should be allowed to develop their own ITQ system. ITQs are a financial decision for fishermen, and deserve proper input from the industry.

The protection necessary in a red snapper ITQ system is for one main reason: the recreational fishery wants our snappers. The red snapper referendum mandates that when the recreational share of the quota has been filled, the fishery should be closed. The Gulf Council does not seem to think this is the proper way to run the fishery.

This was best illustrated recently at the November Gulf of Mexico Fisheries Management Council meeting. The Gulf Council felt that instead of closing the recreational sector, they could take 33 percent of the commercial allocation, giving the recreational fishery 75 percent of the total allowable catch. Studies have been put into motion to reallocate our red snappers.

A question each Senator should ask is: Should less than 1 percent of the population of the United States have access to 75 percent of the American-caught red snappers? This is a fairness issue for the American consumer.

Two years ago, the Gulf Council voted to reallocate 3 percent of the commercial king mackerel quota to the recreational sector. This issue should be addressed by the Magnuson-Stevens Act. Another issue being addressed in Magnuson-Stevens is tracking the recreational catch. The commercial sector feels that mandatory reporting for charter boat landings is necessary in the for-hire section. A snapper stamp should be used to better track the purely recreational catch rate. The National Marine Fisheries Service needs to do a better job in this area.

Spawning potential ratio levels are being set to establish maximum sustainable yield. How are fishermen supposed to have confidence in a system where high SPR levels result in low catch per unit efforts, inability to fill quotas, and only small fish available to win fishing tournaments? In contrast, you have fisheries with low SPRs, where CPUEs are considered at maximum levels. Quotas are filled rapidly, and tournaments are won by large fish.

In the red snapper model, when a red snapper is two years old, it has the same chance of survival as a 10-year-old. In a computer model, this is assumed, whereas in real world experience, impossible. Natural mortality rates in a zero to two-year old fish is 47 percent, the lowest in the United States fisheries. I question bycatch rates also. Shrimpers only cover 15 percent of the bottom, yet kill 88 percent of all juvenile snappers, according to the National Marine Fisheries Service.

With no tracking system in place, many fish sales were on a cash basis. The National Marine Fisheries Service had no idea how many fish were actually being harvested. When permits became required, many fishermen could not qualify due to tax and record-

keeping problems. This incomplete and inaccurate data is the basis for SPR.

Even with all the problems in the data, I would not support a quota increase under derby conditions, including a 15-inch size limit. Due to the recruitment in the red snapper fishery, the commercial sector likely harvests the 4.65 million pounds allotted, and discards another 2.5 million pounds of 13- to 15-inch snappers. Fish do not discriminate against user groups. The Gulf Council is raising the recreational size limit to 16 inches to help extend the season. With such a large increase in recruitment, the release mortality in the recreational sector will rise dramatically.

In summary, I would like to see the following addressed in the Magnuson-Stevens Act:

One, a license limitation ITQ, with input from commercial fishermen. Two, the makeup of the Gulf Council includes no commercial fishermen representation at this time. Three, to better track the recreational catch in the reef-fish fishery. Four, reallocation and discrimination in the council system. This includes discrimination against the 200 million people, consumers, that do not and cannot fish, represented by commercial fishermen. Five, SPR and MSY, the National Marine Fisheries Service expects the population of red snapper to be five billion, and I would like to say that Mike Seripa, who does the computer model, had told me five billion recently.

Is there enough ecology to support MSY? I hope Congress will look into some of these problems and take the appropriate actions.

[The prepared statement of Mr. Werner follows:]

PREPARED STATEMENT OF WAYNE WERNER, COMMERCIAL FISHERMAN, GALLIANO, LOUISIANA

My name is Wayne Werner of Galliano, Lousiana. I am the owner/operator of the fishing vessel "Wayne's Pain". I would like to thank the U.S. Senate for the chance to speak on the Magnuson-Stevens Act.

When the Red Snapper season opens for the new millennium, the historical dependents in our fishery will be entering their tenth year of "derby" fishing. This means one more year of high fishing mortality, dangerous fishing habits, low market prices, and profit margins being diverted to fuel suppliers, ice plants, and grocery outlets. These are atrocious conditions in which to make a living for our crews and families.

If the weather is inclement, fishermen feel forced to fish their way through it. Just last September, the entire snapper fleet went fishing with a tropical wave in the Gulf of Mexico. NOAA Weather Service was reporting that conditions were favorable for tropical development in the next 24 hours. I was there, trying to get my share of the Red Snapper quota, telling myself that this is a disaster waiting to happen. Fortunately, development did not occur that day; believe me, its just a matter of time.

The commercial Red Snapper industry needs a License Limitation ITQ system designed to protect the existing fishermen in our fishery. Financially depleted by regulations and derbies, our industry needs an ITQ system with the same eligibility requirements as our license limitation system today. The qualifiers should remain in place for the first five years, before becoming an open access ITQ; this would ensure financial stability throughout the system before going public. With the average age of our captains being over 50 years, I cannot emphasize enough how unappealing a race for fish looks. The snapper industry should be allowed to develop their own ITQ system. ITQs are a financial decision for fishermen, and deserve proper input from our industry.

The protection necessary in a Red Snapper ITQ system is for one main reason: the recreational fishery wants our snapper. The Red Snapper Referendum mandates that when the recreational share of the quota has been filled, that fishery should be closed. The Gulf Council does not seem to think that this is the proper way to run the fishery.

This was best illustrated recently at the November Gulf of Mexico Fisheries Management Council meeting. The Gulf Council felt that instead of closing the recreational sector, they could take 33 percent of the commercial allocation, giving the recreational fishery 75 percent of the Total Allowable Catch. Studies have been put into motion to reallocate Red Snapper.

A question each Senator should ask themselves is: Should less than 1 percent of the population of the United States have access to 75 percent of American-caught Red Snapper? This is a fairness issue for the American consumer.

Two years ago, the Gulf Council voted to reallocate 3 percent of the commercial King Mackerel quota to the recreational sector. This issue should be addressed by the Magnuson-Stevens Act. Another issue that should be addressed in Magnuson-Stevens is mandatory reporting for charter boats landings that is necessary in the for-hire section. A Snapper Stamp should be used to better track the purely recreational catch rate. National Marine Fisheries Service needs to do a better job in this area.

Spawning Potential Ratio levels are being set to establish Maximum Sustainable Yield. How are fishermen supposed to have confidence in a system where high SPR levels result in low Catch Per Unit Effort, inability to fill quotas, and only small fish available to win fishing tournaments? In contrast, you have fisheries with low SPRs, where CPUEs are considered at maximum levels. Quotas are filled rapidly, and tournaments are won by large fish.

In the Red Snapper model, when a snapper is 2 years old, he has the same chance of survival as a fish that is 10 years old. In the computer model, this is assumed, whereas in real world experience, impossible. Natural mortality rates in 0 to 2 year old fish is 47 percent, the lowest in the United States fisheries. I question bycatch rates also. Shrimpers only cover 15 percent of the bottom, yet kill 88 percent of all juvenile snapper, according to NMFS.

Overwhelming public testimony about science on Red Snapper has been negative. The most common complaint heard is "something is wrong" and "garbage in, garbage out". The science just doesn't correspond to the amount of snapper available.

Time does not allow for me to continue to address this issue with you today. Please take the time to look over the attached comments which further discuss the subject of Red Snapper and the way it is regulated.

I would like to thank the U.S. Senators here today for holding these hearings on the Gulf Coast in order to address the problems and issues that affect so many people's lives.

The following is additional information on the subjects that I will be discussing at the Senate-Committee hearings on Magnuson-Stevens. Most of this information is based on my involvement on Advisory Panels and attendance at 37 Gulf Council meetings, as well as personal experience in the Red Snapper fishery.

Four years ago I testified before this committee against the ITQ system as proposed by the Gulf Council.

The commercial industry felt this system was designed as a Buy-out project. The Gulf Council developed this ITQ without accepting any input from commercial fishermen. Overwhelming public testimony against this ITQ meant nothing to the Gulf Council, as nothing has changed in the four years since Amendment 8, I would still stand against that particular ITQ system.

Remaining in the Red Snapper "derby" is a situation that historical dependents in the fishery have a hard time dealing with. One of the problems created by derbies is discard mortality. For instance, I may need a couple of hundred pounds of snapper to finish my trip limit. Do I ride an hour or two farther from the dock...or do I kill 200 to 300 pounds of undersized snapper and stay competitive with the fleet? I am certainly not the only fisherman that faces this dilemma.

Profit margins are another major concern. Derbies have reduced my prices for snapper by an average of 85 cent per pound. Compounded with a 2000 lb. trip limit, some trips involve running for 8-10 hours. Your trip limit is caught in 45 minutes to an hour, and you drive back another 8-10 hours. This creates much more wear and tear than normal operation, and consumes more fuel as well. Back at the dock, one hour to unload and head back offshore. Which, in turn, creates another problem: Sleep Deprivation. Crewmen have fallen overboard, asleep at the rail. I have had crewmen break down—they just couldn't go on—worn out. These are just a few examples of the conditions that I refer to as "atrocious" in my oral testimony.

It doesn't surprise me that the commercial fishermen do not get a fair shake from the Gulf Council. The make-up of this Council, in the 12 years that I have attended their meetings, has been a majority of recreational representation. The so-called

"commercial" representatives on this Council have been fish dealers, importers and one of two state representatives. There has never been a hook-and-line commercial fisherman on this Council. Every Red Snapper fisherman I speak to is of the same opinion; we have no representation on this Council.

In order to get a proper ITQ system in place, it would take Congressional assistance in forcing the Gulf Council to allow fishermen to develop this system.

In September, the Gulf Council requested that Congress lift the Red Snapper Referendum. This shows just how much they care about the commercial fisherman's opinion.

The commercial red snapper fishermen deserve an ITQ that is representative of our fishery, including the 51 percent-49 percent split, allocated by the Gulf Council ten years ago.

When the Red Snapper Referendum mandated a recreational closure, the Gulf Council found it necessary to raise the quota from 6 million to 9 million pounds. In contrast, during the years prior to 1996, the commercial fishing seasons were getting shorter and shorter, but this did not seem to be a problem worthy of being addressed by the Gulf Council.

Being managed by a lower standard sometimes makes you feel like a second-class citizen in the eyes of the Council system. Now, with MSY restraints, the Gulf Council is left with only one option in order to keep the recreational sector open with a 4 fish bag limit: Reallocation, or as commercial fishermen refer to it, Steal the fish. This is purely an economic decision, and is in direct violation of the 5th National Standard.

Conservation is necessary to all fisheries. Fishermen cannot make a living without fish. Prior to mandatory logbook reporting, the catch histories are questionable to say the least. The best example of just how questionable NMFS' catch history records are, look at the June 1999 Red Grouper Stock Assessment. On page 18, it shows the 1950-1976 Estimated Cuban Landings from the Florida West Coast. I would like to quote from page 20: "None of the Cuban fleet's catch of grouper were exported, but rather remained in that country for domestic consumption". Considering the United States' relationship with the Cuban government during those years, this data is preposterous.

While framing Amendment 1 to the Reef Fish Management Plan, the Gulf Council wanted to prohibit the use of longlines inshore of 50 fathoms in the western zone of the Gulf of Mexico. At the request of Red Snapper fishermen, this restriction later included buoy fishing. NMFS was unaware that this fishing method even existed.

To track some of the historical reef fish catch, NMFS used a TIP (trip interview program) reporting system between 1982 and 1991. I was surveyed only one time during this time period.

In the mid to late 1980's two factors influenced the catch history in the commercial fishery, but were never accounted for. The captains and crews on oil supply boats and oilfield crew boats sold large amounts of Red Snapper. At the fish house where I sold my Red Snapper, I observed eight to ten people (who were not commercial fishermen) per week selling 200-400 pounds of snapper at a time.

With no tracking system in place, many fish sales were on a cash basis. NMFS had no idea how many fish were actually being harvested. When permits became required, many fishermen could not qualify or establish a catch history because of tax and record keeping problems. This incomplete and inaccurate data is the basis for SPR.

Even with all the problems with the data, I would not support a quota increase under derby conditions, including a 15 inch size limit. Due to the recruitment in the Red Snapper fishery, the commercial section likely harvests the 4.65 million pounds allotted, and discards another 2.5 million pounds of 13 to 15 inch snapper. Fish do not discriminate against user groups. The Gulf Council is raising the recreational size limit to 16 inches to help extend the season. With a large increase in recruitment, the release mortality in the recreational sector will rise dramatically.

In summary, I would like to see the following addressed in Magnuson-Stevens:

1. A license-limitation ITQ system with input from commercial fishermen.
2. The makeup of the Gulf Council: Recreational and Commercial, including no commercial fishermen representation.
3. To better track the recreational catch in the Reef Fish fishery.
4. Reallocation and discrimination in the Council system. This includes discrimination against the 200 million people (consumers) that do not/cannot fish, represented by commercial fishermen.
5. SPR and MSY: NMFS expects the population of Red Snapper to be 5 billion; is there enough ecology to support MSY?

I hope Congress will look into some of these problems and take appropriate action. Thank you.

Senator SNOWE. Thank you very much, Mr. Werner.

Mr. Emerson.

STATEMENT OF PETER M. EMERSON, SENIOR ECONOMIST, ENVIRONMENTAL DEFENSE FUND

Mr. EMERSON. Madam Chair, Senator Breaux, my name is Pete Emerson. I work for the Environmental Defense Fund in Austin, Texas.

The Environmental Defense Fund is a member of the Marine Fish Conservation Network. The Network's agenda and conservation goals are attached to my testimony. I appreciate this opportunity to offer my perspective on fishery policy issues in the Gulf of Mexico.

The fisheries and marine ecosystems of the Gulf are truly unique and valuable public resources. Your important work in reauthorizing the Magnuson-Stevens Act can help people in this region solve resource problems that are important to all Americans.

In my written testimony I ask Congress to help our managers by providing a full range of fishery management tools, encouraging the evaluation and use of marine protected areas, and reducing external threats to Gulf fisheries and ecosystems. Among all of the concerns, EDF's highest priority is the reef fish fishery, helping to put an end to the derby fishing, rebuilding stocks, resolving allocation problems between sectors, and reducing environmental damage.

We believe that these negative outcomes—derbies, overfished stocks, conflicts among fishermen, quota overruns, and bycatch waste—feed on each other, and that they must be dealt with jointly before much progress can be made on ocean conservation and resource stewardship goals. We also realize there is a huge amount of work to be done, and there are probably no shortcuts.

But Congress can help. Congress can help by removing prohibitions on individual fishing quotas, and giving the Gulf Council the flexibility to design an appropriate management program for the reef fish fishery. The Council might get started by reviving the ITQ program for red snapper that was shelved in 1996, and then extending it to other important reef fish, and to the for-hire recreational sector.

In my view, it would be desirable to take advantage of work expended in developing the initial ITQ program. A lot of effort went into structuring a program based on information obtained before the commercial fishery was distorted by extreme derby conditions. Capitalizing on this experience might help jump start a new program.

Whatever happens next, we need to help the Council gain broader stakeholder participation, and our Council will need flexibility in several areas to avoid making mistakes in redirecting fishing effort between species or creating new derbies; to concurrently manage the commercial and recreational sector and allow transferability of quota shares between those sectors; to recover the government's cost of running the program; to assess the socioeconomic impacts of the program; and, if necessary, to find ways to compensate those

individuals who are harmed as a direct result of management reform.

In addition, the comprehensive ITQ program should be scrutinized to demonstrate that it will save fish and help protect the marine ecosystem. Conservation benefits would be expected from reduced bycatch, since it will no longer be necessary to discard fish subject to a long closed season while fishing continues for other species and from the elimination of minimum size limits. Conservation will also gain as a result of better monitoring and enforcement to keep the catch within quota limits, less effort in the fishery, and a stronger "stewardship ethic" as fishermen share in the productivity of future stocks.

If we can get to "yes" on a carefully designed ITQ program in the reef fish fishery, then we have a real chance to step forward for conservation and long-term use of the fishery that will benefit all Americans. Such an outcome would be a big improvement over current management.

Madam Chair, Senator Breaux, to realize this improvement, we need, as you know, support from Congress, as I have outlined in my talk here today and in my written testimony. With that support, I feel confident that people here in the Gulf region will be able to work together and to make decisions that will move us closer to meeting the objectives of the Act.

Thank you for the opportunity to testify on behalf of the Environmental Defense Fund.

[The prepared statement of Mr. Emerson follows:]

PREPARED STATEMENT OF PETER M. EMERSON, SENIOR ECONOMIST, ENVIRONMENTAL DEFENSE FUND

Madam Chair and members of the Subcommittee, thank you for the opportunity to testify today on reauthorization of the Magnuson-Stevens Act. My name is Pete Emerson. I work for the Environmental Defense Fund in Austin, Texas. We are a public interest group dedicated to protecting the environmental rights of all people to clean air and water, healthy food and flourishing ecosystems. We have more than 300,000 members worldwide, including 38,000 members living in states bordering the Gulf of Mexico.

The Environmental Defense Fund is privileged to serve on the Executive Committee of the Marine Fish Conservation Network. As you know, the Network is a coalition of more than 80 environmental groups, sport and commercial fishermen, and marine scientists working to improve our nation's fisheries laws. The Network's agenda and goals are attached to my testimony. I urge the members of this Subcommittee to consider them thoroughly.

I will use today's opportunity to provide my perspective on key fishery policy issues in the Gulf of Mexico that reauthorization might address.

The Gulf of Mexico—A Special Place

The fisheries and marine ecosystems of the Gulf of Mexico—or, "America's Sea"—are truly unique and valuable public resources. They are important to all Americans.

Gulf of Mexico mangrove forests, sea grass beds, salt marshes, and offshore reefs are home to a diverse array of marine life. Here in the United States and abroad, seafood consumers enjoy the region's abundant harvest of shrimp, crabs, oysters, and finfish. The commercial fishery in the Gulf—our second largest by volume and dockside value—lands more than 1.5 billion pounds of product annually, worth about $700 million. And, Gulf shrimp make up our nation's single most valuable stock. The commercial fishing industry employs more than 55,000 people as fishermen, processors, and wholesalers.

Recreational activities are enjoyed by millions of people year-round, and recreational demand in the region is growing. Three million sport fishermen catch at least 100 million fish from the Gulf each year, accounting for more than one-third

of all marine recreational fishing in the U.S. Tourists from near and far spend billions of dollars on the Gulf coast to vacation, fish, and enjoy unique coral reefs, endangered sea turtles, and a wide variety of bird life.

Resource Management Problems Persist

Amidst these positive factors there are, however, significant resource problems that trouble the Gulf of Mexico. These problems make life difficult for federal and state resource managers and stakeholders alike. They may be of particular interest to the Subcommittee because they prevent our nation from realizing the greatest long-term benefit from the use and preservation of the Gulf's fisheries and other natural resources.

Six Gulf fish species—red snapper, vermilion snapper, Nassau grouper, gag grouper, jewfish, and king mackerel—are currently classified as "overfished" or "approaching an overfished condition." Five of these are members of the region's valuable multi-species reef fish fishery, including the very popular red snapper. Preventing overfishing and successfully rebuilding this fishery is a difficult challenge.

Current fishery management regulations hurt fishermen and coastal communities economically and even increase the hazards of fishing. Bycatch waste is too high in some fisheries. A huge "dead zone" off the Louisiana and Texas coast threatens vast areas of essential fish habitat. Managers often do not have adequate fisheries and economic data to do their jobs, and there is a need for broader public participation in government planning and decision-making.

In reauthorizing the Magnuson-Stevens Act, the Congress can help the Gulf of Mexico Fishery Management Council, the National Marine Fisheries Service, and concerned citizens solve some of these problems. In particular, we need statutes that provide a full range of fishery management tools and help responsible managers develop strategies to introduce new conservation measures and reduce external threats to Gulf fisheries and ecosystems.

Putting an End to Derby Fishing

At a recent meeting of red snapper stakeholders, sponsored by the Southeast Region Administrator, commercial fishermen were nearly unanimous in calling for an end to destructive "derby" fishing; businessmen in the for-hire recreational sector and sportsmen deplored early season closings; and everyone was troubled by increased bycatch waste due to regulatory discards resulting from minimum size limits and long closed seasons. Today, the Gulf Council finds it very difficult to address these problems, and to allocate a limited catch among competing fishermen, because it is prohibited from using an important fishery management tool.

To help managers better address these problems, the Congress may remove the prohibitions on individual fishing quotas and give the Gulf Council the flexibility needed to design a comprehensive individual transferable quota (ITQ) program for the reef fish fishery. An ITQ program would end the economically destructive red snapper derby, significantly reduce bycatch by eliminating long season closures, help prevent overfishing of healthy stocks, and speed rebuilding of overfished stocks. Carefully designed, such a program will meet the Network's conservation principles concerning the use of individual fishing quotas.

The Council will need flexibility and time to design an ITQ program that might ultimately include all reef fish species and allow for transferability of quota shares between commercial and recreational sectors.

A comprehensive ITQ program may be accompanied by fees levied on ITQ holders to cover the program's administrative, management and enforcement costs. Additional fees and Congressional appropriations may be required to provide funds for other needs in the fishery. Such needs might include retiring excess vessel capacity to ensure that it does not enter adjacent fisheries, and compensating individuals who are economically injured as a direct result of management reform. The Council will need to work closely with fishermen and other stakeholders to avoid mistakes like re-directing fishing effort and, if possible, to identify and find appropriate ways to compensate real economic damage.

The ITQ program—like all other management programs—ought to be reviewed regularly to document its conservation benefits and economic performance. Furthermore, while ITQ permit-holders may take legal action against private parties who unlawfully damage the fishery, they would not be able to claim that ITQ shares are a compensable property right and seek payment from the government if management rules change.

Adopting a comprehensive ITQ program and getting rid of derby fishing will allow fishermen to solve certain issues themselves, like deciding when to fish and reallocation of the catch between sectors. Returning control of these decisions to fishermen will lighten the burden on government regulators. With better working conditions,

I believe fishermen will find it easier to work cooperatively with government regulators on planning and enforcement and with environmentalists on resource stewardship goals.

Winning Support for New Conservation Tools

Confronted with rising demands on marine resources and the reef fish fishery, new conservation tools may be necessary.

The Gulf Council is required to minimize bycatch and bycatch mortality, but rates of regulatory discards as a result of minimum size limits are high, and they are increasing. Also, mortality rates of discarded reef fish are high, estimated to be 20 to 33 percent or even higher. In recent years, in the recreational gag grouper fishery, the number of undersized gag killed as bycatch exceeds the number of gag landed by sportsmen. And, more than 50 percent of the red snapper caught by recreational fishermen are discarded because they are undersized. This problem is exacerbated because the Gulf Council has recently adopted high red snapper minimum size limits to lengthen the recreational season, causing fishermen to catch and discard many fish in pursuit of a four-fish bag limit. In addition, juvenile red snapper are killed in shrimp trawls even though shrimpers have adopted bycatch reduction devices throughout most of the Gulf and reduced their bycatch mortality.

To help managers better address these problems, the Congress may strengthen national policies to put priority on implementing new conservation tools, such as marine reserves. A system of marine reserves—created to satisfy particular conservation objectives—would allow fishermen to avoid bycatch waste, help prevent overfishing, and enhance rebuilding of stocks. More money should be spent on developing the science needed to design effective marine reserves that boost fish production and achieve other conservation goals. NMFS and the Council should be encouraged to establish marine reserves for multi-species fisheries associated with reefs and rocky structures. Marine reserves should serve as the preferred option to manage those fisheries for which traditional management measures are not working. The Council will also need a sufficient level of funding to design, implement and enforce marine reserves.

With marine reserves in-place, minimum size limits in the reef fish fishery may be reduced or eliminated because the natural community structure of the population would be maintained inside the protected area, ensuring an ample source of recruits. In addition, shrimp trawl bycatch could be reduced by setting aside areas where large numbers of juvenile red snapper and shrimp are found together.

Marine reserves can also help managers solve other problems that are difficult to address using traditional management tools. The Gulf Council recently proposed using marine reserves ("closed fishing areas") to prevent overfishing of gag grouper. After a year of deliberation, the Council concluded that marine reserves held the best chance of preserving the dwindling number of gag males and the remaining spawning aggregations. Also, marine reserves would provide the Gulf Council with an opportunity to be more precautionary in its management of fisheries. Marine reserves provide insurance against scientific uncertainty, management errors and extreme ecosystem fluctuations that could devastate troubled fishery populations.

The Council and NMFS should have flexibility to design and implement marine reserves that protect the reef fish complex and its natural habitat. Design and implementation options should be evaluated to ensure they are not unnecessarily biased against commercial or recreational fishing, or other uses. To help marine reserves work, it may be necessary to establish a vessel monitoring program and introduce prohibitive penalties for poaching such as suspension or loss of a fishing permit. Marine reserves, and all new fishery management tools, should be reviewed regularly and monitored to document their performance in meeting their conservation goals.

As new and innovative conservation tools become increasingly necessary to manage Gulf fisheries, the Congress may wish to urge that Council membership become more representative of the broad range of interests in the region—including fishermen, consumers, biologists, environmentalists and academics.

Reducing External Threats to the Gulf

Gulf of Mexico fisheries are also being adversely affected by non-fishing related impacts. Essential fish habitat is degraded as a result of excessive levels of nutrients entering the Gulf from farm and urban run-off into the Mississippi River. Nutrients foster algae blooms that result in depletion of oxygen in Gulf waters. Over the past several years, a "dead zone" measuring more than 6,000 square miles has been documented each summer at the mouth of the Mississippi River off the coasts of Louisiana and Texas. The dead zone damages benthic communities—an impor-

tant part of the Gulf food web—and kills all marine life unable to leave the oxygen-depleted zone.

To address this problem, Congress may support federal programs to reduce nutrient run-off upstream. One such program, the USDA's Conservation Reserve Enhancement Program, helps the federal government join forces with states to pay farmers to turn marginal farmland into buffers of trees and grasses to trap and filter sediment and other farm run-off before it pollutes nearby rivers and streams. Congress may also enhance the EFH consultation requirement, currently in the Act, by providing that federal agencies must ensure that their actions are not likely to adversely impact essential fish habitat.

Summary

Reauthorizing the Magnuson-Stevens Act provides an opportunity to address problems in the Gulf. The Congress may act to provide a full range of fishery management tools and encourage government managers to introduce new conservation measures and reduce external threats to the Gulf. Well-designed programs based on this authority would help us move closer to achieving the objectives of the Act.

Attachment

The Marine Fish Conservation Network

The Marine Fish Conservation Network (Network) is a coalition of national and regional environmental organizations, commercial and recreational fishing groups, and marine science groups dedicated to conserving marine fish and promoting their long-term sustainability.

The Network's primary objective is to make conservation the number one priority of fisheries management. In furtherance of this objective, the Network has analyzed existing federal fisheries management policies to determine whether changes are needed to ensure that such policies adequately promote marine fish conservation. The Magnuson-Stevens Act is the principal mechanism for conserving and managing living marine resources off our coasts, and for the reasons discussed below, the Network has determined that significant changes are necessary to improve the law's effectiveness.

The Network has prepared ***"A National Agenda to Protect, Restore, and Conserve Marine Fisheries,"*** which explains the problems with current federal policies and what changes are needed to protect, restore, and conserve marine fish.

Introduction to the Issues

Marine fish are a precious natural resource of enormous ecological, economic, and social value. They are major components of ocean ecosystems, as well as an important source of food, employment, and recreation. Healthy marine fish populations contribute significantly to the national economy and enhance our quality of life, but only if used and managed wisely.

In 1976, Congress passed the Magnuson Fishery Conservation and Management Act, empowering eight regional fishery management councils and the National Marine Fisheries Service (NMFS) to serve as stewards of our living marine resources. Nearly a quarter century later, many of this country's fisheries are depleted or in decline. In response to rampant overfishing, bycatch (the incidental capture of non-target fish and other marine animals), loss of habitat, and other threats to our fisheries, Congress passed the Sustainable Fisheries Act (SFA) in 1996. This landmark legislation amended the newly renamed Magnuson-Stevens Act with strict new mandates to stop overfishing, rebuild all overfished stocks, minimize bycatch, and protect essential fish habitat.

Even with the SFA in place, overfishing continues because of, among other reasons, prolonged rebuilding periods for overfished populations. Uniformly, fishery managers have failed to effectively reduce bycatch, or to reduce the harmful effects of fishing on marine habitats. NMFS reports that approximately one out of three U.S. fisheries, where the status is known, are overfished, many of these severely. The status of approximately two-thirds of the remaining managed marine fish is unknown. These dismal statistics highlight the critical need in fishery management to get serious about rebuilding the nation's fisheries to sustainable levels. These problems should be considered in the upcoming reauthorization of the Magnuson-Stevens Act. Amendments are necessary to make conservation the number one priority of fisheries management.

Essential for Sustainable Fisheries

The Marine Fish Conservation Network believes, for the reasons discussed below, that substantial changes in the Magnuson-Stevens Act are essential to protect, restore, and conserve the nation's marine fish.

The goals of the Network are to:

- Conserve Marine Ecosystems
- Eliminate Overfishing of All Species
- Avoid Bycatch
- Protect Essential Fish Habitat
- Ensure Adequate Observer Coverage and Data Collection in All Fisheries
- Ensure Broad Public Representation on Regional Fishery Management Councils
- Improve U.S. Management of Highly Migratory Species
- Ensure New Conservation Principles for Implementing Individual Fishing Quotas are Adopted Before Lifting the Moratorium

Network Goals

CONSERVE MARINE ECOSYSTEMS

Fishery managers and scientists recognize the need to expand traditional single-species fishery management planning to include ecosystem considerations. This includes, but is not limited to, interactions between key predator and prey species within an ecosystem, as well as the habitat needs of living marine resources and other limiting factors in the environment.

Commonly referred to as ecosystem-based management, this concept supports the precautionary approach to fishery conservation, especially when the ecosystem effects of fishing are uncertain. The precautionary approach requires managers to act to avoid likely harm before causes and effects are clearly established. We strongly believe that the key to an effective ecosystem approach is to manage fish more conservatively.

It is widely believed that some fishery declines and difficulties in restoring overfished populations are due, at least in part, to fishing caused disruptions of ecosystems. Under existing law, fishery managers do have limited authority to consider ecosystem interactions, including predator-prey relationships, in management plans. The principal reason ecosystem relationships are not being adequately considered is a lack of guidance regarding the information that is needed, clear direction regarding the principles and policies that should be applied, and most importantly, how such principles and policies should be integrated into fishery management decisions.

To address these concerns, the Magnuson-Stevens Act should be amended to: require councils to develop a Fishery Ecosystem Plan (FEP) for each major ecosystem within their jurisdiction; require all fishery management plans or amendments to be consistent with the appropriate FEP; require consideration of ecosystem impacts, including predator-prey interactions when setting catch levels; and appropriate sufficient new funds to assist the councils and NMFS in applying ecosystem principles to fisheries research and management under the Magnuson-Stevens Act.

Eliminate Overfishing of All Species

The Magnuson-Stevens Act mandates that conservation and management measures must prevent overfishing. But in too many cases, managers still react to overfishing after it occurs and continue to interpret the law and regulations to allow overfishing. Managers are extending periods allowed for rebuilding to the maximum allowable time, 10 years, under the Magnuson-Stevens Act and, in some cases, beyond those limits. This "risk-prone" management increases the likelihood that stocks will not be rebuilt in even 10 years.

NMFS continues to interpret the prohibition on overfishing to allow overfishing of fish caught in association with other populations of fish that are not themselves overfished. Only when a fish species is threatened with extinction does NMFS require protection for these "mixed stock" fisheries.

Contrary to Congressional intent, NMFS continues to define "conservation and management" in a way that places at least equal emphasis on preserving present profits as on conserving fish resources for the future. Some managers also use scientific uncertainty as an excuse to allow overfishing to continue in order to minimize short-term economic impacts. Consequently, the long-term sustainability and economic productivity of U.S. fish populations continues to be jeopardized.

Fishing for some species, during particularly vulnerable life stages has placed those fish at risk. Grouper and snapper, for example, have been known by fishermen for years to spawn in the same locations and at the same times. Historically, the difficulty for even the best fishermen to return each year to the same location provided some limited protection for the fish, but improved navigation technology has removed that protection. Removal of this safeguard contributes to overfishing and delays or prevents timely rebuilding of fish populations. These vulnerable fish populations need to be identified and protected.

To address these concerns, the Magnuson-Stevens Act should be amended to: prohibit overfishing of all stocks in a mixed stock fishery; require councils to emphasize biological and ecological factors over economic factors in decision making and drafting of fishery management plans (FMPs); require that each council provide added protection for stocks during spawning and other particularly vulnerable life stages; and mandate the application of the precautionary approach to fisheries management by requiring that management measures include a safety margin to buffer against scientific uncertainty.

Avoid Bycatch

Bycatch is the indiscriminate catching of fish and marine life other than those a fishing vessel intends to capture. This includes fish that are not the target species, sex, size, or quality. It also includes many other fish and marine life that have no economic value but are ecologically important, such as starfish, sponges and skates. Primarily, bycatch results from fishing practices and gear that are not selective. In addition to visible mortality, fish and other sea life are sometimes killed or injured when passing through or escaping fishing gear, and through "ghost fishing" from abandoned or lost gear.

Environmental problems caused by bycatch include overfishing, increased scientific uncertainty regarding total fishing mortality, and potentially serious changes in the functioning of ecological communities. Economically, bycatch equates to lost future fishing opportunities as a result of mortality of commercially valuable fish.

In the SFA, Congress required action to address bycatch problems for the first time. However, the councils and NMFS have uniformly failed to take sufficient action to avoid bycatch. They have relied upon past actions to satisfy the new legal obligation, recommended insufficient action, or have not bothered to address the issue at all.

To address these concerns, the Magnuson-Stevens Act should be amended to:

- strengthen national policies to put priority on avoiding bycatch in marine fisheries;
- refine the definition of bycatch to more specifically address the root cause of this problem: non-selective fishing gear; and
- develop a more specific set of requirements to hold fishery managers accountable for implementing national bycatch avoidance standards.

Protect Essential Fish Habitat

Essential fish habitats (EFH) are those waters and substrates on which fish are dependent to reach maturity and reproduce. The SFA requires action to describe, identify, conserve, and enhance EFH. The law and regulations require councils "to prevent, mitigate, or minimize" identified adverse effects from fishing unless it is not practicable to do so. Most councils say that the fisheries under their jurisdiction do not adversely impact EFH or that they did not have enough information to take action. Unfortunately, NMFS accepted these excuses. The "to the extent practicable" language in the law's EFH requirement is clearly being used as a loophole to avoid action, as is the familiar "lack of information" refrain.

The SFA requires NMFS to provide federal agencies with recommendations on how to minimize, mitigate, or avoid adverse impacts from federally permitted activities on EFH. Compliance with these recommendations is voluntary. This consultation requirement needs to be strengthened to more fully protect EFH.

To address these concerns, the Magnuson-Stevens Act should be amended to:

- require regional fishery management councils to prohibit fishing activities that may adversely affect EFH unless a council determines that the closure is not necessary to protect EFH;
- adopt the precautionary approach to habitat protection by prohibiting the introduction of new fishing gear or the opening of closed areas unless EFH damage is assessed and minimized; and

- enhance the EFH consultation requirement by providing that federal agencies must ensure that their actions are not likely to adversely impact EFH.

Establish and Fund Mandatory Fishery Observer and Enforcement Programs

Objective observation and data collection are vital to effectively manage marine fish and fisheries. Managers' ability to address the problems of overfishing, bycatch, and degradation of EFH can be limited by lack of accurate and reliable information on a fishing vessel's catch, including bycatch. This information is important to meet the objectives of the Magnuson-Stevens Act by promoting sustainable fishing.

Currently, most regulations must be enforced at sea. With a small force of agents burdened with a mounting number of rules to enforce and fishers to enforce them upon, violators know the chances of being caught are slim. As a result, compliance with fishery laws is often poor.

To address these concerns, legislative changes are needed to:

- establish a mandatory fishery observer program for all federally managed fisheries;
- fund observer programs with a user fee based on value and applied to all fish landed and sold in the United States; and
- increase funding for monitoring and enforcement activities.

Reform Regional Fishery Management Councils

Although regional fishery management councils are charged with managing the nation's marine fish for all Americans, representatives of fishing interests dominate the councils. Interests of the general public, as well as non-consumptive users of marine fish, such as divers, are not adequately represented on the councils.

Marine fish are public resources. Decisions regarding their management should be made in the public interest, not simply the economic interest of the fishing industry. Accordingly, representatives of the public interest must sit on regional fishery management councils.

To address these concerns, the Magnuson-Stevens Act should be amended to:

- ensure that councils are more broadly representative of the public interest as they make decisions regarding the conservation and management of public resources; and
- require governors to consult with conservation groups before nominating individuals to a council.

CONSERVE ATLANTIC HIGHLY MIGRATORY SPECIES

NMFS is responsible for conserving Atlantic highly migratory species like tunas, swordfish, marlins, sailfish, and coastal and pelagic sharks. All of these species with the exception of sharks, are also managed under multilateral agreements through the International Commission for the Conservation of Atlantic Tunas (ICCAT).

In 1990, the Magnuson-Stevens Act and Atlantic Tunas Convention Act (ATCA) were amended to preclude U.S. fishery managers from issuing regulations, which have the effect of "decreasing a quota, allocation or fishing mortality level," recommended by ICCAT. Since then, NMFS has done little more than implement ICCAT quotas and allocate them among domestic user groups. Moreover, where no ICCAT recommendations exist, no precautionary measures have been taken.

Although ICATT sets quotas, measures to implement the quotas and minimize bycatch mortality, such as area closures and gear modifications, must be implemented through domestic regulations. NMFS, however, interprets the law to prevent the U.S. from unilaterally reducing bycatch if it would affect the ability to fill the U.S. quota.

To address these concerns, the Magnuson-Stevens Act should be amended to:

- give the U.S. greater discretion and flexibility in the management of highly migratory species; and
- repeal language that prevents or hinders the U.S. from implementing management measures that are more conservative than those recommended under international agreements.

Similarly, the ATCA should be amended to:

- remove language limiting U.S. authority to conserve highly migratory species.

Individual Fishing Quotas

Individual fishing quotas (IFQs) grant the privilege to harvest certain amounts of fish to individuals. The SFA placed a moratorium on the submission, approval, or implementation of any FMP that creates an IFQ program until October 1, 2000.

The Marine Fish Conservation Network supports extending the moratorium on IFQs until and unless Congress addresses all of the Network's conservation principles. Standards must be adopted that, among other things, clarify that IFQ programs:

- do not create a compensable property right;
- demonstrably provide additional and substantial conservation benefits to the fishery;
- are reviewed periodically by an independent body to determine whether the programs are meeting their conservation goals; and
- are of a set duration, not to exceed 5 years, subject to possible renewal if a program is meeting its conservation goals, provided that in any reallocation of quota shares upon a renewal, preference shall be given to those quota shareholders that are meeting or exceeding IFQ program requirements, including all conservation goals.

Provide Adequate Funding for Fisheries Research & Conservation

The status of nearly two-thirds of the species managed under the Magnuson-Stevens Act is unknown due in large part to lack of funding for basic research. Even where general population trends are known, the data are often imprecise, which can undermine the ability of managers to respond to overfishing in a timely and effective manner. There are critical gaps in fishery catch statistics, both in terms of the amount of information collected and the adequacy of the collection systems. These gaps deny managers essential information on the current levels of commercial and recreational harvest, as well as, fish discarded and landed. These research and information shortfalls are largely the result of chronic underfunding, as is the poor state of habitat and ecosystem-based studies.

To address these problems, legislative changes are needed to:

- increase funding for management-related scientific research and data collection; and
- if new appropriations are not available, re-prioritize existing funds and develop new, innovative sources of funding.

Senator SNOWE. Thank you, Mr. Emerson.

Let us talk about the ITQ for a moment. What do you think are the inherent advantages of an ITQ system over the current derby fishing and the license limitations systems?

Mr. EMERSON. From my point of view, one of the most important advantages of an ITQ program would be that it gets the incentives right. There is no longer a need to race for fish. There is every reason on the part of a fishermen, like Captain Werner, to fish in a low-cost, careful way. There is every reason for him to be a good steward of his favorite places that he goes to fish. There is not going to be a long closed season, or minimum size limits. Captain Werner talked about wasting 2.65 million pounds.

Senator SNOWE. In discard, yes.

Mr. EMERSON. Well, what about the fish that are wasted—now our season is closed maybe 300 days a year. Other people are fishing for vermilion snapper. What about all of those fish that are wasted? What is the estimate? Is it another 3 million pounds of red snapper that are wasted? I do not know what the number is, but it has got to be huge, based on what I have learned from fishermen.

Senator SNOWE. So you think there is an inherent benefit to having the ITQ system over the current system, or any other system?

Mr. EMERSON. Absolutely, with respect to the reef fish fishery, there are tremendous conservation benefits associated with a comprehensive ITQ program.

Senator SNOWE. Mr. Fischer, I know you do not agree with lifting the moratorium on the ITQ.

Mr. FISCHER. I do not agree, but my reasons can be swayed.

[Laughter.]

Mr. FISCHER. I am being honest.

Senator SNOWE. You are keeping an open mind. We like that.

Mr. FISCHER. I did not get to verbally state this portion. I presently support the ban on ITQs, because I feel there are a lot of unanswered questions. But I also state that, as the answers come forth, I may feel a need to change my perspective. Enforcement and how we are going to make certain that if we are allowing 4.5 million pounds, is 4.5 million pounds caught, not 4.5 million pounds of fish we registered, but 10 million pounds caught? That is just one of the many hurdles.

User conflicts: Presently the commercial season is closed during the summer months, and this year, through September. The recreational fishery off our coast peaks during the summer months, so we do not see this user conflict. Actually, the two boats, I mean in the commercial and the recreational boat, come in contact very little.

The other issue is it has to be allocated fairly. I have heard every possible scenario of why someone feels they will either be cut out or left out or why this one person got too much of a share. So it has to be allocated fairly.

And I guess my last point, if it enters into the recreational for-hire sector, how is that going to be allocated? I understand they have some areas of the coast, some States, one or two States, which are now reporting their charter boat catches, in anticipation of a for-hire ITQ. Well, I think they are getting an unfair jump, because we are not reporting ours.

The State of Louisiana does not require it. The Federal Government does not require it. So, we do not have the background log of what we have been catching. And I think when it has to be allocated, it has to be done fairly, not because someone had the foresight, in their State, to look into it in advance, anticipating this happening.

Senator SNOWE. Well, does the recreational sector generally have concerns about the ITQ system?

Mr. FISCHER. As far as it occurring to the recreational fishermen?

Senator SNOWE: Yes.

Mr. FISCHER. No, I do not think they would have any clue it is even being thought about.

Senator SNOWE. So you could see some advantages of ITQ, if it addressed the issues that you raised?

Mr. FISCHER. Yes. Actually, as far as the commercial industry now, I think it is the way to go. They get to choose when they want to fish, when the market price is highest, when they want to fish, when the seas are the calmest. There are quite a few advantages. And it lets them target other species during their peak, where there are overlaps. There are overlaps in the fishery, where red

snapper may be open while another fishery is open. So they get to schedule what they want to do.

I just have concerns at this time—you know, just like I said, just a minimal amount of concern—about enforcement and fairness in the allocation.

Now, in the recreational fishery, I would not even know where—you have got people who might only want to fish a couple of days a year. Where in the world do they fit into this puzzle?

The comment I do hear made often, and which was somewhat brought out today, is if the housewife in Nebraska wants to eat snapper, it has to come off a commercial boat. I agree with that. But if her husband wants to go fishing, he has to go on a charter boat.

Senator SNOWE. Thank you.

Mr. Werner, do you want to comment?

Mr. WERNER. Oh, yes.

[Laughter.]

Mr. WERNER. Today what we are dealing with is not just the derby in this one fishery. We are a multi-diversified fishery. We target five or six different species. Two of these are under quota systems, and now under trip limits. So we target one fish at a time, one fish at a time, one fish at a time, all the way throughout the year. We go from this fish to this fish to this fish to this fish.

We are not just driving down our prices on the one fish, we are driving down the prices on all of our fish all year long. This has created a disaster in our price factors. I am getting 85 cents a pound less than I did prior to this management scheme for my snappers. I am having a hard time. I am one of the people who is in this from beginning to end. I am having a hard time keeping my catch up.

And the council system, with the way that they framed up this license limitation system, with such a low qualifier, lets people into the fishery for 5,000 pounds, and now they are fishing 50,000 pounds. And what has happened is, basically, slowly but surely, it is taking away from me.

One of the highliners in our fishery is just taking it and taking it and taking it, until, before I know it, I will probably be at the back of the pack and no longer—this is just a terrible situation. I do not even know how to—I could go on for hours, it is so terrible.

Senator SNOWE. But obviously the current system has not worked for you?

Mr. WERNER. Oh, it does not work.

Senator SNOWE. That is an understatement?

Mr. WERNER. That is an understatement, yes, ma'am.

Senator SNOWE. Mr. Emerson, did you want to address the issue Mr. Fischer was raising about some of the hurdles that could potentially develop with an ITQ system and how they could be overcome?

Mr. EMERSON. Well, I think we need the flexibility here to address those concerns, and we need a process, with our Council, that is broad with respect to the participants. But my concept, or my vision, would be to expand the ITQ program from the commercial sector to the for-hire recreational sector, and then manage the purely recreational sector, either through a stamp program, as

Captain Werner suggested, or continue with bag limits and minimum size limits the way we do now.

But we need to compile necessary data in all the sectors where you are going to use an ITQ program. And so we have to start building that for the for-hire recreational sector. The Council is now looking at Federal permits for that sector. Logbook requirements are going to be needed so we can obtain the data. You are going to have to buildup to this. You cannot start it next week or really quickly. But we do need to get this process started and get some decision made about control dates and things like that, and then put the program together.

Senator SNOWE. Thank you.

Ms. Anderson, you mentioned several things in your testimony that I wanted to explore. You have said, in your testimony, that the essential fish habitat program has spun out of control. Can you tell the committee where you think we should make some changes under the Magnuson-Stevens Act?

Ms. ANDERSON. When I said it has spun out of control is——

Senator SNOWE. The way it is defined?

Ms. ANDERSON. Pardon?

Senator SNOWE. The way it is defined?

Ms. ANDERSON. No. What you wrote was not wrong. It is how it has been perceived and how it has been expanded on, that everything has become essential fish habitat. There is no place in the Gulf that is not essential fish habitat. And I think we have to look back at what I think Congress intended to do, which was to watch the estuaries and bays to see that we had our species coming back and that we were not going to go in there and, I will just use an example, decimate the shrimp industry because of our trawls. And that is where we are seeing we have got lawsuits now filed against NMFS, that they are demanding something be done about our shrimp trawls and bycatch again.

But there are no data out there that show anything has really occurred from our shrimp trawls. We have been there for 40 years, and really nothing has changed. But it is a new—I will just maybe put it bluntly—it is a new fundraiser for other people, a new avenue to jump on. And actually I think that is what has spun it out of control. I am not trying to be bold, but I have gone through the turtle process. I have gone through every process. And I am the biggest fundraiser I have found there to be in the Gulf of Mexico.

[Laughter.]

Senator SNOWE. Senator Breaux.

Senator BREAUX. Thank you very much. And I thank the panel for their comments and their input, which are very, very important to this process.

Mr. Fischer, being a fisherman, you fit right into our panel. But I was wondering, do you consider yourself a recreational fisherman or a commercial fisherman?

Mr. FISCHER. Well, legally we are considered recreational fishermen. We have to abide by the recreational guidelines. We are just taking the fishermen out for hire.

Senator BREAUX. It is sort of a combination.

Mr. FISCHER. It sure is.

Senator BREAUX. You have a commercial business that takes recreational fishermen out fishing.

Mr. FISCHER. In some instances, I wonder if the Magnuson-Stevens Act did not—even though they mentioned the phrase "charter head boat" quite a few times—did not have the foresight to possibly look into it as a third category.

Senator BREAUX. That is why I asked the question. Because we are always talking about commercial fishermen and recreational fishermen, but you fit into a new category.

Mr. FISCHER. There may be benefits. There may be detriments to having a third category.

Senator BREAUX. It is just sort of a different classification. You are a commercial operation that takes recreational fishermen out. So it is kind of a combination of recreational and commercial operations. It seems that the charter boat industry has really increased substantially. I was looking at the numbers of charter vessels and head boats which have essentially doubled between 1989 and 1996, increasing a little over 70 percent.

What about considering a moratorium or a limited entry for charter boats and head boats? I have argued for limited entry as a means of fisheries conservation all over this country. I always thought that for those who were already in the business, hearing that we are going to limit others' ability to enter a fishery would be welcome news. If I were a car salesman in a little town and they said no more car salesmen would be allowed in the town, I would be very happy with that.

Is that an option as far as a management tool?

Mr. FISCHER. It is presently on the table for the Gulf Council. It has advantages. It has disadvantages. What is the goal? If the goal is to decrease or to control effort by the charter boat industry, by the for-hire industry, it would accomplish that. Or would it accomplish it, though?

Senator BREAUX. You have got all of these options for maintaining a certain amount of catch that is allowable, given the status of the species that are out there. If you allow anybody to come in at any time they want, you will have a smaller and smaller quota. Or you can choose limited entry and have fewer people in the business, but with a higher available catch quota.

If you keep doubling like your industry is, and you are going to have a huge take by the charter boat industry on red snapper, the amount of quota available to each of your boats is going to come down and down and down. Or you can say, all right, we have got enough boats out there. Let us keep vessel capacity level for a while and limit the entry into the fishery and have more quota available to the fleet.

Mr. FISCHER. I think one of the problems is that the for-hire boats are coupled with the purely recreational boats. I have seen where recreational boats double every seven years their population. Well, if you cap the for-hire and let the pure recreational continue to grow, and yet you are under a quota, they will be getting the increasing part of the pie, while the charter boats are capped.

I think if you are going to do that, you have to incorporate the two together. Or else the recreational will just start taking away those fish.

Senator BREAUX. I take it, Mr. Werner, you are really knowledgeable. And I always have a great deal of respect for those of you who are out there every day fishing. It is a very tough business. And then to have to come in and talk about all this stuff. It is like alphabet soup—ITQs and all this stuff. This is my job, and I find it horribly confusing. To find a fishing boat captain out there who can also understand this stuff is truly amazing to me. I am impressed.

I guess what we have got for the allocation of snapper is 51 percent to commercial operations and 49 percent to recreational. I understand 70 percent of that 49 percent recreational share is to the charter boat industry. That is something the council has devised, I take it? Is that the council split?

Mr. WERNER. Yes.

Mr. FISCHER. The 70 percent is just the way it ends up, of the 51/49.

Senator BREAUX. OK.

Mr. WERNER. That was based on historical catch.

Senator BREAUX. I take it, Mr. Werner, you do not feel like commercial operations have fair representation on the council. I have been through this a number of times since we wrote this Act, trying to get a proper balance, and to try to not have people with conflicts on the council. On the other hand, if you get people who have absolutely no potential conflicts, you may get people who do not know anything about fish.

[Laughter.]

Senator BREAUX. You could have a bunch of bankers and lawyers on the council who have never been fishing in their lives. They would not have any conflicts, but they would not know what they are talking about.

Senator SNOWE. They just eat them.

Senator BREAUX. Yes, they just eat them.

[Laughter.]

Senator BREAUX. So you have got to have fishermen on the council to provide expertise. You have got to have some recreational representation and commercial industry representation on the council. But I take it the bottom line is that you feel the council is not balanced, and I want you to elaborate on that. We try very hard to encourage the appointment of people to ensure the council is balanced. I feel like Dr. Hogarth, who said, look, we do not have anything to do with that.

[Laughter.]

Senator BREAUX. I used to wish we did have input, but I am sort of glad that Members of Congress do not make these appointments. It is the recommendation of the Governor, through the Secretary of Commerce, that determines council membership. We do not make the appointments. I want to make that clear.

[Laughter.]

Senator BREAUX. But tell me about your concerns.

Mr. WERNER. I have been going to these council meetings for 12 years. I have attended 37 full council meetings, at an average cost of $1,000 a meeting. So I have spent $37,000 going to these meetings.

My representation has consisted of—and I am not going to put anybody down—but there are people like Mr. Corky Perret, who is

a State representative, who does well and has always represented the commercial sector well. And then the rest of my representation are fish dealers and importers of fish. That is like having a fox guarding the chicken house. There is no other way to put it. Because there are two different agendas; the fish dealer's agenda and the fisherman's are two different things.

And I have watched the votes on this council for 12 years. And I can pretty much tell you when a subject comes up, arises, and there is a vote on it, I can pretty much tell you who is going to vote for what before, based on whether it is a recreational or commercial issue. And we just really, the fishermen, and you can ask—there are several of them here today—to speak. You can ask every one of them if they think they have representation on that council. And I will guarantee you, you will not get one commercial fisherman to say that they do.

Senator BREAUX. Well, there is a continuing concern, to make sure that everybody who has an interest in the resource is represented on the council. Fisheries resources belong to the people of this country and everybody has an opportunity to utilize them. But the councils can only, I think, do a good job if they are in fact adequately balanced. I do not know how much more we can do to tighten up the law to ensure balance. We have got the word "balance" in this Act all over the place.

Mr. WERNER. I would like to make one comment on that. Whenever you set up this thing, now you have five State representatives, one from each State. And whatever the political agenda is in each State just determines how it goes. Well, over the last 12 years that I have been attending, we have Governor Foster and the State of Louisiana, and he is big on the GCCA and CCA, and the representation that is put up for that council is going to be the recreational standard.

And all but two years that I have attended council meetings, the representation of that council has been a majority of recreational, all but two years.

Senator BREAUX. I appreciate the comments.

Ms. Anderson, you have been in this business almost as long as I have, I guess. We have been doing this for a long, long time.

Ms. ANDERSON. Yes, we have kind of faced each other quite a few times.

Senator BREAUX. We have been around on this for a long, long time, and I am glad to have you back before the Committee. But you have a statement in here that is really pretty strong, and maybe you could elaborate on it again. In summary: We have completely lost confidence in the ability of the Federal fishery management process to operate fairly and in a manner consistent with sound science and accurate information.

And then you go on, because I really read your testimony and underlined it and all that kind of stuff, in yellow and everything else, and you are saying, in particular, that the bycatch reduction devices are not really working, that the red snapper estimates are too high, and also that you have concerns over the quotas that will be set on red snapper. I was really interested in that. You talked about the science: The stock assessment panel of scientists that serve the Gulf Council recently advised that the annual quota

should be set at no more than 6 million pounds. NMFS has indicated support for continuing the annual catch level at 9 million pounds.

From the shrimp industry's standpoint, the higher the allowable catch, the more they are leaning on the BRDs—bycatch reduction devices—to keep down the total catch. You think they are not doing a good job of that.

Ms. ANDERSON. We think that is exactly what is happening. When they go higher with the TAC, then they work backward to see how much bycatch reduction they want from us to be able to justify that TAC. And it simply is we cannot get to the figure that they think we are going to get to. It is always a potential. We are never going to get past 25 to 28 percent mortality reduction in shrimp trawls with BRDs.

Senator BREAUX. What does the National Marine Fisheries Service estimate, a 44 percent reduction in mortality?

Ms. ANDERSON. They have not even got that. I heard Ms. Dalton talk about 60 percent, 80 percent. But as I said in my statement, they cannot get it from BRDs, so now they want to address the other areas—the seasonal closures, area closures.

Senator BREAUX. What about that? Is there a potential, to look at mortality controls other than the BRDs?

Ms. ANDERSON. That is, in addition to the BRDs, what is being discussed, because the BRDs will not achieve the reduction they are looking for. But what we are saying is if you are going to mandate those BRDs that are not reaching the objective that they were put out there to do, and your stock assessment says you cannot have more than a 6 million pound TAC, then if we have to stay in line, they must stay in line, and both have to share to rebuild this fishery. We are not seeing those same standards being applied out there.

Senator BREAUX. What would you have Senator Snowe and I do? What do you think, in reauthorizing the new Act, would be helpful in ensuring a better balance from the shrimp industry perspective?

Ms. ANDERSON. I have always had a problem with the incidental harvest area, because it seemed like once the shrimp trawl bycatch surfaced, I do not think anybody really understands what the large percentage of that bycatch really is. It is not snapper. It is low value, non-edible species which have the same life cycle as shrimp. They are going to be an annual crop. They are going to come back. If they are not in our nets, they are going to die naturally anyway.

But it just seems like we have gone totally out of control on the theory of bycatch, and not just the shrimp trawl industry, but the other trawl industries are really taking a beating. Because it seems like it is all focusing on the trawl area. We have argued that the bycatch mortality in regulatory discard has to be addressed.

And then finally some just woke up the other day. Well, that is bycatch and it is going to have to be reduced. They thought it was catch and release, but it is not. And they have it listed at 20 percent. But when they went to the size 18-inch fish last year, that mortality factor was horrendous. It was more like anywhere from 60 to 80 percent off of Texas of dead fish floating, to try to attain an 18-inch. The boys could not do it. They just had to pull off.

So what we have done is we continue to increase that size limit. That is increasing the discard mortality on the directed fishery side. And as they keep going up and up with the size limit, then I have got to keep trying to come up with more bycatch reduction, with .05 percent of ours, as our species composition, it just is not there to get from the shrimp industry. So something is wrong.

But I will have to agree with Dr. Shipp's statement: it is all in the science and it is all in the model. In my personal opinion, I think red snapper is healthy. It is not in an overfished state. And I do not believe the shrimp trawl bycatch is affecting that species. It is the computer model that has put us all at odds against each other.

Until it is corrected, I, protecting the shrimp industry, have no option but to have to fight about it. That is what I see.

Senator BREAUX. Mr. Werner, what is your comment on what Ms. Anderson just said about Dr. Shipp's evaluation of the science on red snapper?

Mr. WERNER. Well, the science on red snapper, you made the comment: junk in, junk out. That is the favorite statement of people who come to council meetings in the beginning. If there was any faith in the data, that would be one thing. But I do not see where—there has been thousands of people who have come forward to testify over time—I have not seen one person go up there and say: I agree with this. If we are all wrong and the one man that runs the computer model is right, so be it. But after thousands and thousands of people going up there, I have never seen anybody go up there and say: This computer model is correct. This is the way that this fishery should be run.

Senator BREAUX. Assuming we come up with pretty good data, which, I sure hope we can, is an ITQ system an option? Instead of having the derby all the time where everybody just catches as much as they can as soon as they can, it would seem like an ITQ system would be an advantage to someone like you.

Mr. WERNER. Oh, an ITQ, I am for an ITQ. I am against the ITQ—and Dr. Shipp made a comment that most of the people were in favor of the ITQ—that the Gulf of Mexico Fisheries Management Council developed. I was at that meeting. Eleven people testified against that ITQ and eight testified for it.

Senator BREAUX. That particular one?

Mr. WERNER. That particular type of ITQ system. I would just like to make that comment.

Senator BREAUX. You think the concept could work if it is done properly, but this particular one was not the right one?

Mr. WERNER. Absolutely.

Senator BREAUX. OK. I appreciate you all coming.

Thank you, Mr. Emerson.

Senator SNOWE. Just one final question, Mr. Emerson. You mentioned that you thought the Magnuson-Stevens Act required substantial changes. That is in your testimony.

Mr. EMERSON. With respect to my interest in removing the prohibitions on IFQ's, which is the highest priority, I am not sure that the changes are substantial. I did not mean to give that impression. I think the changes are straight forward. Senator Breaux was looking for a place to put his pencil down and do something; I think

that can be done right at Sections 303(d) and 407(b). With those deletions, we could adopt a really sensible management program here in the reef fish fishery.

I was interested in the discussion of good science, which is very important. Getting the best science is obviously a goal that we are all working toward. But getting the incentives right for people in the fishery and in the management process is just as important. In some respects, perhaps more important! You heard Captain Fischer respond when we had a little back-and-forth here about some things that I said. Captain Fischer said, "Well, I am flexible."

Let's create a situation in the fishery where we can make some deals between the commercial sector and the recreational sector and maybe even with the shrimp fishermen. I cannot see why we cannot do this, other than the incentives are not right.

Senator SNOWE. Well, I think it is unfortunate that the entire industry, which Wilma represents here today, feels that the process is not serving them.

Mr. EMERSON. Absolutely.

Senator SNOWE. Neither the science nor, in this case, the technology. And that is unfortunate. And we have got to bridge those gaps.

Mr. EMERSON. Yes.

Senator SNOWE. The question is going to be whether or not we should be fine tuning this legislation or making wholesale changes, and whether we should try to clarify what we have already done in the 1996 Act?

Mr. EMERSON. I did not intend to argue in my oral or written testimony for wholesale changes. I am talking about pretty specific deletions.

Senator SNOWE. Yes, very precise, limited changes in that respect.

Ms. Anderson.

Ms. ANDERSON. Well, of course, with the shrimp industry being an annual crop, we are not really looking at the ITQ system. But one thing I would certainly look at is what type of user fee anybody is going to look at. Because that could be horrendous and put that industry under. That is the only reason I would be scared of an ITQ system; unless Congress nails that down, you cannot exorbitantly hit this fishery to pay for the services. That is what is going to be the drawback, if you do not curb what they can charge or make it no fee at all. And I think the people will support it.

Senator SNOWE. We thank you all very much for your testimony. We appreciate it.

We will now have our third panel. Mr. Michael Lyons is the Manager for Environmental Affairs, Louisiana Mid-Continent Oil and Gas Association; Dr. Charles Wilson is the Chair of the Department of Oceanography and Coastal Sciences at Louisiana State University; Corky Perret is the Director of Marine Fisheries at the Mississippi Department of Marine Resources; Mr. Steve Loga is a Commercial Longline Fisherman; and Mr. Fred Miller is from the Coastal Conservation Association.

We welcome all of you. Please sit at the table.

I would like to have you all limit your oral statements to five minutes. And we will place your full written testimony in the record.

Mr. Lyons, why don't you begin.

STATEMENT OF R. MICHAEL LYONS, MANAGER, ENVIRONMENTAL AFFAIRS, LOUISIANA MID-CONTINENT OIL AND GAS ASSOCIATION

Mr. LYONS. Madam Chair, Senator Breaux, my name is Michael Lyons. I am the Manager of Environmental Affairs for the Louisiana Mid-Continent Oil and Gas Association.

Mid-Continent is the trade association which has, for 75 years, represented the oil and gas industry in Louisiana. We represent producers, transporters, refiners, and marketers of approximately 90 percent of Louisiana's oil and gas. My testimony this morning is also being endorsed by the American Petroleum Institute.

Before I begin my remarks, I want to make two statements. One, I am honored to be here. I appreciate the invitation. It is my first time testifying before a congressional committee. I have testified before a number of local and state legislative committees. I appreciate the invitation.

Second, I understand the pressure agencies work under in trying to meet legislative mandates. I respect their decisions, even if at times I disagree with those decisions. I know what they go through. I work with state agencies every day. And I know how difficult it is for them to meet legislative mandates. But sometimes they make mistakes. And that is what I would like to address today.

We have closely followed the development of the essential fish habitat, or EFH, regulations over the past 2 years. Unfortunately, the vast majority of Louisiana's oil and gas activity is conducted in areas now classified as EFH under the generic amendment adopted by the Secretary of Commerce. In fact, the entire Gulf of Mexico and much, if not most, of Louisiana has been so classified.

We have commented on the developing program at every opportunity, and will comment again pursuant to the recent call for comments by the Department of Commerce and noticed in the Federal Register.

Our concerns can be summed up very simply. There is no need to subject the oil and gas industry to further regulation in Louisiana and the Gulf of Mexico. Our industry is among the most regulated industries in the world. And I make that statement after hearing several people testify this morning. I understand there are other industries out there that are highly regulated, too.

I have never been to a Fishery Council meeting. I was never exposed to the Magnuson-Stevens Act until the provisions on essential fish habitat were added to the Act. The fact is that there are numerous programs in place today to protect habitat from adverse impacts associated with our activities. Habitat programs are administered by the EPA, the Corps of Engineers, the Coast Guard, the National Marine Fisheries Service, the U.S. Fish and Wildlife Service, and individual States. Oftentimes those agencies disagree in the implementation of these programs, and we sit on the sidelines waiting for a permit.

In most cases, each of these agencies is authorized to participate in permit review under these various programs. So they not only have individual programs, but they participate in each other's programs and consultations, much as is done under the essential fish habitat provisions.

I have witnessed, over the years, the development of two habitat protection programs specifically addressing oil and gas activity: the Corps of Engineers 404, Section 10 program, and the Louisiana Coastal Zone Management Program. I have witnessed long delays in permitting associated with the implementation of each of these programs.

Along with these delays, and the costs associated therewith, has come ever-increasing mitigation costs. What has resulted in Louisiana is a no net loss of wetlands policy, approved by the Department of Commerce and others, which provides that we, the oil and gas industry, or any other developer, replace wetlands values which are adversely impacted by projects in areas subject to program jurisdiction. These are minimal impacts, realized only after we have avoided and minimized impacts to the maximum extent possible.

In Louisiana, virtually every parcel of EFH is currently covered under one or both of these habitat protection regulatory programs. In other words, the EFH program is, for Louisiana, a completely duplicatory program. And "duplicatory" is not the word. This is effectively the third layer of review that we go through.

Indeed, the Department of Commerce currently participates in both the Coastal Zone Management Program and the Corps of Engineers 404 program. As a result, we suggest that all activities in these jurisdictional areas be exempted from the requirements of EFH review.

Unfortunately, having experienced the growth of programs like these in the past, we fully expect delays and additional costs to result to permitees subject to the provisions of the generic EFH amendment. We have in fact already experienced these additional delays and costs.

We have objected to the imposition of yet another habitat protection program in these areas, predicting just these types of unnecessary impacts. And our fears are being borne out today. Oil and gas companies are now subject to EFH review, which results in delays in permitting and additional costs above and beyond the 404 and CZM permit and mitigation costs.

The Corps of Engineers has indicated to us that EFH has resulted in permit delays of approximately 2 weeks, on average. One permit reviewed for EFH impacts 182 miles up the Mississippi River from the coast; another, for a home site north of Baton Rouge, where I am from. Oil and gas platforms in the Gulf are now subject to EFH review. These platforms are widely recognized as improving habitat in the Gulf. I think several persons testified to that effect today.

I was once told that if everything is made a priority, the net effect is that nothing is a priority. The Department of Commerce has, in effect, made everything a priority. One of our main objections to the generic amendment adopted by the Secretary of Commerce is that it identifies all of the Gulf of Mexico and vast areas of Lou-

isiana—indeed, most of Louisiana—as EFH. This is certainly not *"essential"* fish habitat, which should be prioritized and subjected to additional review and regulations. It places virtually all oil and gas activity in and off Louisiana within its purview. The Department has lost sight of the legislative intent to protect *"essential"* fish habitat as opposed to every fish habitat.

Finally, when the generic amendment was proposed in 1998, we cited numerous areas of concern with language contained in the proposal. It was obvious that the drafters of the document were not familiar with oil and gas activities. Virtually all of these comments were rejected. As a result, and by the way of example, the document now states, in part, and I quote: Exploration and production activities should be located away from wetlands. Closed quote.

Most of Louisiana's oil and gas activity is in fact located in wetlands. That is where the oil and gas is located. And if we are to produce it, we must do it in wetlands. I think I overheard a comment that the location of this hearing is in a wetland. This college was developed on a wetland. The city of New Orleans was developed in a wetland. Language such as this in the guidelines is appropriate.

There are many other examples I could cite, where similar comments were rejected by the Fisheries Council, the National Marine Fisheries Service, and the Secretary.

To summarize: (1) The interim final rule, designating vast areas of the U.S. as EFH, is inappropriate. We strongly recommend that the guidelines be narrowed in scope to that which is not adequately covered by other Federal and State programs, and which is truly unique or essential. (2) We recommend the Congress revisit the law, if the guidelines are not revised accordingly, to narrow the scope of the essential fish habitat program. (3) We recommend that the inappropriate rules or guidelines be removed. (4) We recommend that areas covered by existing Federal and State programs be specifically exempted from additional review.

In closing, the EFH program will adversely affect not only oil and gas production projects, but coastal restoration projects, hurricane protection projects, and all types of development projects located within the jurisdiction of the EFH program. A significant percentage of Louisiana's economy, as well as that of other areas of the United States, will be impacted.

In most instances, the effect will be duplicative and unnecessary. We have in place two successful, albeit largely duplicative, programs protecting habitat in Louisiana now; programs which the Department of Commerce participates in. We do not need yet another.

Thank you.

[The prepared statement of Mr. Lyons follows:]

PREPARED STATEMENT OF R. MICHAEL LYONS, MANAGER, ENVIRONMENTAL AFFAIRS, LOUISIANA MID-CONTINENT OIL AND GAS ASSOCIATION

Good morning. My name is R. Michael Lyons and I am the Manager of Environmental Affairs for the Louisiana Mid-Continent Oil and Gas Association. Mid-Continent is a trade association which has, for 75 years, represented the oil and gas industry in Louisiana. We represent producers, transporters, refiners, and marketers of approximately 90 percent of Louisiana's oil and gas.

We have closely followed the development of essential fish habitat (EFH) regulations over the past two years. Unfortunately, the vast majority of Louisiana's oil and gas activity is conducted in areas now classified as EFH under the generic amendment adopted by the Secretary of Commerce. In fact, the entire Gulf of Mexico and much, if not most, of Louisiana has been so classified. We have commented on the developing program at every opportunity and will comment again pursuant to the recent call for comments by the department and noticed in the Federal Register.

Our concerns can be summed up very simply: *There is no need to subject the oil and gas industry to further regulation in Louisiana and the Gulf of Mexico.* Our industry is among the most regulated industries in the world. There are numerous programs in place today to protect habitat from adverse impacts associated with our activities. These programs are administered by the EPA, COE, Coast Guard, NMFS, USFWS, and individual states. In most cases, each of these agencies participates in permit review under these programs.

I have witnessed over the years the development of two habitat protection programs specifically addressing oil and gas activity: the Corps of Engineers 404/Section 10 Program and the Louisiana Coastal Zone Management Program. I have witnessed long delays in permitting associated with the implementation of each of these programs. Along with these delays, and the costs associated therewith, has come ever-increasing mitigation costs. The end result in Louisiana is a *no net loss of wetlands policy,* approved by the Department of Commerce and others, which provides that we replace any wetland values which are adversely impacted by a project in areas subject to program jurisdiction. These are minimal impacts realized after we have avoided and minimized impacts to the maximum extent possible. In Louisiana, virtually every parcel of EFH is currently covered under one or both of these regulatory programs. In other words, the EFH program is, for Louisiana, completely duplicatory. Indeed, the Department of Commerce currently participates in both these programs. As a result, *we suggest that all activities in these areas be exempted from the requirements of EFH review.*

Unfortunately, having experienced the growth of programs like this in the past, we fully expect delays and additional costs to result to permittees subject to the provisions of the generic EFH amendment. *We have, in fact, already experienced these additional delays and costs.* We objected to the imposition of yet another habitat protection program in these areas, predicting just these types of unnecessary impacts, and our fears are being borne out today.

Several examples (which I shall detail in written comments):

1. Oil and gas companies are now subject to EFH review which results in delays in permitting and additional costs above and beyond the 404 and CZM permit costs.
2. The COE has indicated to us that EFH has resulted in permit delays of approximately 2 weeks on average.
3. One permit was reviewed for EFH impacts 182 miles up the Mississippi River from the coast.
4. Oil and gas platforms in the Gulf are now subject to EFH review.

We fully expect significant costs to result from these reviews in the form of delayed permitting and mitigation costs. These are, once again, totally duplicative of existing programs in which the Department of Commerce participates.

I was once told that if everything is made a priority the net effect is that nothing is a priority. The Department of Commerce has, in effect, made everything a priority. One of our main objections to the generic amendment adopted by the Secretary of Commerce is that it identifies all of the Gulf of Mexico and vast areas of Louisiana as EFH. This is certainly not *essential* fish habitat which should be prioritized and subjected to additional review and regulation. It places virtually all oil and gas activity in and off Louisiana within its purview. Significant governmental costs will undoubtedly result simply from reviewing all activities potentially impacting EFH in the U.S. The additional paperwork will add significant costs, even if all the permits are approved without another condition. And we all know that won't happen. Conditions have already been attached to permits.

As if normal delays aren't enough, there have already been threats of forwarding the permits to Washington, D.C. for advanced review. We have experienced this before in the COE 404 program. These delays, while rare, can be years in duration.

When the generic amendment was proposed in 1998 we cited numerous areas of concern with language contained in the proposal. It was obvious that the drafters of the document were not familiar with oil and gas activities. Virtually all of these comments were rejected. So, the document now states in part: "Exploration and production activities should be located away from...wetlands..." *Most of Louisiana's oil*

and gas activity is in fact located in wetlands. That's where the oil and gas is and if we are to produce it, we must do it in wetlands. There are many other examples I could cite where comments were rejected by the Fishery Council, the NMFS, and the Secretary.

To Summarize: (1) The draft generic amendment designating vast areas of the U.S. as EFH is inappropriate. We strongly recommend that the guidelines be narrowed in scope to that which is not adequately covered by other programs and which is truly unique or "essential". (2) We recommend that Congress revisit the law to narrow the scope of the EFH program. (3) We recommend that inappropriate rules or guidelines be removed. (4) We recommend that areas covered by existing Federal and State programs be specifically exempted from additional review.

In closing, the EFH program will adversely affect, not only oil and gas production projects, but coastal restoration projects, hurricane protection projects, all types of development projects located within jurisdictional EFH areas, and a significant percentage of Louisiana's economy—as well as that of other areas of the U.S. In most instances, the effect will be duplicative and unnecessary. We have in place two largely duplicative programs protecting habitat in Louisiana, programs in which the DOC fully participates. We don't need another.

Senator SNOWE. Thank you.

Dr. Wilson.

STATEMENT OF CHARLES A. WILSON, PH.D., PROFESSOR, CHAIRMAN, DEPARTMENT OF OCEANOGRAPHY AND COASTAL SCIENCES, LOUISIANA STATE UNIVERSITY

Dr. WILSON. Madam Chair and Senator Breaux, ladies and gentlemen, my name is Charles Wilson. I am Professor and Chairman of the Department of Oceanography and Coastal Sciences at Louisiana State University. I also am honored to have this opportunity to provide both written and oral testimony for this review of the Magnuson-Stevens Sustainable Fisheries Act as it concerns essential fish habitat.

My experience with essential fish habitat activities in the Gulf of Mexico stem from various reading of published reports, my activities on a scientific and statistical committee for the Gulf of Mexico Fisheries Management Council, and most important is my personal research activities on life history and biology of a number of Gulf of Mexico fish species. I have reviewed the generic amendment produced by the Gulf of Mexico Fisheries Management Council regarding essential fish habitat, and I recently taught a graduate level class on sustainable fisheries, of which essential fish habitat was a primary topic.

There are several levels of activity among fishery management councils concerning essential fish habitat, and I believe there has been reasonable progress toward implementing this new concept. I think the Alaska region is probably the most proactive, due to habitat activities under development prior to the implementation of the EFH language. All the management council regions are assembling essential fish habitat data bases through the use of geographic information systems. I will call this GIS.

In the Gulf of Mexico region, GIS mapping activities have been undertaken by the Galveston Lab of the National Marine Fisheries Service. I strongly support this activity, and believe it will serve as a powerful tool to document and archive the various data bases related to fisheries monitoring and research. This will help fishery scientists to identify both essential fish habitat and future research needs.

Pursuant to the implementation of the Act, the Gulf States Marine Fisheries Commission, in conjunction with the Gulf of Mexico Fisheries Management Council, produced their generic amendment for essential fish habitat that addresses, species by species, EFH issues. I think the authors did a thorough job of addressing species specific EFH issues and other criteria, such as threats and conservation, which were identified by the Act.

But most disturbing, the amendment, which contains the current state of knowledge of essential fish habitat for species of concern in our region, raised my awareness of the glaring lack of information concerning habitat requirements for many species. As Mr. Roussel pointed out, good science is critical for all aspects of the Act, but most important is the essential fish habitat component.

I have several suggestions regarding how we might improve the effectiveness of EFH activities. My first concern is the concept of essential versus nonessential. I think this is a very simple statement, but very difficult in principle to recognize. We now realize the difference between essential and nonessential is not a yes or no issue, but a continuum. Therefore, I think it is important that we define EFH using criteria that can be quantified. These tools need to be repeatable measures of habitat variables that we can use to establish a habitat value along this continuum.

For example, there are a number of new digital techniques that lend themselves to habitat quantification and mapping—side-scan sonar, other forms of acoustics, satellite, and airborne based remote sensing.

The scientific literature contains reference to general essential fish habitat, habitat areas of particular concern, and critical fish habitat. These terms are useful but perhaps not sufficient for effective regulation. Critical fish habitat is derived from the Environmental Protection Agency, and has specific legal interpretation.

Given the diverse life history of fishes, particularly those in the Gulf region, and the spatial and temporal variety of habitats used during their different life history stages, it is important we understand which habitat variables are most important at each life history stage and which are of lesser importance. Again, I reflect back on the value of good science.

Effective, accurate criteria that place a given habitat along a continuum will be very important in developing future regulation. An example comes to mind, Senator Breaux, when you came to Louisiana in 1986 to help us launch our rigs to reef program, which has been very successfully run by the Department of Wildlife and Fisheries. We have since brought many oil and gas platforms into the artificial reef realm under the National Fishing Enhancement Act. Our research at LSU and at Wildlife and Fisheries indicates that these platforms harbor more fish than many of the regions of the Flower Garden Bank, which has been named a national marine sanctuary. So we do not have an effective way to index this difference. We need an index for this continuum.

My second comment is that I think it is very important that essential fish habitat be multi-species based. Although we can establish essential fish habitat for species such as red snapper, in today's political environment we cannot discuss red snapper without discussing the term "bycatch." EFH models being developed in the

future must have methods for incorporating a multi-species philosophy.

My third comment relates to archiving. The National Marine Fisheries Service and others should seek to establish a common GIS-based data archiving method. GIS has been used in many areas of the country. And these data bases may be in very different formats, and thus incompatibility becomes a concern. All data should be in a universal format that can be easily shared. This will allow users to converse in a common language when they are reviewing EFH, as well as other issues.

My fourth comment concerns modeling. I think effective modeling is paramount to making essential fish habitat successful. We all recognize that modeling has become an important concept and a refined science in the 1990's. As modelers adapt new computer tools to the analysis of new EFH data, it is important that the government encourage and support that effort.

My fifth comment concerns the threat of overregulation. The intent of EFH is very sincere. However, if not properly guided and guarded in its implementation, it could result in over-management. It may lead us to impose unnecessary burdens on the dwindling fishing communities of the U.S., as well as unnecessary regulation for coastal communities. We must proceed with logical conservation efforts, based on good science, and not promulgate overregulation.

My sixth comment concerns funding. As Mr. Perret said, in 1996, current and future regulations must be developed with State, regional and Federal cooperation. Many of the species that are and will be managed are estuarine dependent and therefore, in many times, considered State resources. For EFH to become effective, it must have the cooperation of all regulatory and enforcement bodies, and the funding to go along with that effort.

So, in closing, I make the observation that the Gulf of Mexico region is off to a good start in implementation of the EFH component of the Act. The background work is done. We need sound science for effective monitoring and research in the future.

Thank you.

[The prepared statement of Dr. Wilson follows:]

PREPARED STATEMENT OF CHARLES A. WILSON, PH.D., PROFESSOR, CHAIRMAN, DEPARTMENT OF OCEANOGRAPHY AND COASTAL SCIENCES, LOUISIANA STATE UNIVERSITY

Mr. Chairman, Members of the Subcommittee, Ladies and Gentlemen:

My name is Charles A. Wilson. I am Professor and Chairman of the Department of Oceanography and Coastal Sciences and Professor in the Coastal Fisheries Institute, CCEER, Louisiana State University. I am pleased to have this opportunity to provide both written and oral testimony for this review of the Sustainable Fisheries Act (Act) as it concerns Essential Fish Habitat (EFH). My experience with EFH activities in the Gulf of Mexico stem from reading various published reports, my activities on the Scientific and Statistical Committee for the Gulf of Mexico Fisheries Management Council (GMFMC), and my research on the life histories of several GOM fish species. I have reviewed the generic amendment produced by the GMFMC this past year, and I recently taught a graduate level class called Sustainable Fisheries in which EFH was a primary topic.

There are a variety of activities at fishery management councils concerning EFH and I believe there has been reasonable progress toward implementing this new concept. The Alaska region is the most proactive due to their habitat related activities under development prior to implementation of EFH language. All of the management council regions have EFH data bases being archived using the Geographic In-

formation system (GIS). Locally (Gulf of Mexico), mapping activities (GIS) are underway by the Galveston Lab of the National Marine Fisheries Service. I support this activity and believe it will serve as a powerful tool to document, and archive in a GIS compatible format, the various data bases that exist related to fisheries monitoring and research. This will help us to identify areas for future research activities and clarify EFH.

Pursuant to the implementation of the Magnuson-Stevens Act, The Gulf States Marine Fisheries Commission, working with the Gulf of Mexico Fisheries Management Council, produced a Generic Amendment for Addressing EFH that dealt, species by species, with EFH issues. The authors did a good job of addressing species specific EFH issues and other criteria called for in the Act (Threats, Conservation, etc.). The report contains current knowledge of EFH for species of concern of the Gulf of Mexico. The report raised my awareness of the poor scientific knowledge that exists concerning habitat requirements for many regional fish species.

Below are some suggestions for improving the effectiveness of EFH activities.

1. Essential versus Non-Essential: This is a very simple statement, but a very difficult concept. We now realize that the difference between essential and non-essential is not a yes or no issue, but is a continuum; therefore, it is important that we define EFH using criteria that can be quantified. These tools need to be repeatable measures of habitat variables that we can use to establish a habitat values along this continuum. For example, there are a number of new digital techniques that lend themselves to habitat quantification and mapping (side scan sonar, hydroacoustics, satellite and airborne based remote sensing). The scientific literature contains reference to general EFH, Habitat Areas of Particular Concern, and Critical Fish Habitat. These terms are useful, but perhaps not sufficient for effective regulation. Critical Fish Habitat is derived from the Endangered Species Act and has a critical legal interpretation. Given the life history of many fish species, particularly in the Gulf of Mexico, and the spacial and temporal variety of life history stages, it is important that we understand what (habitat) is most important at life history stages and what is of lesser importance. Effective, accurate criteria that place a habitat along a continuum will be very important in developing future federal regulations. We need an index for this continuum.

2. It is important that EFH be multi-species based. Although we can establish EFH for fish such as red snapper, in today's political environment we do not discuss red snapper without discussing shrimp bycatch. So EFH models being developed must have methods for incorporating multi-species.

3. NMFS and others should seek to establish a common GIS data based archiving method. GIS is being used in many areas of the country; these data bases can be in different formats and incompatible; they should be in a format that can be easily shared. This will allow users to converse in a common language when reviewing EFH issues.

4. Effective modeling is paramount to making EFH successful. Modeling has become a critical concept and science in the 1990's; as modelers adapt new computer tools to EFH data, it is important that the government encourage and support this effort.

5. I am concerned about the pending threat of over-regulation associated with EFH. The intention of EFH is sincere; however, if not properly guided and guarded in its implementation, it could result in over-management. It may lead to unnecessary burdens on the dwindling fishing communities of the U.S. as well as unnecessary regulation for coastal communities. I am not certain how to bring this about other than to bring it to the attention of our regulating bodies; we must proceed with logical conservation and not over-regulation.

6. Current and future regulation must be developed with state, regional, and federal cooperation. Many of the species that are and will be managed are estuarine dependent and therefore are at times state resources. For EFH to be effective it must have cooperation of all regulatory and enforcement bodies.

In closing, I make the observation that the GOM region is off to a good start in implementation of the EFH component of the Magnuson-Stevens Act. The background work is done and I encourage the regulatory bodies which you represent to provide adequate and long term funding (for research, regulation, and enforcement) to make the Act work.

Senator SNOWE: THANK YOU.
Mr. Perret.

STATEMENT OF WILLIAM S. "CORKY" PERRET, DIRECTOR, OFFICE OF MARINE FISHERIES, MISSISSIPPI DEPARTMENT OF MARINE RESOURCES

Mr. PERRET. Thank you very much, Senator Snowe. We certainly appreciate you being down here. And welcome to the Gulf Coast. I wish we had more time, so that we could show you a little bit more of all these natural resources we have.

Senator Breaux, it is always a pleasure to be with you again, sir. Thank you for your efforts here, as well as your past efforts in fish and wildlife conservation.

As an aside, one conservation measure that has been so good is steel shot and ducks. I was eating one the other night. I broke a tooth. So I am not feeling too well.

[Laughter.]

Mr. PERRET. But, be that as it may, people are giving you background. I will do a little bit of the same, simply to show that I have had some experience in this area. I, too, have a couple of degrees, a Master's in fisheries. I have served as director of fisheries in two States. I have no interest in being in a third or a fourth.

[Laughter.]

Mr. PERRET. I cast my first vote on the Gulf Council in either 1978 or 1979. And I think I have probably cast more votes than any living or dead member. So I guess I am as much to blame as anyone for all the council activities that may have, in some people's mind, not been beneficial to them or their interests.

Today, I will only speak on essential fish habitat issues. The Congress has defined EFH in a pretty broad sense. And I quote: "Those waters and substrate necessary to fish for spawning, breeding, feeding, or growth, to maturity." Again, very general terms. And heretofore the Act, for the most part, was strictly related to Federal waters, the EEZ, basically 3 miles out to 200, although off Texas and the West Coast of Florida they have basically a 9-mile territorial sea. So now, with the essential fish habitat issue, it comes into State territorial as well as inland waters.

And while this may be appropriate, habitat and fish know no political boundaries. I, as a States' rightist, have a little bit of concern about that. And that is, if it in any way is giving the Federal agencies any more authority in State waters. Mr. Lyons has commented very well on that, I think, from the habitat issue. There are a number of Federal programs and agencies and oversight involved with habitat, and this is one additional one.

I am going to give you five comments and suggestions relative to essential fish habitat, but before I do that, I would like to comment very briefly on habitat in general and, more specifically, on that habitat basically from the Pascagoula River area to the Galveston Bay area, for a couple of reasons. One, I am more familiar with it and, two, that is indeed a productive fisheries area.

Now, I am not taking anything away from those geographic areas in the other parts of the Gulf, but this is the coastal marshes and the areas that are so, so productive to fish and wildlife. In fact, one

renowned Gulf scientist many, many years ago named that area the fertile fisheries crescent.

Why is it so productive? It is so productive, again, because of the vast and extensive coastal vegetative wetlands. And when I testified before a Senate committee, I guess it was four years ago, on reauthorization, and I pointed out, mistakenly so, to Senator Stevens that Louisiana had the largest wetlands area in the United States, he quickly pointed out that Alaska was a little bit larger.

But, nevertheless, these are the areas that are of extreme importance to most of our fishery resources of the Gulf of Mexico, because most of our fishery resources in the Gulf of Mexico are, at some time, dependent upon the estuarine areas in the States' areas of jurisdiction.

The Mississippi River was a major player in contributing to the establishment of these coastal areas. The tremendous volumes of fresh water and silt that comes down the river were the building blocks for these vegetative wetlands.

Problems are taking place in that these vegetative wetlands are disappearing. And depending on which expert you want to talk to, you can get various reasons. But in an oversimplification, the Mississippi River is levied basically all the way down, and sediment load is now going out into the Continental Shelf. We have the levies, and we no longer get the annual overflows that we once had.

Local governments, State government and the Federal Government have recognized the problem with this, and there are things underway to try and alleviate some of the problems. That is, by the introduction of fresh water and silt.

The five specific areas I would like to address relative to EFH, essential fish habitat, are, No. 1, man has created essential fish habitat with the artificial reef program. Senator Breaux and others, as Dr. Wilson mentioned, authored the National Fisheries Enhancement Act. Each Gulf State has an artificial reef plan. Yet, there is a Federal requirement that when the abandonment of these structures takes place, they must be removed. We should encourage them being put in specific artificial reef zones, because they are good habitat for fish and preferred areas to fish by many of our fishermen.

Second, the Gulf Council amended its fishery management plans to include essential fish habitat. We, like NMFS, took everything from 200 miles on in, very generic. We submitted our amendment, and it contained information on the 26 major species that we manage. The amendment was disallowed in court, because we did not include minor species. We did not include the minor species because we did not have the information, we did not have the good science. Even if we had, we could not take anything else in. From 200 miles out, all the way in, is all inclusive.

The broad definition has led to some problems in the permitting area. And I will just cite two examples. Mr. Lyons may have hit on the same one. One application was for a home site in Baker, Louisiana, which is around Baton Rouge, quite a ways from the Gulf of Mexico. In the public notice, it stated, and I quote, that EFH utilized by various life stages of red drum and penaeid shrimp would be affected. That is 100 or so miles from the coast.

The second one was for a barge unloading terminal at Geismar, Louisiana, just south of Baton Rouge, so that they could do some unloading of crane barges on the levee of the Mississippi River, 184.5 miles from above head of passes at the mouth of the river. Again, this, and I quote, would be utilized by various life stages of red drum and penaeid shrimp.

I submit that the only red drum and penaeid shrimp you might find in those areas would be in a fine restaurant or on a plate in someone's home.

[Laughter.]

Mr. PERRET. It went a little bit too far.

The identification of essential fish habitat in the estuarine areas has got to involve the States. It is the States' area of jurisdiction. The States have people that work in these areas on a daily basis. And any addressing of habitat areas must include the States, and needs to be included. It needs to include the States.

I will close by saying that we are only in the beginning of the EFH regulatory process. It is probably too early to draw any definition conclusions. But because of the current broad definition, it is and has created some problems. And I think probably, in the generic approach, that it takes away from some of the critical areas that probably need to be a little bit better addressed.

And, again, I thank you very much, both of you, and the staff, for taking your time to be down here.

[The prepared statement of Mr. Perret follows:]

PREPARED STATEMENT OF WILLIAM S. "CORKY" PERRET, DIRECTOR, OFFICE OF MARINE FISHERIES, MISSISSIPPI DEPARTMENT OF MARINE RESOURCES

Senator Snowe and members of the Senate Subcommittee on Oceans and Fisheries; my name is William S. "Corky" Perret. I am Director of the Office of Marine Fisheries, Mississippi Department of Marine Resources, and a voting member of the Gulf of Mexico Fishery Management Council. I sincerely appreciate the opportunity to appear before you and to provide my input for your deliberations in reauthorization of the Magnuson-Stevens Fishery Conservation and Management Act (MSA), and more specifically to the Essential Fish Habitat (EFH) provisions of this Act.

Congress has defined EFH as "those waters and substrate necessary to fish for spawning, breeding, feeding or growth to maturity". The Act defines EFH in broad terms that take into account not only the Exclusive Economic Zone (EEZ) generally from 3 to 200 miles seaward, but also includes state territorial waters (0-3 miles for Louisiana, Mississippi and Alabama, and 0-9 miles for Florida's west coast and Texas) as well as inland (estuaries) waters of these states. Thus, while the Act generally deals only with the management of fishery resources in the EEZ of the United States, EFH now includes state waters. I suppose this is appropriate, (EFH is not constrained by political boundaries, and the states and federal government share jurisdiction) but I am 100 percent for state rights and am concerned whenever federal activity impacts state jurisdiction, especially in coastal areas, much of which is privately owned.

First, I would like to briefly comment on the habitat and fisheries that we (states and Council) manage, and will further restrict my comments to the north central Gulf area. The Gulf Coast, with its vast complex of estuaries, has been recognized as one of the most productive fishery habitats in the world. Additionally, the Mississippi River, its distributaries, and lesser riparian systems with their freshwater introduction and accompanying nutrient-laden silts expand this fertile and productive fisheries area into the near offshore waters of the adjacent Gulf of Mexico. This is definitely essential fish habitat, and it is in the states' area of jurisdiction. Most Gulf fisheries consist of species that are estuarine dependent during some phase of their life cycle. These include as examples, penaeid shrimp (the United States most valuable fishery), menhaden (one our country's largest volume fisheries), oysters, blue crabs, red drum and spotted seatrout. The estuarine habitat that is crucial to our Gulf fisheries is located in the states' area of jurisdiction. As I stated in 1995,

when I testified on the reauthorization of this Act, "Habitat is the key to maintaining fisheries". This statement is also true today. In reality, the controlling factor of a fish or animal population is governed by what man does to a species' habitat, and then what is done to that species. My definition of habitat also includes water quality and quantity. Why is fisheries production in the Gulf of Mexico so high? This productivity is high because of the vegetated coastal wetlands created by the Mississippi River system and its tremendous discharges of sediment laden waters, but these coastal areas are undergoing great change. The most notable of these environmental changes that affect the estuarine dependent species is the deterioration of the coastal vegetative wetlands. This deterioration provides a superior nursery environment that could account for recent increases in fishery production. However, this increase in fisheries production, at the expense of losses in wetland habitat, will, if continued, result in a decline of future fisheries yield. Some indicators suggest that we may now be at the peak of fisheries production, and a decline will begin in the next decade. Activities have been initiated to help combat these losses with projects designed to introduce fresh water and sediments into certain areas of the coast, to aid in sediment buildup and creation of vegetated wetlands. Activities of this type have been and are continuing to be supported and funded by local, state and federal governments.

Following are my concerns and suggestions for your consideration:

(1) Section 305 (b)(1)(A and B) of MSA requires that each Regional Fishery Management Council submit amendments to the fishery management plans (FMP's) that identify and describe EFH for species under management. The Act requires further that adverse impacts on EFH be identified as well as the actions that should be considered to ensure the conservation and enhancement of EFH as contained in the Act. "National Marine Fisheries Service (NMFS), in consultation with participants in the fishery, must provide each Council with recommendations and information regarding each fishery under that Council's authority to assist it in the identification of EFH, the adverse impacts on that habitat, and the actions that should be considered to ensure the conservation and enhancement of that habitat".

The Gulf Council developed a generic amendment that identified and described EFH for the estuarine and marine life stages of the stocks in its FMP's. The amendment also described threats to EFH and management measures for enhancing EFH's. NMFS partially disapproved the amendment, largely because the Council only addressed EFH for those 26 dominant species for which data were available. Minor stocks were not included because data were not available. NMFS action places us in quite a quandary. The Act clearly states that it is NMFS's responsibility to provide EFH information to the Council, so that the Council can do its job, *not the other way around.* In preparation of the EFH Amendment the Gulf Council utilized the best available information that could be obtained. Our amendment recognized that certain data for some species were not available; but even if this data had been available, it would not include any additional habitat that is not currently described in EFH for the 26 selected species, because EFH has already been defined as *all* estuarine and marine habitat in the Gulf of Mexico. (Figure 1.)

(2) The definition of EFH in broad terms and NMFS' (Council's) generic acceptance of EFH being the entire Gulf of Mexico (out to 200 miles), the states' territorial and inland estuaries, and watershed areas has imposed a tremendous regulatory burden on fishery managers, fishermen, landowners, and anyone else whose activities might take place in these areas. This generic approach also dilutes attention that should be drawn to more crucial areas that need protection. Better science (as referenced in 3) to identify and reduce the scope of EFH would benefit all users.

(3) EFH identification, conservation and enhancement *must* involve states. Activities of the states for assessing EFH in their waters—whether by describing areas by vegetative or substrate type and quantifying them by measurements, or monitoring changing parameters such as salinity and temperature that together form a set of conditions favorable for a particular animal's success—should be encouraged, funded and conducted in a coordinated effort. The description and identification of EFH needs to be based on the best scientific information available. A cooperative effort on the part of the states and federal agencies needs to be undertaken to provide this type of current information. A coordinated program similar to the **Gulf of Mexico Estuarine Inventory** (GEMI) of the late 1960's could shed light on the status of nearshore habitat

now and in some ways compare it to what was found years ago. Sustained productivity in a fishery, or decline, perhaps could be linked to scientifically documented changes in coastal habitats over 35 years. The GMEI data that resides in each of the Gulf states provide a unique baseline to which current conditions can be compared. Research of this type would greatly improve our scientific understanding of EFH of managed species thereby refining habitat requirements and the geographic scope of EFH.

(4) EFH consultations by the U.S. Army Corps of Engineers. The existing interagency consultation process requires extensive coordination among NMFS, the Councils, and federal action agencies. I would also hope that in those areas of state jurisdiction, that the process includes state resource agencies as well as private landowners, who own the majority of coastal land along the Gulf coast. The current process can result in project delays, cost escalation and an additional layer of bureaucracy. Rather than create a new consultation mechanism, EFH consultation should focus more strongly on existing procedures, interagency cooperation (state and federal) and cooperative EFH creation and enhancement opportunities.

The concerns by some that the EFH definition is too broad and would lead to unnecessary project delays and costs appear to have some validity. I cite the following two examples to show how far the EFH process has reached.

(a) Permit application No. ET-19-990-1622. Applicant proposed to clear approximately 0.23 acres of private property to prepare a home site. This property is located in East Baton Rouge Parish, Louisiana, some *100*-odd miles from the Gulf of Mexico. Quoted in the public notice is, "The applicant's proposal would result in the destruction or alteration of *NA* acre(s) of EFH utilized by various life stages of red drum and penaeid shrimp".

(b) Permit Application No. 19-990-3891. Applicant proposes to install and maintain a permanently moored crane barge and Mississippi levee crossing, for a barge unloading and transfer facility. This work would be done on the descending bank of the Mississippi River some 184.5 miles above head of passes near Geismar, Louisiana. Quoted in the public notice is, "The applicant's proposal would result in the destruction or alteration of two acre(s) of EFH utilized by various life stages of red drum and penaeid shrimp".

For these two examples, I submit that the finding of red drum and penaeid shrimp in these areas would only occur if found on a plate in a person's home or in one of the fine restaurants in the area.

(5) EFH has been created by man. Each Gulf state has a state approved artificial reef plan and Gulf wide funds are being utilized to create artificial reefs. These reefs provide additional habitat for many species, and are preferred fishing locations for a majority of offshore fishermen. Platforms put in place for mineral operations have been beneficial as artificial reefs. Current federal regulations, however, require their removal after abandonment, unless permitted for artificial reef deposition. The deposition of these structures as artificial reefs should be encouraged provided it does not negatively impact other fisheries.

We are in the beginning stages of the EFH regulatory process. It is too early to draw definite conclusions, but the current generic nature of EFH designation lends itself to conflicts between NMFS, other federal agencies, states, private landowners, and the public. Conflicts among these groups could cause delays and increase costs for many needed activities in our coastal and marine environments.

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 to the overall well-being of our nation.

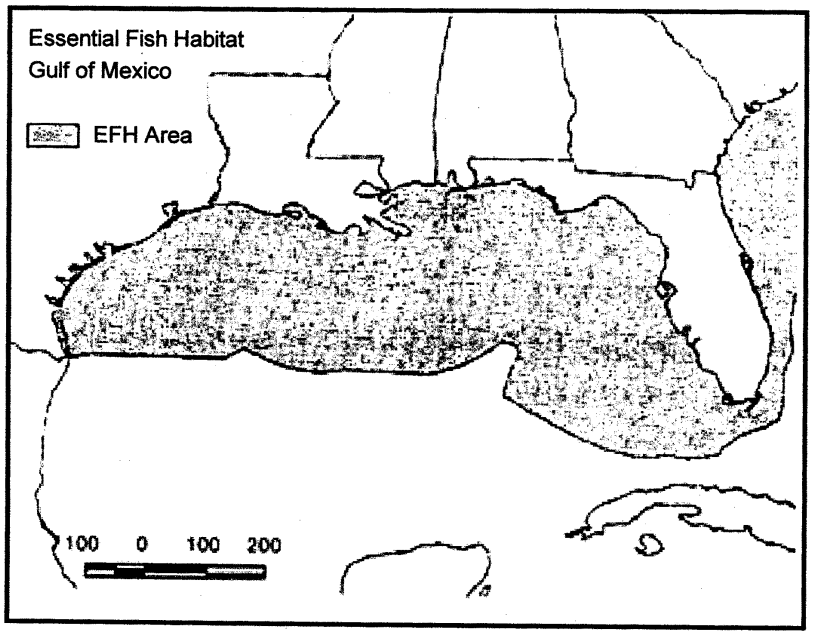

Figure 1. Map depicting the extent of Essential Fish Habitat in the Gulf of Mexico. Source: N.M.F.S. Southeast Regional Office

Senator SNOWE. Thank you. We appreciate it.

Mr. Loga.

STATEMENT OF STEVE LOGA, PRESIDENT, TUNA FRESH, INC., DULAC, LOUISIANA

Mr. LOGA. Good afternoon. I am Steve Loga, President of Tuna Fresh, Incorporated, a company based in Dulac and Venice, Louisiana. I am also State and Regional Director of the Blue Water Fishing Association, representing U.S. commercial pelagic longline vessels from Maine to Texas.

I would like to thank Senator Breaux and Senator Snowe, and all of the Senate cosponsors for introducing Senate Bill 1911, the Highly Migratory Species Conservation Act of 1999. I am grateful for the opportunity to present my views on what is an incredibly important bill to our industry.

I would like to thank Senator Breaux in particular for his recognition that there still are some commercial fisheries left in Louisiana, and very important ones at that. For as long as my family and I can remember, you have been a strong, reliable voice for Louisiana commercial fishing interests. And we appreciate your continued fair and balanced approach to what are often politically difficult issues in the Gulf region.

The pelagic longline fishery may be one of the least known, but it is one of the most important to fishery dependent communities throughout the Gulf region. This year alone, my company pur-

chased over $20 million worth of fish, with much of that being landed in Louisiana, from 40 to 60 longline vessels, the bulk of which was yellowfin tuna.

My company has a continuous payroll in excess of $120,000 per month and, additionally, employs as many as 150 workers throughout various times of the year. We ship yellowfin tuna and other longline caught products to over 30 major cities nationwide. When you order tuna steak in any restaurant in America, it is almost certainly yellowfin tuna. And Venice and Dulac, Louisiana have become the No. 1 ports for yellowfin tuna in the Nation.

I would also like to thank Senator Snowe especially for her championing the cause of commercial fishery dependent communities and for ensuring that the social and economic realities of such communities are not forgotten in the fishery management process. By championing the addition of National Standard 8 during the last reauthorization of the Magnuson-Stevens Act, you reminded everyone that fisheries management is as much about managing fishermen, their families and communities as it is about managing fish.

And what we appreciate most of all, Senator Snowe, is your persistent oversight, to ensure that these principles are not just on paper, but are put into practice every day by Federal fishery managers. In many ways, Senate Bill 1911 reflects your philosophy that healthy fish and a healthy fishing industry are not mutually exclusive goals.

I know Senator Breaux shares this view, because it was his vision and leadership that brought the commercial and recreational industries together into a constructive dialog, with the recognition that we shared many of the same basic goals and concerns for the future of highly migratory species. This process culminated in an unprecedented memorandum of understanding, which I do have a copy that I submitted for the record, among some of the most important mainstream organizations in the sports fishing community and the pelagic longline industry, as represented by the Blue Water Fishing Association.*

While the parties to this memorandum of understanding are to be congratulated, we deeply appreciate your willingness to recognize the inherent value of our memorandum of understanding by introducing legislation that reflects both its substance and spirit. Senate Bill 1911 is not just a good bill, it is the best possible solution that could be achieved under any process. And we sincerely hope that it will remain so as you progress through the legislative process.

To this point, we want to stress that the content of Senate Bill 1911 could never have been achieved through the current National Marine Fisheries Service regulatory process—a process that has effectively relinquished the responsibility for fishery management to Federal judges. I understand that NMFS is now the defendant in nearly 100 Federal lawsuits. And if they try to do what your legislation does, they will undoubtedly add a few more.

We hope that you will strongly discourage any efforts by NMFS to preempt and ruin this extraordinary opportunity by moving for-

*The information referred to was not available.

ward with their own separate rulemaking process—which they have done already. While our memorandum of understanding had many specific objectives, the overall goal was to strike the optimum balance between the conservation need to reduce the bycatch of billfish and small swordfish in pelagic longline fisheries with the need to minimize social and economic disruptions to U.S. fishermen, their families and their communities.

In other words, this was an exercise in finding the appropriate balance among the bycatch conservation goals of National Standard 9 and the social and economic goals of National Standard 8 of the Magnuson-Stevens Act. We believe that this optimum balance was achieved, and it is reflected in Senate Bill 1911.

On the conservation side, the expected benefits of this bill are extraordinary. Over 52 percent of the small swordfish bycatch and 31 percent of the billfish bycatch in the U.S. EEZ occur in the time-area closure set forth in Senate Bill 1911.

In order to achieve this extraordinary conservation benefit, however, the science indicated that a permanent year-round closure of 80,000 square nautical miles of ocean to pelagic longline was necessary along the Southeast Atlantic coast. But the consequences of this action would be to completely destroy the fishing operations of about 68 longline vessels.

In our view, Senate Bill 1911 provides the only fair and equitable means to address this problem. Consistent with the spirit and intent of National Standard 8, Senate Bill 1911 provides compensation to those fishermen that would be forced to sacrifice their livelihoods in the name of swordfish and billfish conservation. The bill logically requires all three stakeholders, the commercial industry, the recreational industry, and the government on behalf of the public's interest, to share in the cost.

In the Gulf of Mexico, the data indicated that billfish bycatch reductions could be achieved by moving the longline fishery farther offshore during the summer months, away from the areas with the highest concentrations of billfish. By carefully balancing the times and areas of these conservation closures with the need to provide enough room for the pelagic longline industry to prosecute a viable yellowfin tuna fishery further offshore, I think Senate Bill 1911 has again achieved that goal of National Standard 8 to both minimize the adverse economic impacts and to provide for the sustained participation of our Gulf fishing communities in this very important fishery.

With that said, however, let me also share with you some of the perspectives down at the docks in the Gulf longline fishery. No commercial fishermen will ever be thrilled with the idea of having to draw circles around gigantic areas of the ocean and declare that guys fishing with hooks attached to commercial longline gear cannot fish in that circle, but the guys fishing with the same exact hooks attached to sport fishing gear can fish inside that circle.

Of course, I think it is safe to say that they would be even less thrilled with the prospect of a longline ban. But that approach is completely irresponsible and without scientific merit.

Despite these instinctive concerns, our Gulf yellowfin tuna longline industry is willing to do at least its share for swordfish

and billfish conservation, by giving this approach a sincere try, while recognizing that it remains as yet untested and unproven.

You have our commitment. But until the results of the experiment are in, our fishermen will remain necessarily cautious. The unanswered question for our fishermen is whether we will in fact achieve the fundamental objectives of our memorandum of understanding to reduce billfish and small swordfish bycatch mortality while preserving our ability to prosecute a healthy yellowfin tuna longline fishery outside the closed areas.

That is why the research component of this legislation is so important to our industry. We feel that there is a great potential to achieve even greater billfish bycatch reductions than through vast time-area closures by making improvements to longline gear technology and fishing methods. We understand that is why the Gulf time-area closure set forth in Senate Bill 1911 is temporary, and is linked to the results of this research. We appreciate this research being a major emphasis of your legislation and a priority of our coalition partners.

Finally, I ask for your indulgence to say something nice about our industry that does not get said very much these days. Contrary to negative hype and rhetoric you may hear, U.S. pelagic longliners are among the most conservation minded people in the fishery management process today. They know that it is their own and their children's future that is at stake. They know it is in their best interest more than anyone else's to strive for the most effective conservation measures that can be sustained by their industry.

That is why they initiated the process that led to this legislation. And that is why, time and time again, they are at the forefront of international conservation advocacy at ICCAT. Last month at ICCAT, it was again the U.S. pelagic longline industry that led the charge, and almost unilaterally made the conservation sacrifices necessary to achieve an international 10-year rebuilding plan for North Atlantic swordfish. For one, I am proud to be a part of this industry.

Again, I thank you for introducing this important legislation and for this opportunity to testify. I would also like to recognize and thank your Louisiana colleague, Congressman Billy Tauzin, for joining Congressman Porter Goss in introducing a companion bill to your bill in the House of Representatives.

We look forward to continuing our work with you and your excellent staff to get this legislation enacted as soon as possible.

Thank you.

[The prepared statement of Mr. Loga follows:]

PREPARED STATEMENT OF STEVE LOGA, PRESIDENT, TUNA FRESH, INC., DULAC, LOUISIANA

Good afternoon, I am Steve Loga, President of Tuna Fresh, Inc., a company based in Dulac and Venice, Louisiana. I am also Secretary and regional director of the Blue Water Fishermen's Association, representing U.S. commercial pelagic longline vessels from Maine to Texas.

I would like to thank Senator Breaux and Senator Snowe, and all of the Senate cosponsors for introducing S. 1911, the Highly Migratory Species Conservation Act of 1999. I am grateful for the opportunity to present my views on what is an incredibly important bill to our industry.

I would like to thank Senator Breaux in particular for his recognition that there still are some commercial fisheries left in Louisiana and very important ones at

that. For as long as my father and I can remember, you have been a strong and reliable voice for Louisiana commercial fishing interests, and we appreciate your continued fair and balanced approach to what are often politically difficult issues in the Gulf region.

The pelagic longline fishery may be one of the least known, but it is one of the most important to fishery-dependent communities throughout the Gulf region. This year alone, my company purchased over $20 million dollars worth of fish, with much of that being landed in Louisiana from 40 to 60 longline vessels, the bulk of which was yellowfin tuna. My company has a continuous payroll in excess of $120,000 per month and additionally employs as many as 150 workers throughout various times of the year. We ship yellowfin tuna and other longline-caught fish to over 30 major cities nationwide. When you order tuna steak in any restaurant in America it is almost certainly yellowfin tuna, and Venice and Dulac, Louisiana have become the number one ports for yellowfin tuna in the nation.

I would also like to thank Senator Snowe, especially for her championing the cause of commercial fishery-dependent communities and for ensuring that the social and economic realities of such communities are not forgotten in the fishery management process. By championing the addition of National Standard 8 during the last reauthorization of the Magnuson-Stevens Act, you reminded everyone that fisheries management is just as much about managing fishermen—their families and communities—as it is about managing fish. And, what we appreciate most of all, Senator Snowe, is your persistent oversight to ensure that these principles are not just on paper, but are put into practice every day by federal fishery managers.

In many ways, S. 1911 reflects your philosophy—that healthy fish and a healthy fishing industry are not mutually exclusive goals. I know Senator Breaux shares this view because it was his vision and leadership that brought the commercial and recreational industries together into a constructive dialogue with a recognition that we shared many of the same basic goals and concerns for the future of highly migratory species. This process culminated in an unprecedented Memorandum Of Understanding among some of the most important, mainstream organizations in the sportfishing community, and the pelagic longline industry as represented by the Blue Water Fishermen's Association.

While the parties to this MOU are to be congratulated, we deeply appreciate your willingness to recognize the inherent value of our MOU by introducing legislation that reflects both its substance and spirit. S. 1911 is not just a good bill, it is the best possible solution that can be achieved under any process, and we sincerely hope it will remain so as you progress through the legislative process. To this point we want to stress that the content of S. 1911 could never have been achieved through the current NMFS regulatory process—a process that has effectively relinquished the responsibility for fishery management to federal judges. I understand that NMFS is now the defendant in nearly 100 federal lawsuits and if they try to do what your legislation does, they will undoubtedly add a few more. We hope that you will strongly discourage any efforts by NMFS to preempt and ruin this extraordinary opportunity by moving forward with their own separate rule-making process.

While our MOU had many specific objectives, the overall goal was to strike the optimum balance between the conservation need to reduce the bycatch of billfish and small swordfish in pelagic longline fisheries with the need to minimize social and economic disruptions to US fishermen, their families and their communities. In other words, this was an exercise in finding the appropriate balance among the bycatch conservation goals of National Standard 9 and the social and economic goals of National Standard 8 of the Magnuson-Stevens Act. We believe this optimum balance was achieved and is reflected in S. 1911.

On the conservation side, the expected benefits of this bill are extraordinary. Over 52 percent of the small swordfish bycatch and 31 percent of the billfish bycatch in the US EEZ occur in the time-area closures set forth in S. 1911.

In order to achieve this extraordinary conservation benefit, however, the science indicated that a permanent, year-round closure of 80,000 square nautical miles of ocean to pelagic longlining was necessary along the southeast Atlantic coast. But, the consequence of this action would be to completely destroy the fishing operations of about 68 pelagic longline vessels.

In our view, S. 1911 provides the only fair and equitable means to address this problem. Consistent with the spirit and intent of National Standard 8, S. 1911 provides compensation to those fishermen that would be forced to sacrifice their livelihoods in the name of swordfish and billfish conservation. The bill logically requires all three stakeholders—the commercial industry, the recreational industry, and the government on behalf of the public's interest—to share in the cost.

In the Gulf of Mexico, the data indicated that billfish bycatch reductions could be achieved by moving the longline fishery farther offshore during the summer months,

away from areas with the highest concentrations of billfish. By carefully balancing the times and areas of these conservation closures with the need to provide enough room for the pelagic longline industry to prosecute a viable yellowfin tuna fishery further offshore, I think S. 1911 has again achieved the goals of National Standard 8 to both minimize adverse economic impacts and provide for the sustained participation of our Gulf fishing communities in this very important fishery.

With that said, however, let me also share with you some of the perspective down at the docks in the Gulf longline fishery. No commercial fisherman will ever be thrilled with the idea of having to draw circles around gigantic areas of the ocean and declare that guys fishing with hooks attached to commercial longline gear *cannot* fish inside that circle, but guys fishing with the exact same hooks attached to sportfishing gear *can* fish inside the circle. Of course, I think it is safe to say they would be even less thrilled with the alternative of a longline ban—but that approach is completely irresponsible and without scientific merit.

Despite these instinctive concerns, our Gulf yellowfin tuna longline industry is willing to do at least its share for swordfish and billfish conservation by giving this approach a sincere try while recognizing that it remains as yet untested and unproven. You have our commitment but, until the results of this experiment are in, our fishermen will remain necessarily cautious. The unanswered question for our fishermen is whether we will, in fact, achieve the fundamental objective of our MOU to reduce billfish and small swordfish bycatch mortality while preserving our ability to prosecute a healthy yellowfin tuna longline fishery outside of the closed areas.

That is why the research component of this legislation is so important to our industry. We feel that there is great potential to achieve even greater billfish bycatch reductions than through vast time-area closures by making improvements to longline gear technology and fishing methods. We understand that is why the Gulf time-area closure set forth in S. 1911 is temporary and linked to the results of this research. We appreciate this research being a major emphasis of your legislation and a priority of our coalition partners.

Finally, I ask for your indulgence to say something nice about our industry that doesn't get said very much these days. Contrary to the negative hype and rhetoric you may hear, U.S. pelagic longliners are among the most conservation minded people in the fishery management process today. They know that it is their own and their children's future that is at stake. They know it is in their best interests—more than anyone's—to strive for the most effective conservation measures that can be sustained by their industry. That is why they initiated the process that led to this legislation, and that is why time and time again they are at the forefront of international conservation advocacy at ICCAT. Last month at ICCAT it was again the US pelagic longline industry that led the charge and, almost unilaterally, made the conservation sacrifices necessary to achieve an international 10-year rebuilding plan for north Atlantic swordfish. For one, I am proud to be part of this industry.

Again, I thank you again for introducing this important legislation and for this opportunity to testify. I would also like to recognize and thank your Louisiana colleague Congressman Billy Tauzin for joining Congressman Porter Goss in introducing a companion bill to your bill in the House of Representatives. We look forward to continuing our work with you and your excellent staff to get this legislation enacted as soon as possible.

Senator SNOWE. Thank you. Thank you very much, Mr. Loga.

Mr. Miller.

STATEMENT OF FREDERIC L. MILLER, CHAIRMAN, GOVERNMENT RELATIONS COMMITTEE, COASTAL CONSERVATION ASSOCIATION

Mr. MILLER. Thank you, Madam Chairman.

My name is Fred Miller. I am an attorney from Shreveport. Like Senator Snowe, when I am down here, I am considered from being way up north.

[Laughter.]

Mr. MILLER. I currently serve as Chairman of the Government Relations Committee for the Coastal Conservation Association, better known as CCA. This morning I would like to focus my testimony on three areas. First, I would like to tell you a little about CCA and how it operates. Second, I will address some of the issues

we are concerned about in the upcoming Magnuson-Stevens Act reauthorization. And third is S. 1911, which Mr. Loga just spoke about, the legislation of which you and Senator Breaux are cosponsors.

The Coastal Conservation Association is a leading marine recreational fishing group in the United States. Formed by a small group of sports fishermen in Houston in 1978, CCA has grown to a 15-State operation, with over 70,000 members. CCA learned long ago that Federal and International fisheries management were just as important to the local marine recreational fishermen as the conservation of the most local fish population.

CCA pursues its conservation policies that are set by our State and National boards of directors. These boards consist of active volunteers concerned about the health of the Nation's fisheries. Our members in the Gulf are very interested in both red snapper and billfish.

Recently, members of our Maine chapter met with you, Senator Snowe, and asked that you cosponsor S. 1911, and to include recreational fishing issues in your efforts to reauthorize the Magnuson-Stevens Act. I would like to thank you personally, on behalf of all of our members, for the attention you and your staff have shown about our concerns. And I would also like to thank my friend, Senator Breaux, for all the help he has been to all of the sportsmen in the State of Louisiana over the years, and particularly your help with S. 1911.

CCA does not yet have a comprehensive position on the reauthorization of the Magnuson-Stevens Act. Our board will meet in February, and we will formulate our position at that time, and look forward to visiting with both of your staffs on those issues. However, we do have several issues that we can discuss today that need no further discussion among our membership before we can form a position.

The first two issues that I would like to discuss involve the future of red snapper management. Red snapper management is one of the most complicated and controversial conservation issues in the country, as well evidenced by all of the testimony that you have heard here today. It involves the management of the directed fishery that at the moment has 51 percent of a mere 9 million pound quota being caught by 132 commercial vessels in a limited entry system. The remaining 49 percent is caught by thousands of recreational anglers, using private and for-hire vessels.

The Sustainable Fisheries Act includes two provisions that have become obstacles to the orderly management of the fishery. The first is the moratorium on the implementation of the ITQ system for vessel owners in the snapper fishery. CCA supports the furtherance of ITQs, and would recommend that the ITQ system be brought back into discussion as a viable management alternative of the snapper fishery in the Gulf.

The moratorium, we think, makes no sense in the Gulf. If it makes sense some place else in the country, we do not believe that it makes any sense in the Gulf and the South Atlantic or the Southeast region, and should be allowed to expire for all fisheries in those two regions. In addition, we ask that the authority to authorize ITQs be clarified so that any interest may be eligible to

purchase them on a willing buyer/willing seller basis. Entities outside the commercial sector should be allowed to retire the quota or transfer it to another sector.

The second red snapper issue deals with the provision which requires a directed recreational fishery to be managed through a quota management system, similar to the kind used in most commercial fisheries. This is the most blatant anti-recreational measure in the entire Act. It requires the red snapper recreational fishery to be over-managed and closed unnecessarily.

No state fishery manager believes that recreational fishery management should be accomplished through the strict application of a quota, which, when reached, automatically closes the fishery. States do not use this system because recreational fisheries, unlike commercial ones, need to be managed differently to achieve stability, while maintaining conservation goals.

Three fundamentals have to be understood to appreciate this difference. Recreational fisheries include thousands of participants. Some participants fish a lot. But most are part-time and even occasional participants. They are used to seasons, minimum sizes and bag limits. They are not a highly regulated nor easily regulated group. As a result, they do not respond well to uncertainty in fishing regulations.

The second fundamental flows from the first. Recreational catches are very difficult and expensive to count accurately. We have heard about the data and junk in and junk out. With respect to managing recreational fisheries on the data that is available, there is no real-time data. It is impossible to manage this fishery quota on the data, the MRFSS, that is available. NMFS cannot do this. They close this fishery on a guess. That is the best that they could ever hope to do.

Last, the structure of the recreational sector is different. Recreational fishermen plan their year around their hobby. They gather friends, relatives and equipment to plan a fishing trip. If they charter a boat, they do it months in advance. This kind of activity is not compatible with reading the Federal Register to determine if the fishery has been closed, nor is it conducive to a long-term commitment on a charter when you do not know when the season will be opened or closed. It is detrimental to the recreational fishermen. It is likewise detrimental to the charter boat industry.

CCA supports buying out excess capacity in the commercial industry. However, we do believe the commercial industry and the snapper fishery needs to be right-sized. We also support increased funding for the States for enforcement. I think we will find that increased funding for State enforcement will enable the Magnuson-Stevens Act to be better enforced rather than relying totally on the Coast Guard.

With respect to S. 1911, I appreciate my friend Mr. Loga's comments. CCA got involved in the longline issue through the Blue Water Fishermen's Association. BWFA wanted to explore reducing the bycatch of billfish through closed areas if there was support for a buyout of the smaller vessels in the fleet. CCA was very interested in the concept. Our national board met three times on this issue, with very lively discussion going on in each one. And it was concluded in the final analysis that the approach taken in your bill

was not only the right approach for the resource, but it was the only way that we could accomplish our basic conservation goals.

The areas chosen for closure are a result of research done by the Billfish Foundation, which identified hot spots for billfish bycatch, and by the swordfish industry, which indicated areas where small swordfish catches are found. The data used to identify these areas shows that the closures will have a number of positive impacts on bycatch. The preliminary estimates are that it will reduce U.S. longline bycatch in the EEZ by 50 percent for sailfish, 45 percent for blue marlin, and 20 percent for white marlin.

In addition, it will have a positive impact on the bycatch of sharks, tunas, small swordfish, dolphin—or mahi-mahi—, wahoo, and other species. It will reduce the U.S. swordfish fleet by about one-third. Since these vessels also fish in other domestic fisheries from which they will be precluded, the buyout will have some positive impact on the snapper, shark, grouper, and mahi-mahi fisheries.

Internationally, it will set a precedent, allowing the United States to negotiate the international closing of open ocean spawning and small swordfish areas. These closures will further assist in reducing the international fleet exploitation of billfish.

CCA has always looked at resource issues to determine what gains can be made and how those gains will improve recreational fishing. We are not willing to stand back and avoid achieving improvements because someone else is responsible for the damage. We are willing to pay a share in the buyout of these displaced longline boats, because we are getting a benefit.

I want to thank you again for allowing me to testify, and I appreciate your time. Thank you.

[The prepared statement of Mr. Miller follows:]

PREPARED STATEMENT OF FREDERIC L. MILLER, CHAIRMAN, GOVERNMENT RELATIONS COMMITTEE, COASTAL CONSERVATION ASSOCIATION

Good morning Madam Chairman:

My name is Fred Miller and I am the Chairman of the Government Relations Committee for the Coastal Conservation Association ("CCA"). This morning I'd like to focus my testimony on three areas. First, I'd like to tell you a little about CCA and how it operates. Second, I'll address some of the issues we are concerned about in the upcoming Magnuson-Stevens Act reathorization, and third is S. 1911, legislation that you and Senator Breaux both cosponsored.

The Coastal Conservation Association is the leading marine recreational fishing group in the United States. Formed by a small group of sportfishermen in Houston in 1978, CCA has grown to a fifteen-state operation with over 70,000 members. Each of our states operates somewhat independently focusing on issues in the state that are important to marine recreational fishermen. However, like so much in fisheries management, conservation issues encompass a regional and national perspective, therefore, CCA learned long ago that federal and international fisheries management were just as important to the local marine recreational fishermen as the conservation of the most local fish population.

CCA pursues conservation policies set by our state and national Boards of Directors. These boards are made up of active volunteers concerned about the health of the nations fisheries. CCA has been active in a number of conservation issues in the last twenty years, including: all of the east and gulf coast net bans; gamefish status for redfish, speckled trout, tarpon, striped bass, river shad, marlins spearfish and sailfish; and, the reduction of bycatch through the use of closed areas and technology. In the Gulf we are most interested in red snapper. We have also pushed for the improvement of the management system through the restructuring of state and federal management systems; the elimination of conflicts of interests by deci-

sion-makers, and the active involvement of our membership in the management process.

Recently members of our Maine chapter met with you and asked you to cosponsor S. 1911 and to include recreational fishing issues in your efforts to reauthorize the Magnuson-Stevens Act. I'd like to thank you personally on behalf of all of our members for the attention you and your staff has shown to our concerns. I would also like to thank the senior Senator from Louisiana, Senator Breaux, for all of his help in recreational issues and particularly for his leadership in S. 1911.

MAGNUSON-STEVENS ACT

CCA does not yet have a comprehensive position on the reauthorization of the Magnuson-Stevens Act but it will have one early next winter. We would like to brief you and your staff then. However, we do have some issues to raise with you now that need no further discussion among our membership before we can form a position.

The first two issues I'd like to discuss involve the future of red snapper management. Red snapper management is one of the most complicated and controversial conservation issues in the country. It involves the management of a directed fishery that at the moment has 51 percent of a mere 9 million pound quota being caught by 132 commercial vessels in a limited entry system. The remianing 49 percent is caught by thousands of recreational anglers using private and for-hire vessels. In addition, substantial mortality of juvenile snapper still exists in the bycatch of the shrimp fishery. Shrimp vessels are now required by federal law to carry bycatch reduction devices (BRDs) throughout most of the Gulf. In state waters, most of the Gulf States now have or are proposing measures to require their use. In addition, the Gulf Council is considering extending the use of BRDs to the eastern Gulf. These measures, along with a possible bycatch quota for the shrimp industry, offer substantial promise for the rebuilding of the red snapper stock.

These measures have all been taken as a result of the Hutchison amendment to the Sustainable Fisheries Act ("SFA") in 1996. That amendment allowed the Gulf Council to treat bycatch from the shrimp industry just like the bycatch of every other fishing fleet in the country. It allowed what Senator Breaux endorsed in principle in his floor statement the night before final passage—namely, allowing the councils, not Congress, to deal with complex fishery management problems. The SFA, however, included two provisions that have become obstacles to the orderly management of the fishery.

The first is the moratorium on the implementation of an individual transferable quota (ITQ) system for vessel owners in the fishery. At the time the Act passed, the Gulf Council had adopted and the Department of Commerce had sent to the Federal Register a system to rationalize the harvest sector in this fishery. The continuation of the ITQ moratorium will only frustrate the full rationalization of this fishery. If the moratorium makes sense someplace else in this country, it doesn't make any sense here and we would ask that it be allowed to expire for all fisheries under the Gulf and South Atlantic Council's jurisdiction. In addition, we ask that the authority to authorize ITQs be clarified so that any interest may be eligible to purchase them on a willing buyer/willing seller basis. Entities outside the commercial sector should be allowed to retire the quota or transfer it to another sector.

The second red snapper issue deals with section 407 (d), which requires the directed recreational fishery to be managed through a quota management system, similar to the kind used in most commercial fisheries. This is the most blatant anti-recreational measure in the entire Act. It requires the red snapper recreational fishery to be over-managed and closed unnecessarily. No state fishery manager believes that recreational fishery management should be accomplished through the strict application of a quota which, when reached, automatically closes the fishery. They don't use this system in the states because recreational fisheries, unlike commercial ones, need to be managed differently to achieve stability while maintaining conservation goals.

Three fundamentals have to be understood to appreciate this difference. Recreational fisheries include thousands of participants. Some participants fish a lot, but most are part time and even occasional participants. They are used to seasons, minimum sizes and bag limits. They are not a highly regulated or easily regulated group. As a result, they do not respond well to uncertainty in fishing regulations. The second fundamental flows from the first. Recreational catches are very difficult and expensive to count accurately. Ask the National Marine Fisheries Service ("NMFS") about the accuracy and the value of the MRFFS data as an in-season management tool. It is, at best, an estimate and not a very accurate one, unlike log data and landing statistics used in the commercial sector. Lastly, the *structure* of the recreational sector is different. Recreational fishermen plan their year around

their hobby. They gather friends, relatives and equipment to plan a fishing trip. If they charter a boat, they do it well in advance. This kind of activity isn't very compatible with reading the Federal Register to determine if the fishery has been closed.

The flexibility to manage recreational fishing is available in every fishery managed at the federal level except this one. Let's do what Senator Breaux suggested should be done in 1996. Let's leave to the councils the job of developing the right management measures for each of the region's fisheries and stop restricting them from doing their job.

No management is successful without a strong enforcement program. CCA would like to endorse the concepts in the testimony from the State of Louisiana. Integrated enforcement by all of the federal and state arms is necessary to achieve sound conservation. Congress needs to support the state component of this network to allow them to be a functioning part of the system. In the Gulf it is absolutely necessary to have dockside enforcement if our conservation laws will be effective. To do that we need the cooperation and active support of state enforcement.

Lastly, CCA supports buying out excess capacity in the commercial industry. On the whole we have not approved of the NMFS approach of reverse auctions which seemed to be disconnected with necessary conservation objectives. However, we do believe that the commercial industry does need to be right-sized. There are too many commercial vessels and in many places these vessels have a disproportionate share of the resource. Right sizing is necessary to achieve many of the conservation objectives and harvest reallocations necessary to benefit our marine resources in the next century. At a minimum, we need to authorize parties other than commercial fishermen to participate in buyouts. We need to consider mechanisms that would allow for the free market transfer of quota and the reallocation of quota based on something other than the present traditional economic factors. We intend to work with the Committee to fashion such an amendment.

S. 1911 ATLANTIC HIGHLY MIGRATORY SPECIES ACT OF 1999

Let me take this opportunity to thank both of you on behalf of our membership for your help and leadership in this issue.

CCA got involved in this issue through the Blue Water Fishermen Association. BWFA wants to explore reducing the bycatch of billfish through closed areas if there was support for a buyout of the smaller vessels in the fleet. CCA was very interested in this concept. Our national Board met three times on this issue and concluded that the approach taken in your bill was not only the right approach for the resource it was the only way we could accomplish our basic conservation goals. As a result, we instructed our General Counsel to enter into negotiations with Blue Water and to build a coalition of other like-minded conservation groups. These negotiations led to a Memorandum of Understanding among CCA, BWFA, the American Sportsfishing Association and The Billfish Foundation, which was signed in August. The MOU contained many of the principles found in your legislation and formed the basis for the working relationship the participating groups have today.

The bill you introduced does the following:

1. Permanently closes an area from the North Carolina/South Carolina border to Key West, Florida to all pelagic longlining.

2. Permanently closes an area off the Gulf coast from Panama City, Florida to Mobile, Alabama to longlining from January through Labor Day.

3. For five years after enactment, it closes an area in the Gulf from Cape San Blas, Florida to Brownsville, Texas from Memorial Day to Labor Day from the beach out to at least 500 fathoms.

4. Provides for a three-year research program with the longline fleet to determine ways to further reduce bycatch by longliners. This research will provide the basis for a permanent solution for longline bycatch, which can be implemented at any time by either the agency or the Congress.

5. Offers to buy all fishing permits from 68 eligible vessels on a willing buyer/willing seller basis. In order to be eligible, a vessel must receive at least 35 percent of its income from a permanently closed area.

6. Vessels will be prevented from reflagging or fishing in any other commercial fishery including state water fisheries.

7. Vessel owners will be compensated by payment for all fishing licenses (federal and state) and for forfeiture by the vessel of its fisheries endorsement. Ves-

sels not documented will be prevented from being sold into any other commercial fishery.

8. Total cost could approach $25,000,000. Funding will be through the National Marine Fisheries Service—$15,000,000 if appropriated funds and $10,000,000 provided by the Federal Financing Bank. Funds will be provided only to vessel owners who can document landings and their value. Owners will be paid $125,000 for their permit packages and an additional payment equal to one year's gross landings value not to exceed a total of $450,000.

9. The Federal Financing Bank will be repaid with $10,000,000 split 50/50 between the recreational community and the longline industry.

10. The longline industry will repay its obligation through a surcharge collected at the dealer level. The recreational community will repay its obligation through the issuance of a federal license to vessels fishing for highly migratory species in the closed areas. The bill establishes a system for states to voluntarily elect to pay the debt for their fishermen.

11. The bill will provide that the permits can be obtained at any post office, retail outlet, on the Internet or through a 1-800 number system. The permits will issue to the boat and will not be transferable.

12. The bill includes requirements for vessel monitoring devices and enhanced observer coverage.

13. The research program will include a special emphasis off the mid-Atlantic in the event of displacement there of existing vessels as a result of the closed area.

The areas chosen for closure are a result of research done by The Billfish Foundation, which identified hot spots for bycatch, and by the swordfish industry which identified areas where small swordfish catches are found. The data used to identify these areas shows that the closures will have a number of positive impacts on bycatch. The preliminary estimates are that it will reduce U.S. longline bycatch in the EEZ by 50 percent for sailfish, 45 percent for blue marlin and 20 percent for whites. In addition, it will have a positive impact on the bycatch of sharks, tunas, small swordfish, mahi mahi, wahoo and other species. It will reduce the U.S. swordfish fleet by about one-third. Since these vessels also fish in other domestic fisheries from which they will be precluded, the buyout will have some positive impact on the red snapper, shark, grouper and mahi mahi fisheries.

Internationally, it will set a precedent allowing the U.S. to negotiate the international closing of open ocean spawning and small swordfish areas. These closures will further assist in reducing the international fleet exploitation of billfishes.

CCA and its partners have been praised and maligned for their efforts. Most of the criticism has been from groups that do not understand the legislation or are looking for solutions that are not attainable. I'd like to address some of those criticisms.

"Why are recreational fishermen buying out longliners who destroyed the fishery?" One of the earliest votes taken by CCA on the negotiation was whether we as recreational fishermen were willing to pay for some of the buyout of the longline fleet. The vote was unanimous. CCA has always operated on a principle that we were willing to put our money where our conservation mouth is. We have had any number of instances in which CCA has directly participated in the buy-out of gear and licenses through the contribution of funds by our members or as an organization. As an example here in Louisiana, we supported legislation that placed a surcharge on recreational fishing licenses to provide funds for commercial fishermen impacted by the net ban. In Texas, we made direct contributions to the state to buyout bay shrimp licenses.

CCA looks at resource issues to determine what gains can be made and how those gains will improve recreational fishing. We are not willing to stand back and avoid achieving improvements because someone else is responsible for damage. We are willing to pay because we are getting a benefit.

"There is no conservation benefit." Approximately 52 percent of the total small swordfish bycatch reported by US pelagic longline fishermen in the US EEZ occurs in the three proposed closed areas. Similarly, approximately 31 percent of the total billfish bycatch reported by US pelagic longline fishermen in the US EEZ occurs in these three areas combined. In addition, these closed areas will reduce the longline catch of other species including mahi mahi.

"The vessels have already left the areas being closed." Prior to entering into the MOU, The Billfish Foundation commissioned a study by Dr. Phil Goodyear to look

at the biological effects of time and area closures on the reduction of bycatch in the tuna and swordfish longline fleets. Dr. Goodyear looked at thousands of data sets from longline vessels in the south Atlantic and the Gulf to determine where and when the greatest reductions could be achieved if areas were closed. That data was used to determine which areas should be closed. In addition, in the Gulf the objective was to address the area of the greatest billfish bycatch and the recreational and longline fleet interaction without displacing the longline fleet to new areas of the Gulf or the Caribbean.

"There will be displacement of the fleet to the mid-Atlantic bight." There are two issues here. The first is the impact of the vessels being bought out and the second is the potential for more effort in the mid-Atlantic as a result of the closed areas.

A substantial portion of the negotiation over the MOU was spent discussing how to avoid the displacement of the eligible vessels to any fishery. The provisions in the bill, which restrict the vessels accepting the buyout from participating in any commercial fishery, were a result of those discussions. Vessels will be required to forfeit all of their state and federal fishery permits. In addition, the vessels will be required to permanently forfeit their fisheries endorsement, which will restrict any subsequent owner from placing the vessel in a commercial fishery. The vessels are also prevented from reflagging. Since these vessels are in limited entry systems this will reduce the number of licenses in the swordfish, tuna, shark and red snapper fisheries. None of these vessels will ever again carry a longline.

"This won't help get a rebuilding plan for swordfish." This bill is not intended as the exclusive measure to achieve a rebuilding plan for swordfish. The bill's aim is to reduce the harvest of small swordfish and billfish. However, it will greatly assist in the achievement of an Atlantic-wide recovery that was just negotiated at the recent ICCAT meeting in Rio. ICCAT agreed with the United States that it would adopt a ten-year rebuilding program for swordfish. That agreement came at some substantial cost to the domestic swordfish industry. In addition to taking a quota reduction, the domestic industry agreed to phase down its allowable discard of small swordfish. Without this concession by the industry, no deal approaching a ten-year rebuilding plan was possible.

Taken as a whole, the U.S. industry will take a quota reduction approaching 20 percent over the next three years, while other fishing fleets from the EU and Japan will take considerably less of a cut. I believe that the existence and the potential for eventual passage of this legislation gave the industry the support to make this sacrifice.

"Why not let NMFS close areas?" Earlier in my testimony I spoke of red snapper and the need to allow the Councils and not the Congress to manage fisheries. CCA strongly endorses this principle and has conducted its activities to ensure the minimum amount of federal interference in fisheries management. Given that, you might ask why we are supporting a legislative approach to the address longline bycatch when the National Marine Fisheries Service is in the process of proposing rules that will do just that. The reason is that NMFS does not have the authority under the Magnuson-Stevens Act to accomplish what can be accomplished through your bill. As Penny Dalton will tell you, the bill you have introduced goes well beyond what NMFS can accomplish through rulemaking.

NMFS can clearly close areas to longlining, however, in doing so they must take several factors into consideration, including the economic impact on the longline fishery and the biological impact on other fisheries if the closed areas result in the displacement of vessels. They have no authority to buyout displaced vessels and therefore have to adjust the area they are proposing to mitigate the impact on the industry and other fisheries. This mix of considerations is best described by comparing the NMFS proposal for the Gulf of Mexico presented to the HMS AP in June and the S. 1911 Gulf closure. What NMFS proposed was to close an area in the Western Gulf from about Port Eads westward to the Mexican boarder for the months of June, July and August. This will have a significant biological benefit for billfish in the western Gulf and could have a positive impact on the spawning populations of bluefin tuna. It will, however, displace the entire western Gulf longline fleet to the eastern Gulf during that period. CCA members in Texas will enjoy substantially improved recreational billfishing and will be effectively free of any longline interaction. However, our members in Louisiana, Mississippi, Alabama and Florida will get to enjoy an even greater interaction with the longline fleet as they shift their effort to the east. Your bill is designed to prevent the lateral displacement of the fleet in the Gulf and by pushing the longline effort further offshore it creates separation of the two activities and produces a positive conservation effect.

On the East Coast this is even more dramatic. Your bill proposes a permanent closure on the East Coast from Key West to North Carolina. It assumes that there will be a number of vessels displaced as a result and offers to buy them out of all

commercial fishing rather than allow them to shift their effort. NMFS can close the same area or even one larger, but when they do, they will simply send the effort elsewhere either to the Gulf or the mid-Atlantic. The alternative would be to reduce the size of the closure thereby reducing the potential for displacement, but also reducing the conservation benefit. Neither of these two results is going to make recreational fishermen happy.

The answer is absolutely clear to us. If we can get the kind of meaningful conservation that is in your bill then we wanted to be part of passing it. Thank you again for your leadership and allowing us to testify.

Senator SNOWE. Thank you all very much for your outstanding testimony.

I will start with you, Mr. Miller and Mr. Loga, and we will work this way. Let us talk about the legislation, S. 1911, and where to go from here based on what has happened with the agency, the proposed rule that was issued yesterday, and a May 2000 deadline for a finalized rule.

Mr. MILLER. I just put a copy of the proposed rule between Mr. Loga and me. I got it on the fax late, late yesterday afternoon.

Senator SNOWE. I think Senator Breaux and I both agree that it is really remarkable, or regrettable, that organizations like yours were not informed, since you had participated in developing this legislation and were not informed about this legally binding court order that was reached between the agency and the environmental groups that has now resulted in an ironclad rule by May of next year.

Mr. MILLER. That would appear to be what their constrained agreement is.

Senator SNOWE. Exactly. Mr. Loga, how many in your organization would have utilized the buyout option?

Mr. LOGA. I think there are about 68 vessels. I am not sure if all of them are in the organization, but they are longline vessels that are eligible for a buyout.

Senator SNOWE. Do you think this agreement is possible without a buyout?

Mr. LOGA. I do not think so. I do not know where you can displace some of these vessels that are only 40 to 45 feet. When you are closing down that much area of an ocean, I think it would be difficult for some of these vessels just to go outside the areas. Possibly some of the boats in the Gulf can move to other areas, but the East Coast boats, I see it impossible for those guys to be able to move 200 or 300 miles to fish.

Senator SNOWE. So you were very surprised about the result?

Mr. LOGA. I think that is probably an understatement. Having worked with the National Marine Fisheries Service working through this legislation, I was totally disappointed with what happened. I took a lot of flack at the docks with the boats, just simply by telling them we were working with National Marine Fisheries Service on this. And every one of them said the same thing: You cannot trust NMFS. You cannot trust NMFS.

And the whole time I was sitting there telling them: No problem, guys. We have got this worked out. They are on our side this time.

And last Monday, when I found out that they had I guess come to an agreement with another environmental group, I was shocked. I was totally surprised that this came up. I could not believe that it happened. I guess I probably could believe that I was not told,

but I was even more surprised when I found out that you guys were not told. It is almost a slap in the face to all of us. We worked real hard.

If you can imagine pulling the longline industry into one room with the Billfish Foundation, the CCA, the American Sports Fishing Association, and Blue Water, and having all of us not kill each other, but agree to something, it was amazing that we came up with this. I am really proud of everybody, how hard they worked on this whole thing.

Senator SNOWE. Well, you should be. We all are. It is extraordinary to bring such disparate groups together, who were willing to take these steps to preserve valuable highly migratory species and reach an agreement that ultimately affects the livelihoods of many. At the same time, I thought the legislation was a very fair and balanced approach, given what was at stake.

Mr. LOGA. I do not actually know where to go from here, with the National Marine Fisheries Service doing this. Is my next step to get an attorney, just to watch these guys and see what they are doing? Is that the way we are going to run the fishery management process today?

I would hope that this legislation would go through. I would hope that National Marine Fisheries Service would back off of the proposed rule. A seven-month closure to our industry will devastate it. Just giving the western Gulf of Mexico as an example, they closed, basically, from Grand Isle, Louisiana, west to Brownsville, Texas in the Gulf of Mexico, in an effort to save billfish bycatch.

Well, what they did was basically, the reported bycatch that was caught in that area was seven-tenths of 1 percent that the U.S. actually reported to ICCAT of billfish bycatch. What they also did by saying that seven-tenths of 1 percent is eliminate 72 percent of the yellowfin tuna fishery in the Gulf of Mexico.

And not only did they eliminate that fishery, what they did was effectively move the boats from the western Gulf and put them in the eastern Gulf, where the problem of undersized swordfish was in the first place. I see no science at all behind this. And I cannot even believe that they would be that bold to do that. They effectively made the problem worse.

Senator SNOWE. Ms. Dalton was saying earlier that these areas were very similar to those legislation identified. What is your response to that?

Mr. LOGA. That is not correct. I do not have the exact coordinates on me, but basically it covers the entire EEZ, from 90 degrees west, all the way down to 26. So it is a significant difference.

Mr. MILLER. Senator Snowe, the biggest problem that I see with the proposal is just as Mr. Loga says, it closes from the 90 degree meridian west, which leaves everything else in the eastern Gulf open. Which will push the participants in the longline fishery to the east, which will create additional problems.

The fundamental difference and the fundamental thing, and Senator Breaux pointed it out, is that NMFS cannot do anything about the displaced fishermen. All NMFS can do is push them around. They will push them to the east in the Gulf and they will push them to the north in the Atlantic.

Your bill is going to give those folks an opportunity to, if they choose—it is not mandatory—if they choose, to opt out, to cash out and get out of the fishery, since they cannot fish in the closed areas. It will address the socioeconomic problems. NMFS has not addressed those. NMFS, if they got sued over not closing this area, they are going to get sued over this rule, because they did not address the socioeconomic issues.

It is a faulty plan. It certainly flies in the face—it took—and I do not mean to say it took—nine months of work went into this memorandum of understanding that Mr. Loga has put in the record, nine months of work, unprecedented work, between very disparate organizations. One of the first times that the recreational community and the commercial fishing community have been able to sit down and agree on anything other than let us fight. It is unprecedented.*

Your legislation is monumental. I am absolutely appalled at this rule that NMFS has pushed in at this 11th hour.

Senator SNOWE. We share your deep frustration.

Mr. Lyons and Mr. Perret, may I ask you a question that you both mentioned. I also raised EFH issues earlier with Ms. Dalton. There did not seem to be any recognition that EFH was a problem, with regard to permitting delays or other implementation issues. You cited, Mr. Perret, in your testimony two examples of the types of permit applications that were delayed.

What happened? What was the outcome of those two applications?

Mr. PERRET. I used two extreme examples to make my point. NMFS did not identify that as essential fish habitat. However, in the Corps' public notice process, the statements there, the detrimental impact to penaeid shrimp and red drum, that is just another agency who is commenting. If it is in the coastal area, they are going to comment anyway. But this is well above the coastal area. But those permits were not held up or were not denied because of the essential fish habitat on the Mississippi River levee and the home site in East Baton Rouge Parish.

But, again, Mr. Lyons pointed out hurricane protection, coastal erosion type projects, some of them are being impacted by this essential fish habitat designation.

Senator SNOWE. So where are the delays, Mr. Lyons? I know there is duplication and there are consultation requirements. So is it the time required to consult among agencies? Are you having to go back over the same old ground, so to speak?

Mr. LYONS. It is the additional review time required under these new essential fish habitat guidelines that concern us. I know of no permits that have been denied.

Senator SNOWE. They are delayed?

Mr. LYONS. The problem that we have, and have had in past years, with Corps of Engineers permits and coastal zone permits is delay. And delay is money. For our industry, money is extremely important at this juncture in our history.

If I might say, we need a domestic oil and gas industry. And we are losing that domestic oil and gas industry. And it is because, at

*The information referred to was not available.

least in part, of regulatory constraints. And I have seen, having been a second-generation oil person—my parents are from Crowley, my father was a geologist—the boom here and I see what is happening here now. And it does not have to happen.

The Gulf of Mexico holds the most promise in the United States, reasonable promise, for energy development. We need to be able to develop the Gulf. But delays resulting from programs like this make companies look outside the United States. This is just one straw. I will admit, it is not the only straw. It is just one straw in a truckload of straw that makes people look elsewhere for development opportunities.

So hopefully we will not see denial of permits. It is simply going to result in additional delays. And those delays are very, very important. There is no reason, for example, to look at a permit in Baton Rouge as affecting essential fish habitat, 182 miles north of the coast of Louisiana.

When we heard the term "essential fish habitat," we thought we were talking about discrete areas that were essential and critical to fish development. These other areas are already covered by the Corps of Engineers program and the coastal zone program. They are adequately covered, and NMFS participates in those discussions. They fully participate in every coastal zone permit that is issued in the State of Louisiana, every Corps of Engineers permit that I know of. So there is no need to have an additional opportunity for delay.

Senator SNOWE. Thank you.

Dr. Wilson, you mentioned defining essential and nonessential fish habitat, if it can be quantified. The question is, can it be?

Dr. WILSON. I think so.

Senator SNOWE. We have heard this recommendation in some of our other previous hearings. How would we go about that?

Dr. WILSON. Well, as I had mentioned, there are a number of new techniques coming online using acoustics, side-scan sonar, dual-beam hydro acoustics, and satellite remote sensing. And I think that that can establish an index to qualify the habitat, and then we can look at fish life history stages and fish abundances associated with those various areas, and develop indexes along this continuum.

But just to say that the entire Gulf of Mexico is essential fish habitat has pretty significant ramifications for the future.

Senator SNOWE. Do you think that the EFH provisions should be changed in the Act?

Dr. WILSON. I think it would be helpful, yes.

Senator SNOWE. A distinction between essential and nonessential?

Dr. WILSON. Well, a distinction along some continuum. But I do not know whether you want four, five, six, eight, ten, different levels.

Senator SNOWE. Is the definition in the Act too broad, or is the implementation the problem?

Dr. WILSON. I think it is a little bit of both actually. I know the National Marine Fisheries Service, during some preliminary rulemaking, was trying to develop some index continuum. But I think a lot more work needs to be done in that area.

Senator SNOWE. Can you explain how the habitat areas of particular concern are treated? Is focusing on HAPCs a better way of approaching it?

Dr. WILSON. Well, that at least gives it a priority. I saw that was used in the New England Council's definition of some groundfish habitat. And they identified some areas where reproduction of cod was taking place and maybe scallop beds occurred. That certainly helps to say, well, this is real important habitat as opposed to the fact that fish occur here. It does not make it as important. But I think certainly a lot of work needs to be done. And we go back to good science for that, of course.

Senator SNOWE. Senator Breaux.

Senator BREAUX. Thank you, Madam Chair. I am going to be checking some essential duck habitat tomorrow.

[Laughter.]

Mr. PERRET. Watch that steel shot when you eat that duck.

[Laughter.]

Mr. PERRET. Or do you use lead?

[Laughter.]

Senator BREAUX. Let me just follow up on the same line of thought here. I think you all make a good point. We should be required to determine what essential fish habitat is. Just to say the entire Gulf is essential means there is nothing that is not essential. I think you are right, it was an effort to try and get special attention to areas of special importance, but not just to say the entire Gulf is EFH. It loses its effectiveness if it is just a blanket statement that everything that is wet is an essential fish habitat.

Mr. Lyons' comment is that on every permit for activities in the Gulf of Mexico for instance, the National Marine Fisheries Service already has had the opportunity to comment under other laws. And NMFS can say no, they do not want you to build a platform here because this is essential fish habitat. It is interesting that most of the rigs themselves eventually become essential fish habitats, as shelter for smaller fish in the food chain that live near the rigs, and food for larger fish that then come to feed there.

So I think it is worth us looking at trying to make this work better. Dr. Wilson, what is the good thing about having an essential fish habitat designated?

Dr. WILSON. I think that for the first time we are actually focusing on—my original interpretation, when I was first looking into the Act, and we were talking about it in our class—for the first time, we are actually identifying those areas that are very critical to different life history stages of the fish that we depend on. Where is the red snapper habitat that is most critical for their survival?

Unfortunately, it appears to be areas that shrimpers may or may not have an impact on. But that is a critical life history stage that we need to know more about, the rubbled, low relief bottom where the juvenile seem to occupy.

Senator BREAUX. Sometimes I think, looking out into the future, the designation of an essential fish habitat is a means of trying to use management tools other than excluder devices or quotas, by just closing up areas of essential fish habitat. Such EFH designations would pevent interference by people who are fishing in those areas. If you have an area that is more sensitive to a particular

species that is threatened, for instance, you could keep your shrimpers away from there, but not require them to pull TED's.

If you know an essential fish habitat for turtles, as a matter of fact, do not go shrimp over here, but you can shrimp everywhere else and you do not have to carry all kind of nets behind you with excluder devices on them. So I think that there is some potential in this method of designation.

Now, I understand that Mr. Lyons's concern is that they already have to go through the permitting process. They can look at this. You go through it under one Act. You go through it under another Act. Do you have to do the same thing under a third act? It may not be necessary. So I think Senator Snowe and I certainly will be looking at ways to make it work, but without the unnecessary bureaucratic rules that are there.

Mr. Loga and Mr. Miller, I am just glad to see you all at the same table. Normally, we have to put you guys at this end of the table and the other one on this end of the table, and about three or four witnesses in between you to keep the recreational and commercial fishermen from battling each other. But what you all have done is truly amazing. And that is the way it should be done. That is the way to solve these problems between recreational interests and legitimate commercial interests. Both of you have a legitimate interest in the Gulf of Mexico.

And to come up with a plan that would allow your people to actually go out of business, to be compensated for it, but to get out of a business that may be a family tradition in order to help preserve and protect recreational fishing is an amazing achievement. Maybe that agreement made the—let me see who the plaintiffs were who sued NMFS—maybe it made the Earth Justice Legal Defense Fund happy.

[Laughter.]

Mr. LOGA. Whoever they are.

Senator BREAUX. Whoever they are.

But it did not make the people who sat at the table happy, who negotiated this bill, who are actually involved with the issues on a day-to-day basis, your recreational fishermen and people who actually are catching the tuna. So we are going to continue to push this.

Mr. MILLER. I would note for the record, Senator, that this joint motion for stay in this lawsuit is dated October 5, 1997, which was shortly after this memorandum of understanding went public.

Senator BREAUX. Your memorandum?

Mr. MILLER. Yes, Your Honor.

[Laughter.]

Mr. MILLER. Yes, Senator.

[Laughter.]

Mr. MILLER. Excuse me. I am an old lawyer. I call everybody that sits higher than me Your Honor.

[Laughter.]

Senator BREAUX. We have been called a lot worse, I will tell you. We thank you for the compliment.

[Laughter.]

Senator BREAUX. We accept it completely. We do not get called that a lot.

We congratulate you and want you to continue. Do not get too disappointed. I think our proposal is ultimately going to happen, the way it should happen.

Corky, do you want to come back to Louisiana, or are you all right over there?

Mr. PERRET. Everything is good in Mississippi.

[Laughter.]

Senator BREAUX. Thank you for your continued long-time help. If anybody can be on the Council as long as you have, have voted as many times as you have, and still be liked by the industry, they have got to be doing something right. And I thank you for it.

Mr. PERRET. Thank you.

Senator BREAUX. I thank the whole panel.

Senator SNOWE. Yes, thank you all. Thank you very, very much.

Senator BREAUX. The chairman has said that she would be willing, and I would also, to hear other comments on the reauthorization and on the bill. I think we have had some great presentations and everybody, I think, has had a chance to be heard on this. But if there are some additional comments that can be summarized maybe by a comment or two, I think the chairman has indicated that she would be willing to take those. If anybody would like to come up to that microphone right there, we would be happy to hear from you.

Just identify yourself for the record. I want to make sure the record has your name.

STATEMENT OF MAUMUS CLAVERIE, MEMBER, GULF OF MEXICO FISHERIES MANAGEMENT COUNCIL

Dr. CLAVERIE. Madam Chair, Senator Breaux, thank you for the opportunity to speak. I am Maumus Claverie. I am interested in this process.

I am on the Gulf Council for the second go. The first go was in the early 1980's, when 90 percent of the effort was a turf battle between agency and civilians. Things have improved a bit.

I wanted to comment on a few things. First is your longline bill, Senate Bill 1911. I just saw the map that NMFS has in their regulation. And in the Gulf of Mexico, their line is much worse than your line. So I do not think you will have much competition there. But on that bill, the last iteration I saw allowed the vessels that are bought out to participate in the charter fisheries in the Gulf or elsewhere, but not in any other commercial fishery.

And I would urge that you not let them participate in the charter fishery in the Gulf. You have heard testimony today about how crowded that is already. And the Gulf Council was concerned about additional participation in that fishery through those vessels, which were described as possible charter boat candidates.

On essential fish habitat, I think the degree of harm needs to be considered in all instances, such that a very important—whatever you want to call it—habitat, something that is going to hurt that just a little bit may not be anywhere near as bad as something that hurts nonessential fish habit very much, or less essential, whatever you want to call it. So there has to be the ability to balance how much the net problem is going to be, not just what the category of habitat is.

And one of the features of the council system is that people with an interest in what is going to be regulated can participate in the process. And you all, in the Act, have a procedure for doing that. If a council member lists a conflict of interest situation for fisheries management, then that council member, unlike in ordinary Federal law, but under a specific exemption in the Magnuson-Stevens Act, is allowed to participate in the discussions and the voting on the regulations that are going to impact the fact that I own a shrimp boat, for instance, if I am a shrimper on the council.

That is one of the good features of the Magnuson-Stevens Act council system, because it gets the people who are going to be regulated involved in developing the regulations. And the theory is that there will be more cooperation and more acceptance of those regulations in an area of the world where it is very hard to enforce things at sea.

The essential fish habitat has introduced a new problem. And that is if one of us voting members of the council has an interest in something that is essential fish habitat, i.e., owns stock in an oil company that is drilling in essential fish habitat or owns a piece of land or even owns something in a gambling boat, any number of ways, or own General Motors, because General Motors produces engines that drive oil wells or something, then that precludes that member, under Federal law, from participating in the discussions or voting.

And my request is that you amend the Magnuson-Stevens Act so that an interest in essential fish habitat by a council member would be treated the same for conflict of interest purposes as an interest in fisheries operations would be. That would be a specific amendment you have to make somewhere in that Act. And I would encourage that.

The other thing that I wanted to talk about is management of highly migratory species. Right now, since 1990, that is done by the National Marine Fisheries Service, not by the councils. Whereas, Senator Breaux, you pointed out earlier that the system of councils is localized development, so to speak, it is more than just that. It is done open to the public. Whereas, management by the agency, decisions are made actually behind closed doors. And that is a big, big difference. And the fishermen are not used to that.

And so I would encourage that the management of the highly migratory species—my preference would be that they be turned back to the five councils. The problem was that if one council vetoed, nothing happened. That can be solved by saying that if not all the councils agree to a specific provision, that the total vote of the voting members at the next of each of the council meetings be added up and the majority rules, so that you do not get a veto situation.

There is resistance to returning to the councils, because the councils feel, No. 1, they are already overloaded and, No. 2, participants in highly migratory on an international level would like a one-stop-shopping situation, which would be a super-council. My suggestion would be, if that is considered, that that council be made of 11 voting members, one from NMFS and two members from each of the five councils.

This would have the advantage of people that everybody is used to, and also the five councils then could use their public input sys-

tems, which all the official participants are familiar with, to get into the input part of that management, too. For instance, the council AP's and the SA's, the science and social and whatnot input situations. And those are the specifics that have not yet been covered here today that I would like to mention.

But there is one question, Senator Snowe, that you raised. And that is about limiting participation in fisheries. I can tell you, from personal conversations, that at least two voting members of the Gulf Council are very concerned that if ITQs or limited entry is started in any fishery, i.e., a commercial fishery, that the worst thing would be for it to spread into a recreational private boat fishery. That that would be a compelling reason to not let it start.

And I think you asked that question earlier. And I can tell you that that is a concern. Because at the present time, that is not seen to be the right way to manage a recreational fishery or to get as many participants as possible. And the traditional way to cause conservation to happen there is to say each participant can catch fewer and fewer and fewer fish, but you have the opportunity to catch at least one, rather than limiting the number of people who can participate. That would be my comments.

Senator SNOWE. Thank you very much.

Next, please identify yourself for the record.

STATEMENT OF ROBERT SPAETH, EXECUTIVE DIRECTOR, SOUTHERN OFFSHORE FISHING ASSOCIATION, INC.

Mr. SPAETH. Thank you, Senator Snowe, Senator Breaux. My name is Bob Spaeth. I am with the Southern Offshore Fishing Association, out of Madeira Beach, Florida, west-central Florida.

I have an interest in a fish house. I also have an interest in boats. And I also represent about 100 vessels, 30 to 50 feet. In Madeira Beach, we have 250 jobs, $8 million to $10 million a year it brings into our small community, to give you a little oversight.

This is an overview of what we see going on in the Gulf of Mexico. We have cumulative regulations that are affecting us that NMFS does not seem to be addressing. An example of a regulation is that they take sharks and they close sharks off, thus forcing the industry into another fishery. And then that impacts other fishermen in that fishery. And then maybe nobody can make any money. That is just one example.

Another example is that one agency does not realize what the agency is doing. The Coast Guard came out with regulations that cost about $10,000 to $12,000 for safety, and some of these vessels only cost $30,000. So you are talking about a substantial investment into some of these small fleets, without any impact studies, et cetera, from those other agencies.

The paperwork burden we see out there, we know it has to be done, but it is getting impossible. You have got size limits. You have got this. You have got that. You have got to have a Ph.D. to become a fisherman anymore. Or for me to go hire somebody with the fine system the way it is set, I would lose my boat because of a captain that broke the law, which I would not want him to do, but I really do not have any control over it.

I heard somebody earlier mention insurance. I have heard 70–80 percent of the vessels in the Gulf of Mexico do not have insurance

and cannot afford insurance, some of it due to the impacts of these 10 years of regulations. Legally, the cost of litigation is expensive. It takes a lot of time. And there needs to be other alternatives put in that will give us a committee or something that maybe will let us go around all this litigation. The costs are expensive. I am sure NMFS would like that.

Banking, you talk about how you want to have a viable commercial fishery, but there is no bankability. How can a bank or anybody in that business go lend a fisherman money on a boat or to improve his equipment when that banker does not know whether the guy is going to be in business tomorrow? And if you cannot capitalize an industry, you are going out of business. And that is what we have done. We have made it impossible to capitalize anything in this business.

Vessel values, I have a vessel that was worth $200,000. I would be lucky if I could get $80,000 for it. And nobody wants it. And it happens to be a longline swordfish vessel.

People, public hearings, this has gotten to be out of hand. The public has no respect for the process. When they do, they ignore it. You see public hearings on grouper, almost everybody testified that the stocks were getting better, recreational, commercial, the whole nine yards. But when you get done with all this, it is a preconceived notion of what they are going to do. And they are only holding these public hearings to abide by the law. And that is the impression that we have, that the public hearings are not of any substance anymore.

Unfortunately, I do not know what we can do about it. I have been to several meetings where there are more government people than there is public testimony. And that can be found out if you want to investigate that.

SFA, we have already talked enough about it today. I concur that it is a mess. The big question is: Do you want a commercial sector or not? If you truly want the non-fishing citizens to have a chance to eat our Nation's fresh fish, you need to step in now and help save this sector. You need to help us find a way out of this mess.

The Department of Commerce has been mismanaging fisheries management plans in numerous areas. While their job is to manage stocks of fish, they have endeavored to take over and regulate how Americans run their business—when to fish, how to fish, where to fish, how many fish you can carry. The regulations are impossible to live with, and the commercial fishing industry is in much worse shape than many fish stocks as a result of the NMFS.

The Southern Offshore Fishing Association feels that unless our elected representatives step in and straighten out this problem, thousands of jobs will be lost because many tax paying businesses will fail. Many already have. The food fish harvesting capabilities of America will be lost. Consumers will pay more for less quality of fish, and the balance of trade will further slip.

One of the big problems is you cannot find a commercial fisherman and train them in a day. It takes years to become effective.

A potential solution is you need to match the resource availability to the economics of the fishery. We understand that many vessels and thousands of jobs will be lost to accomplish this action. Individual and financial misery can be avoided with the govern-

ment's proper help. Job training for those captains and crews is needed for those who will lose their jobs. Vessel and/or permit buyout programs are needed to reduce the fleet to optimum size.

The other thing I heard today was ITQs mentioned. And the ITQ, I could support it. But I do not support it at the present time because I do not know what it is. We have a special instance in the Gulf with reef fish. I heard that mentioned. Shark fishing has been cut by 50 percent, 50 percent, after the Governor enticed us that were in the reef fishery to go into the sharks, to take pressure off reef fish. Now, those people do not have a history or a fishery they can fish in. How do we take care of those people?

Those are the kind of questions I have before I could support an ITQ system. Thank you.

[The prepared statement of Mr. Spaeth follows:]

PREPARED STATEMENT OF ROBERT SPAETH, EXECUTIVE DIRECTOR, SOUTHERN OFFSHORE FISHING ASSOCIATION, INC.

Testimony to the members of the U.S. Senate Commerce Committee meeting in New Orleans, Louisiana, December 14, 1999 concerning the re-authorization of the Magnuson-Stevens Fishery Conservation and Management Act.

My name is Robert Spaeth. I am the Executive Director of Southern Offshore Fishing Association, a non-profit commercial fishing industry corporation. Our headquarters are in Madeira Beach, Florida, which is the center of the US grouper fishing industry. Our members fish throughout the Gulf of Mexico, the South Atlantic and in international waters off Caribbean and South American countries. We are the non-boating citizens access to offshore fishery products.

In a few words, it is past time for Congress to halt the cumulative destruction of the US commercial fishing industry by actions and policies of the National Marine Fisheries Service.

When Congress enacted the Sustainable Fisheries Act (SFA) it did so to establish a rational manner of maintaining not only the fisheries of the nation but maintaining those who harvest the fisheries of and for the nation. Congress did not pass SFA to give the Sustainable Fisheries Division of NMFS a license to close down as many fisheries as they possibly could in the shortest possible time frame. But close down fisheries is exactly what Dr. Gary C. Matlock seems to be all about.

Bob Jones, Executive Director of Southeastern Fisheries Association since 1964 and who supports this statement has long maintained, and I quote him, "Dr. Matlock has never seen a commercial fishery he didn't want to close, beginning with his early work in Texas on redfish & trout and continuing to this day in federal waters."

We hope and pray the information contained in the ongoing General Accounting Office (GAO) investigation will finally convince Congress to rein in an agency that has run amok. The Sustainable Fisheries section of NMFS is the epitome of what is wrong with the federal government in the eyes of the citizens who live under the NMFS regulatory process. We strongly recommend the Senate Commerce Committee hold Oversight Hearings on the SFA activities in NMFS as soon as the GAO Report is received. Create a proper forum where we can voice our concerns and present quantifiable information for the Senate Committee to study. Congress is our only hope for fairness in the management of fisheries as long as the Sustainable Fisheries division is constituted as it is at present.

In this regard, we want the Committee to know this is not a criticism of Penny Dalton who has recently been brought in to run NMFS. She is a breath of fresh air in a stale house.

Ms. Dalton probably doesn't have the authority to remove someone as entrenched as Dr. Matlock under civil service rules and he certainly is not without a political power base of his own. But members of the Committee, we shouldn't have to live under a system where the individual bias of one government employee can have such negative economic and social impacts on a particular group of fishermen. That kind of system is not democracy. It is a dictatorship and cannot be tolerated in the United States of America.

Please keep in mind when you read this statement that NMFS has about 60 lawsuits going on at present. What a waste of taxpayer's money and how critical it speaks of the agency and their lack of ability to work for the benefit of all. We rec-

ommend someone create a chart on litigation before Dr. Matlock and litigation during his tenure. I think the Committee will be shocked by what they see.

Let me list 12 statements for your consideration.

- Fishery regulations are so pervasive it almost requires legal counsel to know when to fish, what kind of gear can be used and where you can fish. NMFS is forcing the Management Councils to make more and more regulations each time they meet. Never does NMFS take a break from enacting rules or repeal rules. NMFS law enforcement leaders are pushing the Councils even harder to make law enforcement for them easier. The law enforcement advisory committee of the Gulf Council, for instance, wants to put an electronic vessel monitoring system (VMS) on commercial longliner boats and shrimp vessels. This is akin to an ankle bracelet mandate for people on parole and it is absolutely unacceptable to the overwhelming majority of the fishing industry. NMFS even wants the boats to buy the VMS devices and pay for their maintenance. If VMS systems are required on commercial boats then they must also be required on recreational fishing boats as well.
- Cumulative impacts of all the regulations in the Gulf of Mexico and the South Atlantic regions have never been examined by anyone who is concerned with such impacts. NMFS certainly doesn't seem to care how many regulations the industry has to live under nor do they care how much they cost. A Congressionally authorized study by a blue ribbon commission of experts should be created and funded immediately. There is great concern among industry that once you get rid of boat captains and crew it will be impossible to replace them.
- The paperwork burden is horrendous. The volume of what is required to file on a timely basis with NMFS and the confusing nature of regulations makes it very difficult for traditional fishermen to understand the legalese and mumbo jumbo of CFR writing. No attempt is made by NMFS to educate the industry.

  Their philosophy is, "We just write the regulations we don't have to tell you all about them or explain them to you."
- Selective law enforcement is another problem with NMFS. We feel NMFS and the Coast Guard enforce recreational fishing differently than commercial fishing. NMFS certainly reports differently as seen in the Law Enforcement Report given during the November 1999 Gulf Council Meeting in Orlando, Florida.
- A great deal of talk was heard about law enforcement of the commercial fishing sector but not one word on the efforts to enforce rules on recreational fishermen. Surely there must be some law violators out of the million or so recreational fishermen in the Gulf.
- Litigation is the only way the commercial fishing industry can get a fair hearing on fishery issues. Litigation is very expensive for the industry but unlimited funds are available for NMFS. We believe Dr. Matlock understands too well how to use the "presumption of correctness" doctrine. He has used this hammer in closing down commercial fisheries. He knows in most instances if he can just provide even a scant paper trail showing he tried to stay within the law, the court will rule in his favor and against the industry. Even with all that power, Dr. Matlock has been taken to task by two different federal judges in the past year. I encourage the Committee to read the Judge's Order in the flounder and shark litigation.
- Both the District Judge in North Carolina (flounder issue) and in Florida (shark issue) came down hard on the agency. This evidently has no impact on Dr. Matlock as he has now indicated in a sworn declaration, dated November 11, 1999, that if the court doesn't get its act together, he will declare certain sharks as endangered species and close them down and impact more fishermen.
- The role of NMFS as the research arm, review of the research arm and enforcement arm of the Department of Commerce is frightening. Our perception is NMFS sometimes makes their science meet their preconceived goal. In one court case pertaining to fish traps, Dr. William Fox, who was head of NMFS at the time, came to the Southeast Region and forced his regional staff to ***"sequester"*** certain science that was in NMFS' possession but which did not help NMFS position in their desire to ban fish traps. This was science developed by US taxpayer dollars that was prevented from being put in the record. This scandalous conduct is part of court records in the lawsuit against the Department of Commerce by the Organized Fishermen of Florida, I believe. It is a sad day when the middle bureaucracy or "keepers of the flame" are forced to look the

other way in order to accomplish a personal agenda of the agency head. I don't think the Senators know how subtle pressure can be put on an underling who is just trying to do his/her job and move forward on their chosen career path. The Senate should take a hard look at the way some NMFS officials do business.

- Outside peer review of NMFS' science has been a bugaboo for years and has even resulted in the National Academy of Science being brought in on one occasion to take a look at NMFS' work. Recently, our organization combined with the leadership of Southeastern Fisheries Association and the Florida Offshore Fishing Consortium to review gag grouper and red grouper science. We engaged a certified Fishery Scientist and asked him to review the science being used for grouper regulations and write a report. That was our only direction to Dr. Trevor Kenchington, of Nova Scotia, Canada, who had no ax whatsoever to grind. His review was enlightening and pointed out some problem areas of the NMFS science being used especially as it pertained to genetics and stock size.

  Dr. Kenchington was invited to a summer meeting of the Gulf Council in Key West, Florida and made his report in detail. He was subsequently invited to the recent meeting in Orlando, Florida and was almost prevented from making any comments at all because a designee for a state director didn't want to hear his presentation. As a result of all this clamor and confusion, the Gulf Council has rewritten their policy on outside science which calls for the science to be reviewed by the Stock Assessment Panel and other panels before it is presented to the Council. This will be a good policy if the dates and time available for submitting the review is not manipulated by NMFS to prevent the outside reviews from being properly considered on a timely basis.

- This brings up another point. Maybe it is time for the state directors to be a non-voting member of the Councils. A case could be made of conflicts between state and federal management because of policies and statutes. The federal fishery resources belong to all the people of the nation and should be available to them. When states are successful in prohibiting commercial harvest for distribution throughout the nation, they in effect reserve the fish for those local folks and tourists who come thereby denying a great number of citizens the opportunity to share in the resource. Redfish is the classic example. Here is a federal resource and a state resource that could produce a modest harvest in federal waters but politically it cannot be harvested in federal waters because it became a sacred fish and no state director will even consider opening federal waters to a harvest. This is a blatant violation of the M-SFCMA. That's all I will say on redfish but the way that fish was taken away from the non-boating citizens is a shame.

- Another area of our concern is NMFS does not listen to the constituents during the public hearing process. Public hearings are a sham. In the most recent grouper hearings, 90 percent of the citizens, both recreational and commercial testified that the grouper and red snapper are coming back and the fish are getting bigger but their comments are ignored. It seems NMFS develops a model, absolutely full of assumptions, and refuses to change or even consider changes no matter what is brought to them. Additionally, NMFS has done a horrible job of explaining or even trying to explain their models to the citizens. Its like the science is in the nether world and mortal fishermen are not permitted to see what is going on.

  If there is any doubt on what I am saying about the public hearing process, get the public record from the Gulf Council on the gag grouper hearings and read it. You will be amazed at how much information is ignored.

- NMFS has no programs to assist commercial fishing. Why? The commercial fishing industry has vessels that are in the federal waters every day but there is no cooperation between the industry and NMFS in this region. It's like we are the enemy and the designated target as well. We are under the gun from an agency using our tax money to destroy us. Why? NMFS has gone from turtles, to TEDs, to BRDs, to longlines to gear to essential fish habitat etc., as a way of inflaming issues to get media exposure which generates research money which keeps the agency pumping out regulations.

All of us know NMFS has to create a demon or create fishery collapse to be in a position to impose draconian regulations on the fishermen. When will this insanity end? When will Congress step in and say, "Wait a minute, it is not now nor has it ever been our intent to destroy an important food producing segment of our na-

tional economy!!" But destroying us is exactly what NMFS is doing through the Sustainable Fisheries division.

Members of the Committee, there are many other points that need to be brought before you but I think I have brought enough for a start. Check with other industry people from Maine to Texas for similar views. The Pacific Coast might or might not have similar views and Alaska of course, has a very unique situation separate from the lower 48. They don't live under the NMFS heel like the rest of the country.

Thank you for anything you can do to help America's First Industry survive and prosper in the new millennium.

Respectfully submitted,

Robert A. Spaeth, Executive Director
Southern Offshore Fishing Association
December 7, 1999

Senator SNOWE. Thank you very much.

Senator BREAUX. Thank you.

STATEMENT OF FELIX COX, COMMERCIAL FISHERMAN

Mr. COX. Thank you, Senator Snowe, Senator Breaux, for the opportunity to testify before your subcommittee.

I am Felix Cox. I am from Texas, Aransas Pass, Texas, a little small town close to Corpus Christi. And I own a fishing boat there. And I have been fishing all my life, I guess you might as well say. Trying to make a living out of it is a little difficult anymore.

Anyway, I have got two or three points I would like to make that you might be able to help me, which is the reauthorization of the Magnuson-Stevens Act. The first and most important point is my support for individual transferable quotas. We have been through a derby fishery in our red snapper fishery now for eight years or so.

And I guess you have heard testimony in support of the individual quotas, and so I would just like to add mine to that. We just cannot live any longer with the derby fishery. It has cut our profits. It endangers our lives. And bankruptcy is just right around the corner for many of us. And so I would ask you two Senators, if you would, to be supportive of lifting the moratorium on the individual quotas.

The second concern that I have, and you have heard this voiced already today, is the recreational and commercial battle, the ongoing recreational and commercial battle. And having been a fisherman all my life, of course you are going to find me supportive of environmental fishing. I feel like people in the country who cannot come down to the coast and fish still ought to have some access to the fish. And I think it is probably up to the Senate and the House of Representatives to keep those opportunities available for people.

Now, you will hear our council, unfortunately, our council has forever been tilted toward recreational interests. And that is unfortunate, because the balance of the people in the country just do not get a fair hearing. So I would appreciate it if you two Senators could maybe do something about that. I do not know what specifically, but maybe something, to make sure that we always have a viable commercial fishery.

And I guess my last point would be some way to try to return some of the power that fishermen used to have and no longer have. We are told who we can sell to. We are told when we have to go fishing. We are told when we have to come back. And right around

the corner I understand is a little thing called a VMS that will be attached to us, something similar to a leg band that prisoner wears, that will pinpoint where we are at all the time. So I am not sure where this is going to end.

And if you two Senators could please address these little concerns that I have, I would be most appreciative. Thank you very much.

Senator SNOWE. Thank you.

STATEMENT OF STEVE LOUP, RECREATIONAL FISHERMAN, GLENN, LOUISIANA

Mr. LOUP. Thank you, Senator Snowe and Senator Breaux, for allowing me to talk.

My name is Steve Loup, and I am a recreational fisherman. I am here representing several dozen fishermen who do not have a voice and cannot come here. What I wanted to bring up was the Magnuson-Stevens Act, which is what you all are talking about. I would like to see National Standard 4 enforced. And by that, I would like to explain what I am talking about.

The council had asked for a March 1st opening of the red snapper season, and they were turned down by NMFS. And in the Federal Register of September 1, it says: NMFS has disapproved this measure based upon finding it inconsistent with National Standard 4 of the Magnuson-Stevens Act, which requires an allocation of fishing privileges be fair and equitable.

That is the reason they turned down the first season. Now the council asked for the season to be opened April 21st instead of March 1st. And now it looks like they are going to approve it. They are just disregarding Standard 4 of the Magnuson-Stevens Act.

And the reason that I cannot fish in the summer and a lot of us cannot is because the red snapper comes from offshore, 40 or 50 miles in, to within 15 or 20 miles of the shore. And the people with the 18- to 24-foot boats cannot go out 40 miles to fish. We have to fish in close. Not only that, it costs so much money to go fishing this red snapper, just for four fish.

So the only time we can fish is when the fish come in close to shore. Which is when? November, December, January, February, and March. Those five months are being closed. We are being totally discriminated against. And I really consider myself to be a poor minority winter recreational red snapper fisherman. That is what I am. Seriously. And there are hundreds of us here in Louisiana who only fish in the winter. And the reason is because of the fish coming in. We cannot afford to go out in the summertime, 40 miles out, like these charter people do, with 60-foot boats.

For 30 years I have been doing this. I am going to lose my fishing 100 percent. I am totally discriminated against. They are not following the law. And I think something ought to be done about it.

And I have got a second point. I have sent several letters to the council. And they wrote back and told me that they could not consider my suggestions because the reason why we could not consider such changes as you recommended earlier is that the council is not allowed to submit more than one set of regulatory changes for the same management measure per year. Well, them asking for an-

other season on April 22nd is a second change in one year. I do not see how that is legal. This is according to the Magnuson-Stevens Act. I would like to have an answer to that if somebody can answer me.

Senator SNOWE. I see the point. Can you respond to that?

Mr. COX. It is not a regulatory amendment?

Senator SNOWE. Can anybody respond to that?

Senator BREAUX. I think since he has made the request public and has also written me, rather than trying to do it all in this meeting, I think the question is very, very clear. And we would like to ask the National Marine Fisheries Service to get with him, get the exact question that he is talking about. And it is basically a question of discriminating between commercial and recreational fishing and the ability to catch the fish closer in shore when they get there in their boats instead of having to go further offshore. I think he feels that Standard 4 says you cannot discriminate against recreational or commercial fishermen, and he feels that currently there is discrimination. And so I think you all need to get together and talk about that.

Mr. COX. Well that is the reason they said in the Federal Register that they canceled the season the first time, at the request by the council. Now they are acting like it does not count anymore.

Senator BREAUX. That is a good point and it deserves an answer.

Senator SNOWE. Yes, exactly.

Senator BREAUX. We'll get you an answer.

Senator SNOWE. Thank you very much.

Who is next?

STATEMENT OF CHRIS DORSETT, GULF RESTORATION NETWORK, NEW ORLEANS, LOUISIANA

Mr. DORSETT. Senator Snowe, Senator Breaux, my name is Chris Dorsett, with the Gulf Restoration Network, here in New Orleans, Louisiana. We are a network of 43 groups, dedicated to protecting and preserving the environment in the Gulf of Mexico and its natural resources.

I have a written statement that I will hand to the Senators. And in the interest of time, I would like to discuss primarily essential fish habitat and its role in the Gulf of Mexico. Our network feels that this issue is a priority concern if we are to have productive fisheries in the Gulf of Mexico. You heard some facts and figures already about the region's productivity. I share those statistics. I have some more in my testimony.

Essential fish habitat, in our opinion, it is really simple, if we truly want productive fisheries in this region, we must protect essential fish habitat. While the Act defines essential fish habitat, it is very important—if we are to go back and start dividing what is essential and what is not essential based on the scientific information we have right now—what level of productivity do we want from our fisheries?

Are we going to draw a line and say, OK, this is a level of productivity that we want, here are the habitats we need to support it, the rest is fair game? That is a question that has to be answered before we go back and start drawing the line and saying what is essential and what is not essential.

I urge everyone involved to review the council's amendments to its fishery management plan addressing essential fish habitat. For example, I have maps from the document of the three commercially important species in the Gulf of Mexico. The habitats utilized by these species are noted in this document. And I will submit this for the record. And a review of this will show the bays and estuaries and offshore habitats of the Gulf of Mexico are extremely important to our fisheries.

This region is unique in that 95 percent of the commercial and recreationally important species utilize the bays and estuaries of the Gulf of Mexico, primarily as nursery grounds. And the larvae move from offshore areas into the bays and estuaries. It provides them shelter and food. When they grow to a size needed, they then migrate back offshore, and the process starts all over again, depending on the species.

I would like to address a little bit the requirements, consultation requirements, in addressing non-fishing impacts in the Gulf of Mexico. The way I understand this Act and the interim final rule that implements the Act, the National Marine Fisheries Service produces these rules. The Federal agencies whose actions affect essential fish habitat must assess their impacts. That is what it requires them to do.

The National Marine Fisheries Service does not have the authority to say, no, you will not complete this project because of its unacceptable adverse impacts on essential fish habitat. The most they can do is call for a meeting between the Secretary of Commerce, and let us use, for example, the Corps of Engineers so, Secretary of the Army.

And let me start with this. We are very pleased that Congress recognized formally the importance of habitat in fishery management. If in fact the current processes, which I think the National Marine Fisheries Service has used very effectively to address essential fish habitat assessments, if they truly are duplicative, all you would need to do is write a statement: Here is our assessment of what this does to essential fish habitat. And then you would have no extra work at all.

Again, I feel it is very important that the impacts be assessed. We have a choice here. And it is how much effort or how much inconvenience to maybe some other industries do we want to subject them to so that another industry can have benefits, the fishing industry of the Gulf of Mexico.

I will end with those comments on essential fish habitat. I also address some other topics. And I have a copy of a report from Greenpeace that they sent me today. I have not read this yet, so I do not endorse it. But I just wanted to submit it for the record on their behalf.

Senator SNOWE. Thank you very much.

Next.

STATEMENT OF DONALD WATERS, PENSACOLA, FLORIDA

Mr. WATERS. Good afternoon. I appreciate the opportunity to speak here in front of this Senate subcommittee panel. Thank you, Mr. Breaux and Ms. Snowe.

I come here today to ask you to lift the moratorium on ITQs so that the red snapper fishery can frame a limited entry ITQ system for the red snapper fishery in the Gulf of Mexico. The derby-type system we are currently participating in is not working for the historical dependents of this fishery.

One of the reasons is the original qualifier was set too low, which allowed fishermen who landed red snapper only as a bycatch to participate in a directed fishery, which they had never participated in before. In other words, the creation of the current limited entry system in the directed red snapper fleet was more than doubled. Some vessels that could qualify only by catching 5,000 pounds a year are now producing over 60,000 pounds, while the original highliners struggle to maintain their historical landings even though the quota has more than doubled. This is due to short seasons.

The added number of vessels in the rapidly rebounding red snapper stock created large market gluts, thus creating an average drop in prices of 30 percent, coupled with a 2,000 pound trip limit that increased our expenses by approximately 30 percent. The only fair and equitable way to build a stock is an ITQ system based on fishermen's historical landings. It is not fair to reward some who take away from the historical dependents of this fishery, the ones who have suffered the most during long closed seasons.

An ITQ system should be put in place to maximize the economic net benefits, increase the stability of the red snapper fishery in terms of fishing patterns and markets, to promote flexibility for the fishermen and their fishing operations, and minimize the release mortality associated with incidental bycatch after the commercial season has closed.

Last, but most important, safety at sea. And this should not be a reallocation tool. As a historical participant in the council process, attending at least 50 percent of all council meetings in the last 10 years, I can honestly say it does not work. The recreational interests, which has a controlling vote, has gone as far as arrogantly voting to reallocate quota split, to increase TAC only when needed by the recreational fishery, to continuously ignore massive overruns in the recreational fishery, and totally avoid any kind of logbook reporting system for the charter boat/head boat industry. They do not want to know how many snapper they are landing, and they do not want you to know either.

With the special interests involved, it would be hard to get a fair shake from the Gulf of Mexico Management Council. That is why it is so important to have as many fishermen as possible involved in developing a limited entry ITQ system, to protect themselves as well as the American consumer.

Thank you.

Senator SNOWE. Thank you very much.

Next.

STATEMENT OF CHARLES ROBIN, III, COMMERCIAL FISHERMAN, ST. BERNARD, LOUISIANA

Mr. ROBIN. Good morning, Senator Breaux and Senator Snowe. My name is Charles Robin, III. I am a fifth generation commercial fisherman. I have been doing it all my life.

I come here today to talk about fishing and about turtles and things. Back in 1987, I did a study with LSU. A guy came on my shrimp boat. We did a study on turtles, to see if these devices were going to work in our areas.

Well, I have a double-rig. I have two trawls. I put a TED on one side and one without. We went through the marshlands, because I fish inland waters, I do not fish offshore. We did the survey for five days. We compared the trawls, what I lost and how many turtles I caught. My survey came out that I lost 30 percent of my profit out that one hole. So, through the whole trip, I never caught one turtle.

Now, for five generations I have been fishing as a shrimper, from my grandfather, from my day. We never knew what a Kemp Ridley was because we never seen any in our area.

I want to ask the National Marine Fisheries Service, what kind of scientific data do you all have that you all forced us to put these turtle devices to save this turtle? What scientific data do we have to go by? Here, you have got to do it. You have got to put this thing in your trawl, a 32-inch hole. And I am going to race and patch a one-half mesh, so I do not lose one shrimp. And I have got to rip this hole in my trawl.

It is different if they would have the species in our area. Yes, I agree, I am one of the biggest conservationists they got. I have got to think about tomorrow. I have got to save my young fish to grow, so tomorrow I can feed my family. That is the way we are. That is the way I was brought up.

But I want to know why they force us to do these things. We are talking about turtles and saving turtles. Yes, I agree. I agree with saving turtles. But why force it on us when these turtles do not even migrate in our area?

I had to take my kids to the aquarium to show them what a Kemp Ridley was. I did not know what a Kemp Ridley was. That is how naive I was. Because it was not in my area. It might be some place else. But why shove it down our throats?

Then they come around and talk about bycatch. The bycatch has been around here for hundreds of years. My people came from the Canary Islands back in the 1780's, and made a life for themselves down here. You have got to put a BRD in your trawl. What the hell is a BRD?

But I have a device on my boat. It is called a test trawl, 16-foot. I am a shrimper. I do not catch fish. I do not want fish. I want shrimp.

I will get into an area, and some places have got fish here, shrimp here. I get into an area that has fish, and my little test trawl, I pick it up every 10 minutes to see what I am dragging on. If I get fish, I turn around, I go back where I caught shrimp. I do not want that.

But I am going to tell you something. The fish, the bycatch that I catch in my trawl, 100 percent of it is gone. Everybody look at the movie, the Lion King, the cycle of life. Every year I go back shrimping, I catch the same thing every year.

Back when I got my vessel in the 1980's, we had a shortage of pelicans. Well, now we have got so many pelicans, they follow us around. We depend on the pelicans to find fish to set on, to catch.

But we have got to save all this. They did not realize that we feed the pelicans, the porpoises, crabs; 99 percent of the stuff that hit the bottom is gone. We only take what we need.

Now, red fish and trout, we cannot even do this any more. A lot of people are tired of hearing this. This is something that my grandfather and my great grandfather did. We look at them pass and we cannot even catch them.

But I have got my kids going for an education, to take one of these guys' jobs.

[Laughter.]

Mr. ROBIN. I guarantee you that. I am trying to preach to them. They are bred into this business. I am bred into it. You have got this, you have got shrimp and fish. The wife says, you ought to get a blood transfusion. I said, why? I might wind up with something that you might not like. But it is the truth. I mean our livings are swept out from under our feet, from generations, from generations, from generations. That is what we do.

The bottoms over here where we fish with our trawls, the bottoms, they are not fit for these TEDs. A couple of these guys could tell you. We have got pictures. On normal conditions, I lose 15 percent out of each trawl. Normal. There is no normal conditions where we fish. None.

The marshland is not a hard sand bottom. It is mush, oysters and shells. But we put up with this. My dad is 63 years old, healthy as a horse. You probably might know my dad. There is a tape made. Maybe somebody might have seen it. Have you seen it, Mr. Breaux?

Some people think that was an act. It is not. You all ought to see that. You ought to come jump in my shrimp boots, walk in my shoes, to find out the way my life is. It is a hard life. I love it, though. If some people try to take it away from me, I get mad.

This man here, he said you have got to put it in. All of his profits are going out the front end of his hole. When he lifts up his trawl, his tail, there is a couple hundred pounds of shrimp going out the front. It is supposed to go in the back. Everything usually goes to the tail. We sort our things out.

But when your profit goes out the front or the tail, well, that is very stressful for you. That is like if you get your little paycheck, it kind of hurts at the end of the week. I think so.

But this man, healthy as a horse, 6 months later has a heart attack. I wonder how in the heck my dad has a heart attack. This man is as healthy as can be. He is healthy as a horse. Stress. Head stress. My dad is almost 69 years old today. He is home. He does not want anything to do with it no more. The stress is too much on him now. Having his profits go out the hole. It is just tremendously bad. It is bad.

So, just think about it. The people of the younger generation coming up. Once this generation is gone, I have got three sons coming up. They have been on a boat just like I was, since they were in diapers, bring them up and watching our industry. Our industry was a beautiful living at one time, a beautiful living. Some of these actors get into our business.

To me personally, I do not care what they think. That is the way we was brought up. We think about tomorrow. But they try to stop

us. They have so much fish out there right now, Senator Breaux, you would not believe it. We are out there all the time. We know what is going on. We are not here pushing a pencil. We are not here on paper. That is not my cup of tea. But I am out there. I see what is going on.

There is so much fish, there is going to come a time that they are going to have one species of fish because every other one is going to eat out each other. They do not know that you have got to go and take. You have got to take from the land. If not, it is going to eat it out. You have got to take from it.

I am 39 years old. I am hoping to do this the rest of my life. So try to be easy on us with these regulations, and think about the younger generation coming up. Because if we do not have our young kids, who is going to feed the country? We are going to have to depend on foreigners, the foreign lands, to get our seafood. And it is not going to be fresh.

Thank you very much.

Senator SNOWE. Thank you. We hope we can do everything we can so that you can fish for the rest of your life.

Next.

STATEMENT OF GEORGE VARISICH, PRESIDENT, UNITED COMMERCIAL FISHERMEN'S ASSOCIATION, CHALMETTE, LOUISIANA

Mr. VARISICH. I am George Varisich, the President of United Commercial Fishermen's Association. I am a third-generation commercial fisherman, and probably I will be the last in my family.

On behalf of what is left of Louisiana's commercial shrimp industry, I want to thank you for, once again, affording me an opportunity to go on the record to attempt to invoke some reality to what has become the worst injustice that ever hit one of South Louisiana's oldest industries. And I am going to be talking about reality, so I want to pass you this for you to look at. This is reality. And you can pass it through the crowd after.

This hearing makes over 50 meetings I have attended, fighting to educate the government on what really happens out there in the real fishing world. The problem is, up to now, hopefully, I have testified, been questioned and interrogated, and showed the government agencies how devastating the TED regulations have been to Louisiana's shrimp industry.

Unfortunately for us, the government did not feel any of our information should be given any consideration. My only hope is that today will be different. It will not be just another exercise in futility.

Even my mom, who is my strongest supporter, questioned me: Why was I going to lose another day's work to talk to people who seemed to be indifferent about our plight?

My answer was: Remember, mom, about six years ago, when dad died? I promised him I would fight to preserve Louisiana's fishing heritage as long as there was air in my lungs. And I am still healthy.

It has been 12 years since the devil first poked a hole in my net and in my ability to make a profitable living. Consequently, it

seems fitting for us to look back and lay out some of the facts for this hearing.

Fact Number 1: inshore Louisiana waters and considerable Louisiana offshore territorial waters were never established to be a critical nursery habitat for Kemp Ridley turtles. This is very important. It never was established, but we have got to pull these things.

Fact Number 2: turtle populations have rebounded faster than predicted. They are up twice as fast as they thought they would be.

Fact Number 3: although TED, if used successfully, allow turtles to escape if encountered, no data has been established linking turtle activity and recovery in Louisiana waters. Everyone close to the subject knows the efforts made in Mexico, the head start program and everything we have done on the beach over there, is what enhanced the turtle recovery—not necessarily TEDs.

Several years ago, we had one reasonable researcher come up to one meeting, and we asked him about that. And he made a statement. He said it would take seven years of trawling offshore Louisiana just to see if we had had an impact. And that is enough right there to let you know we should not have to pull that stuff.

Fact Number 4: and this is the big one, the 5 percent shrimp loss that NMFS adheres to is grossly inaccurate. The most reliable information we have from our research, from observers on boats like Charles', on real shrimping vessels in real shrimping areas is a range from 12 to 22 percent shrimp loss. At this real percentage, Louisiana's shrimpers are losing approximately 15 million pounds of shrimp a year, with a vast negative economic impact being felt in coastal communities.

I wish you had time to come down and see our area and see how many boats are for sale, see how many boats are tied up, just laying there, see how many boats are sunk on the side of the bayou. It is pathetic.

Fact Number 5: prior to TED regulations, the Louisiana shrimp industry supported 32,000 commercial trawlers. Now, after 10 years, we have plummeted to just around 15,000. Ladies and gentlemen, that is almost 60 percent in just 10 years that have fell out of the industry.

The question is: How many of us have to fall before we qualify for protection under the Endangered Species Act?

Seeing what NMFS has done to protect turtles that are not there, I sure would like to have them protect me.

Fact Number 6: although the economic and socioeconomic impact study was done, as required by the Magnuson-Stevens Act, which did in fact predict how devastating the TED regulations would be, it never was acted upon. It just blew by. It is this thick. It is 452 pages, laying out how many problems we were going to have.

OK, we have done it. So what. You are going to go out of business. Who cares?

Fact Number 7: since we got the temporary TED exemption last year, after Hurricane Georges—thank you very much for your assistance—we got to do a lot of our own testing, which a lot of us took advantage to do: put one TED on one side and one on the other. And we discovered, in the large white shrimp—we thought for a while that Louisiana was not producing the 1015's anymore—but the day, the very day after we got the exemption, our white

shrimp, large white shrimp, count went up 35 percent on our catches.

And the second thing we also discovered was we have been having a lot of damage from porpoises and sharks. It has been increasing since the TED. So we did the same thing, put a TED on one side and one not on the other. What is happening, the sharks and the porpoises are just watching the fish come out the TED. So you have got bycatch. It is being released. And it is getting eaten.

And the problem is, when there is no fish coming out of the TED, they go to hit the tail. They get hungry, they want lunch. So you have got another problem because of the TEDs.

Fact Number 8: Louisiana shrimpers used to be one of the happiest and easy-going people on the water. But now, having to live with the fact that every day you are going to go out there, go to work and lose money has made most of us miserable and bitter, with no faith in your government to do anything to help us out.

Fact Number 9: the Louisiana Department of Wildlife and Fisheries has been conducting testing since 1966, has looked over 48,000 samples, and has yet to catch a Kemp Ridley turtle. That is not my data. That is data for data purposes only. That should not be ignored anymore.

I could go on, but I feel I will get too frustrated to remain objective. These are factors driving the past. My concern now is the future.

Are you going to reauthorize this Act with survival of the commercial fishermen in mind? I sure hope so. If so, I have a simple solution: Let me, or us, the shrimp industry, fund a recovery program for the turtles. When I go back to work without this ball and chain I have been dragging around for 10 years, the economy wins, the turtles come out on top, and everybody wins. It is a good solution, the same one I proposed to you 5 years ago.

Last, I want to address Ms. Dalton on some statements she made. Mainly the fact that you and NMFS want to work with the fishermen to achieve some of these goals. Ms. Dalton, you inherited a host of problems. The main one is credibility. The people before you did a lot of bad stuff to commercial fishermen.

They come on my boat, they took data, and the data showed what I proved and never made it. So there have been lies, years and years of lies. And every time they lie, they lie to cover up the other lies. So there is no credibility at all. So now you have inherited that problem. And I do not know how we are going to get past it.

For example, how we are going to get past it, there is going to be a question right now. We are here today testifying and trying to educate you, to tell you that I am going out of business left and right. I am one of the best there is in my size class and I am barely making it. If it would not be for oysters in the wintertime, I would be out of business.

So here I am educating you all. And tomorrow there is a meeting in Pascagoula to examine the possibility of making these damn holes bigger. So this is absurd. This is absurd. If you cannot see what is going on, unless that is your goal, your goal to kill us. I was told that by Dr. Andy Kimmer, who said, we want to get the

fishermen out of the Gulf. Off the record. You cannot say that on the record.

And I told him, I said, Andy, you close the Gulf; I want you to close it. And every shrimp dealer and processor, everybody will be on this man's case so bad, I guarantee you. He would not do it. I dared him to do it. But that was 2 years ago. So now he is no longer there. And I have got to educate another one of you all.

[Laughter.]

Mr. VARISICH. Ms. Dalton, if you had to run NMFS like I have to run my boat right now, I believe the regulations would be a hell of a lot more reasonable. Once again, I am offering my experience and my knowledge for you to draw on. I sent you my card already and we have talked on the phone already.

Senators, this is for you all: If NMFS does not get its act together and come to the real world, we will be asking you to sponsor legislation similar to what we passed in Louisiana last year, basically asking for area exemptions for TED use; that is, areas that have no history of critical turtle habitat or turtle existence.

Number 2, seasonal exemptions; that is, cold-water months, like right now. In the boats fishing offshore, that water is so damn cold, there is not a turtle within 150 miles from here. Why do I have to pull this nonsense?

Third, an industry funded recovery program for the Kemp Ridley turtle, provided that the turtles that we bring, you release them off of Mexico. Do not release them off of Louisiana, because you are putting them right in my trawls and making me look bad again.

And if we do not get this done, I would like to see you all put some legislation in to where you pay me, NMFS or anybody, because they go through a hell of a lot of money, and I know they are getting their State funds and stuff like that, pay me for what I lose. I am taking a beating for this turtle recovery. Nobody else. The shrimp industry is. So you pay me for my 10 percent shrimp loss, and then I can survive.

Senator Breaux and Senator Snowe, I extend to you an invitation next spring to come out on my boat, like we tried to do one time before, Senator, and you can come see for yourself what we have got to put up with.

Thank you all very much.

Senator SNOWE. Thank you very much. We appreciate it.

And we have one more witness. If anybody wants to provide additional testimony, statements, or questions, the legislative record will remain open for 10 legislative days.

[Additional documents submitted for the record at the hearing are available upon request from the office of Public Information at the Senate Commerce Committee.]

STATEMENT OF TIM TORRANCE, COMMERCIAL FISHERMAN, LAROSE, LOUISIANA

Mr. TORRANCE. Thank you, Madam Chairman, Senator Breaux. I appreciate you all coming to this part of the world and giving us a chance to express our grievances and concerns.

My name is Tim Torrance. I am from Larose, Louisiana. I am the owner-operator of the 39-foot commercial fishing vessel Sea Quest. I have served two terms on the Gulf Advisory Panel for Reef Fish.

I am currently on my third term on the Advisory Panel for Coastal Pelagics.

I retired from the United States Coast Guard in October 1978, as a master chief bosun mate, after 20 years of active duty, 16 of which I served as officer in charge of search and rescue vessels. Besides being a commercial fisherman, I also have served as a vessel operations consultant to 26 law firms in Louisiana and Texas. I am accepted as an expert witness in this field in the United States Districts Courts of the Eastern and Western Districts Louisiana, and I am also qualified in this field in numerous Louisiana State courts. I hold a 500-ton master's license, an able-bodied seaman, any waters unlimited.

I would like to address the desperate need for the end to derby fishing in the Gulf of Mexico. With the creation of derby fishing, we have established what is probably, in my professional opinion, one of the most hazardous and unsafe work environments that exists at sea in modern times. With vessels pitted against one another, fishing for their share of the quota, we have a situation where vessel operators are forced to work on a 24-hour-a-day basis, during any weather conditions that prevail while the season is open.

The Coast Guard requires that licensed operators only operate 12 hours a day. There are very few fishing vessels with licensed personnel. Yet these vessels are operated on a 24-hour-a-day basis, with unskilled, untrained personnel standing wheel watches after having worked long hours fishing.

This leads to extreme fatigue and exhaustion, with a loss of mental alertness. It places the vessels and personnel in danger from adverse weather conditions, and often results in vessels proceeding to sea that are not seaworthy. Virtually every fishing season, vessels are involved with collisions with oil structures, groundings and men lost overboard.

The operators are forced to sail into adverse weather conditions in an attempt to make a living, knowing that they could be found guilty of reckless and negligent operation should a mishap befall them. It is only a matter of time, if derby fishing continues, before the snapper fleet will be caught in an unprecedented storm or a fast developing low pressure system, with the loss of vessels and life.

When the Act was last reauthorized, National Standard 10 was included. This Standard promotes safety at sea. Derby fishing violates this Standard. We in the industry must have an individual transferable quotas system in order to survive. With derby fishing, we flood the market with one species of fish at a time. This results in depressed vessel prices and forces us to sell our fish for any price offered by the dealers.

I would like to commend Ms. Dalton and Dr. Hogarth for their efforts with the snappers stakeholders meetings this year in an attempt to find a solution to the derby fishing problem. I attended the meeting held in New Orleans and the executive summary meeting in Biloxi, where the industry addressed these problems and made recommendations to the Gulf Council on what action could be taken to rectify the problems until an ITQ system could be put in place.

At the November meeting of the council in Orlando, Florida, the results of the stakeholders meeting was addressed. The council recommended virtually every change the recreational/for-hire sector wanted and none of the commercial industry's suggestions. All the commercial sector got was five days of our opening taken away from us, thus putting more pressure on us to fish in any and all weather conditions when the season opens in the dead of winter.

The only rationale I can see for this action was the fact that the commercial sector has never, in my memory, had a commercial fin fisherman represent us on the council. The majority of the commercial allotted seats on the council are held by fish dealers, whose best interests are not necessarily the same as the fishermen.

Thank you very much for your time and attention.

Senator SNOWE. Thank you. I want to thank all of you for your very helpful comments and constructive suggestions. This is not the end of the process, it is the beginning. So please feel free to submit any additional information that you think will be helpful as we proceed with the reauthorization of the Magnuson-Stevens Act.

Senator BREAUX. I would just echo Senator Snowe's comments. We have had some good comments today. We have had some very serious problems brought to our attention. Certainly Senator Snowe has a very sympathetic ear to some of the things that we have heard today. I am delighted that she has been able to come down here to this part of the country and listen to the problems of our fishermen in the Gulf of Mexico.

We are committed to going back to Washington as we reauthorize this legislation, to try and address legislatively some of these problems that are not, I think, the intent of the Congress. I think some things get lost in the shuffle, and we intend to do everything we can to make this program work better for everybody that it was intended to work for. Thank you.

Senator SNOWE. Thank you. And I want to thank you for inviting me to be here today with all of you. I can say without any doubt that there is no finer person to represent you and there is no one more knowledgeable on these issues than Senator Breaux. We will do everything we can to reconcile some of the problems that have been raised today. And please do submit additional information that you think will be helpful to this process.

With that, the hearing is adjourned. Thank you.

[Whereupon, at 1:48 p.m., the hearing was adjourned.]

APPENDIX

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. OLYMPIA J. SNOWE TO PENELOPE DALTON

Question 1. Recently, an industry group sponsored an independent stock assessment of red grouper in the Gulf of Mexico. This stock assessment conflicted with the NMFS assessment in several areas. As a result of this conflict and other problems with the NMFS assessment, the Scientific Committee of the Gulf Council rejected the stock assessment.

How can you improve the Council stock assessment process so that stakeholders have more confidence in the outcome?

THE WITNESS DID NOT PROVIDE A RESPONSE.

Question 2. At previous hearings, some witnesses have questioned whether it is appropriate to continue to use Maximum Sustainable Yield (MSY) as the target for fisheries management.

a. Is MSY a reasonable goal and do you recommend any modifications to the management process which would make achieving such a goal more feasible?

THE WITNESS DID NOT PROVIDE A RESPONSE.

b. How do you view ecosystem management as it relates to the management of species at MSY?

THE WITNESS DID NOT PROVIDE A RESPONSE.

Question 3. The agency has entered into a November 22, 1999 consent order with the plaintiffs in *National Coalition for Marine Conservation* v. *Daley,* requiring it to publish proposed regulations by December 15, 1999, and final regulations by May 1, 2000, to address "additional measures to reduce billfish and juvenile swordfish bycatch in the pelagic longline highly migratory species fishery, including considering whether certain areas in the United States' exclusive economic zone should be closed to pelagic longline fishing."

a. Is the December 15, 1999 proposed rule, which would close areas in the south Atlantic and Gulf of Mexico, the only proposal in response to the consent order?

THE WITNESS DID NOT PROVIDE A RESPONSE.

b. If so, what other measures did you consider in addition to those contained in the proposed rule?

THE WITNESS DID NOT PROVIDE A RESPONSE.

c. The consent order requires a final rule to be published by May 1, 2000. Does the consent order require an effective date for the final rule? If so, what is it?

THE WITNESS DID NOT PROVIDE A RESPONSE.

d. If the agency were to determine that it did not have adequate information to publish a final rule, what, if anything, does the consent order require the agency to do?

THE WITNESS DID NOT PROVIDE A RESPONSE.

e. If the order requires the agency to publish final regulations but the agency has the authority to delay the effective date, what kind of information must be in the administrative record to delay the effective date? Please explain in detail.

THE WITNESS DID NOT PROVIDE A RESPONSE.

Question 4. The agency is now collecting information through public hearings on its administrative proposal. To what extent does the agency propose to collect economic information, which would allow it to mitigate the displacement of the longline fleet as a result of the proposed closed areas? Please explain in detail.

THE WITNESS DID NOT PROVIDE A RESPONSE.

Question 5. Will the information allow the agency to take into account the impact on shoreside processing, marine terminals and local communities? Please explain in detail.

THE WITNESS DID NOT PROVIDE A RESPONSE.

Qustion 6. Will the agency also collect sufficient information to determine the social impact on families which might be dislocated? Please explain in detail.

THE WITNESS DID NOT PROVIDE A RESPONSE.

Question 7. How does the agency intend to address the dislocation of vessels to the mid-Atlantic? Please explain in detail.

THE WITNESS DID NOT PROVIDE A RESPONSE.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. OLYMPIA J. SNOWE TO JOHN ROUSSEL

Question 1. In 1995, the Council proposed the establishment of a red snapper Individual Transferable Quota (ITQ) system. The system was never implemented, however, due to the ITQ moratorium set by Congress in 1996. Those opposed to ITQs have argued that they would result in a consolidation of the fishery among a few big businesses, thereby forcing the traditional and smaller fishing operations out of the industry. Some proponents argue that ITQs can provide for improved management, increased safety, and better quality seafood over longer seasons.

In your testimony, you supported lifting the moratorium on ITQs. How would the use of ITQs for red snapper stabilize the fishery?

Answer. My support for lifting the moratorium on ITQs is based on my observation that with the moratorium in place, full study and debate of the appropriateness of ITQs is stifled. ITQs can produce some undesirable outcomes and I certainly share some of the concerns that initially led to Congress establishing a moratorium. However, I feel that fishery managers and the fishery participants should be afforded the opportunity to consider the entire suite of management tools when regulating fisheries.

At this point I am not prepared to say that the ITQ program developed by the Council in 1995 is appropriate for the Gulf Red Snapper Fishery, nor am I prepared to propose an alternative ITQ program for the Gulf Red Snapper Fishery. However, if properly structured, ITQs may provide an opportunity to eliminate the race for fish, address overcapitalization, and create a safer fishery with a higher quality product. Each of these conditions exists to some extent in the Gulf Red Snapper Fishery.

If the moratorium were to be lifted, it is my opinion that there should be substantial support from the fishery participants before implementing an ITQ program for a particular fishery. Additionally, the development of the specifics of the program should be careful and deliberate so as to minimize undesirable outcomes and if possible any ITQ program should be structured so as to not preclude the use of a non-ITQ approach in the future should conditions in the fishery change.

Question 2. The National Marine Fisheries Service (NMFS) and the Councils have begun to identify a subset of essential fish habitat (EFH) called "habitat areas of particular concern." This subset targets critical areas such as places of spawning aggregations. Should these "habitat areas of particular concern" be the true focus of NMFS' work on EFH or has NMFS implemented the EFH provisions appropriately?

Answer. The recognition of the importance of habitat issues in the Act was a significant positive step. Undoubtedly the size and vitality of our estuarine and marine fish populations are dependent on the quantity and quality of their habitat. However, we have only a limited understanding of the ecological relationships that constitute this dependence. This limited understanding makes it difficult to effectively address habitat issues especially on a species by species basis.

The "essential fish habitat" and "habitat areas of particular concern" concepts in my mind are both species based approaches. Since both rely heavily on a good understanding of the relationship between a species and its environment, they both share the same inherent weakness. What is most important is that the Act require that there be a mechanism for addressing non-fishing threats to healthy estuarine and marine ecosystems.

Question 3. Many of our witnesses mentioned the need for increased participation of fishermen in the data collection process. Several also mentioned that we need to make management decisions that reflect a consensus within the region. Please explain how we can increase participation of fishermen in research when there are such different views on how to proceed?

Answer. The barrier to increased participation of fishermen in the data collection process is the adversarial relationship that tends to exist between the regulated (fishermen) and the regulator (managers). History has shown that fishermen and managers can have a good and mutually beneficial relationship as has generally been the case when both groups have worked together to collect data in the development of new fisheries. Under this scenario the fishermen clearly see the benefits of working with the managers, however, in a highly regulated fishery the benefits are not clear to the fishermen and in fact what the fishermen often perceive is more data equals more regulations.

In order to engage fishermen in data collection efforts in a highly regulated fishery some type of incentive will probably be necessary. The type of data collection as well as the type of incentive that may be effective would likely vary from fishery to fishery. Opportunities to incorporate incentives into the regulations are one area that I think should be further explored.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. OLYMPIA J. SNOWE TO DR. ROBERT SHIPP

Question 1. NMFS has been criticized for its implementation of National Standard 8 under the Magnuson-Stevens Act. Do you believe that NMFS has properly implemented National Standard 8 and would you suggest any changes to the Act to better protect traditional fishing communities?

Answer. The problem with this standard is that the definition of "fishing communities" is too vague. NMFS has tried to implement it, but there are no clear limits as to what constitutes a fishing community. Thus I don't think it can be properly implemented, and the Act must clearly specify what is intended by a "fishing community" and Senate-House staff should consult with NMFS as to the problems encountered when trying to interpret the congressional intent.

Question 2. In 1995, the Gulf Council proposed the establishment of a red snapper Individual Transferable Quota (ITQ) system. The system was never implemented, however, due to the ITQ moratorium set by Congress in 1996. Would the use of ITQs for red snapper stabilize the fishery? Please explain.

Answer. ITQs would absolutely stabilize the fishery. It would provide all harvesters, initially commercial, and eventually charter/recreationals, with a plan to regulate themselves based on economic considerations of the present and future. It would eliminate the derby fishery which challenges common sense regarding safety and long term conservation. The problems of implementation have been exacerbated by the long delay, but the long term advantages far outweigh those problems.

Question 3. The National Marine Fisheries Service (NMFS) and the Councils have begun to identify a subset of essential fish habitat (EFH) called "habitat areas of particular concern." This subset targets critical areas such as places of spawning aggregations. Should these "habitat areas of particular concern" be the true focus of NMFS' work on EFH or has NMFS implemented the EFH provisions appropriately?

Answer. The "habitats of particular concern" should certainly be the focus of NMFS' work on EFH. As it now stands, EFH has been diluted to a meaningless expanse, essentially including all waters of the EEZ and even adjacent nearshore and inshore habitats.

Question 4. Many of our witnesses mentioned the need for increased participation of fishermen in the data collection process. Several also mentioned that we need to make management decisions that reflect a consensus within the region. Please explain how we can increase participation of fishermen in research when there are such different views on how to proceed?

Answer. The only way participation by fishermen can be increased is by standardization and quality control of data gathering. Without this, their participation is anecdotal and generally useless; with it, their participation becomes empirical data and very useful. To accomplish this, specific protocols, including the use of observers when needed, would have to be adopted. Consensus within the region should not be a requirement for effective fisheries management.

Question 5. At previous hearings, some witnesses have questioned whether it is appropriate to continue to use Maximum Sustainable Yield (MSY) as the target for fisheries management.

a. Is MSY a reasonable goal and do you recommend any modifications to the management process which would make achieving such a goal more feasible?

b. How do you view ecosystem management as it relates to the management of species at MSY?

Answer. There needs to be far more latitude in implementation of MSY, especially as habitat dynamics change. For example, habitat increases for red snapper during the last half century have resulted in projections of MSY some ten times what has ever been harvested. To require NMFS to work toward this theoretical harvest is ludicrous and damaging to the credibility of NMFS and Magnuson. MSY definitely needs to be considered within the context of ecosystem management where MSY for all species is often an impossibility, and preferences and allowances need to be made based on economic, social, and long term ecological considerations.

Question 6. Some groups have criticized other Fishery Management Councils for not using information and recommendations submitted by advisory committees. How does the Gulf Council incorporate the recommendations of its Scientific and other panels into the decision-making process?

Answer. The Gulf Council has always carefully considered advice of its panels, and in fact feels legally bound in most instances to the advice of its scientific and statistical panels.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. OLYMPIA J. SNOWE TO MYRON FISCHER

Question 1. Some recreational fishermen contend that the red snapper quota is flawed because it does not properly balance the social and economic values of the recreational and commercial fisheries. Do you believe that the recreational fishery deserves more quota? If so, please explain in detail how such an allocation would affect the supply and prices on domestic red snapper.

Answer. The original quota was based on a 49 percent–51 percent historical catch divided between the recreational and commercial user groups respectively. Many caveats appear; one being that the MRFSS data, especially in this time frame, was suspect to precise accuracy. Secondly, much of the commercial red snapper catch was foreign (Mexican) and recreational interest contends that an incorrect portion was discarded, yielding a higher domestic commercial catch. Lastly, the socio-economic figures did not come into play regarding the impact of either category, commercial or recreational. Looking solely at the participants in this fishery, one can easily determine the vast quantity of recreational anglers engaged as opposed to the minimal population of the commercial sector. This figure, when added to the economic benefits of the recreational community, poses a realistic question as to whether the 49/51 percent split is justified. Many anglers sitting on the recreational side of this issue will contend, in the light of the three caveats mentioned above, that the percentage split should be addressed. My personal feelings on the issue are that this management scheme has evolved through expeditious annual framework changes to the point that both sectors are not sure of what are the regulations. This twisted menagerie of amendments leads me to the conclusion that the entire FMP concerning red snapper should be discarded and the council begin a new plan originating with a new "original" stock assessment; an item whose validity has been debated vigorously.

Addressing the percentage split between user groups should not have much bearing on commercial prices. The market seems to move at its own pace with imports and substitute species affecting prices in unknown manners. The actual problem may not be the user group split, but rather the science that dictates the TAC. A twenty percent increase in TAC would give both sectors more fish than any re-allocation would give to one group while taking away that portion from the other group. The congressionally mandated peer review of the red snapper management may have indicated that judgments were based on sound science, but most all reviewers also stated that the quality of the data going into the model was suspect. If the original stock size was mis-calculated, then all subsequent calculations and management decisions based on these calculations are in error. Possibly, if we are unable to count the original population of red snapper in the Gulf, then we should not rely on any management scheme that requires such a percise number to be known.

Question 2. The National Marine Fisheries Service and Councils have begun to identify a subset of essential fish habitat called "habitat areas of particular concern." This subset targets critical areas such as places of spawning aggregations. Should these "habitat areas of particular concern" be the true focus of NMFS' work on EFH or has NMFS implemented the EFH provisions appropriately?

Answer. These habitat areas of particular concern are considered to be either the most fragile, most important, most critical, or some other adjective to indicate that they are to be considered at the top of the list. Of course, these areas should be the main focus of NMFS work on EFH, but let us make sure that they are actually "areas of particular concern." How do we actually define such a term? I feel a commercial fisherman will differ from a recreational fisherman, who will differ from a scientist, who will differ from an environmental group in how the criteria are laid out for a habitat area of particular concern. The problem will not lie in how NMFS implements provisions but rather in what habitat areas are chosen and on what standards.

Question 3. Many of our witnesses mentioned the need for increased participation in the data collection process. Several also mentioned that we need to make management decisions that reflect a consensus within the region. Please explain how we can increase participation of fishermen in research when there are such different views on how to proceed?

Answer. The problem does not extend only to data collection, but rather to quality data collection. Mandatory programs are often not accepted unless the recreational sector is initially educated on the benefits of such a program. The fears of government intervention and further restrictions will be in the minds of fishermen participating in such programs. Education and earning trust through a partnership may shed more light than dictating a system to these fishermen. Science has to originate the scheme of what data are needed and on what basis. The anglers have to be sold into the system that the research is for their benefit. Many recreational anglers feel that fishing is their right, not a privilege. With this mindset, recreational anglers may look at big government as big bully pushing something else on them. Even allowing representatives of the recreational community in on the ground floor of data gathering decisions does not necessarily translate to the masses of recreational fishermen that the system is sound and in their best interest. The change needed will be based on education through a period of time. Trust is the largest hurdle to overcome and may just be the barrier that causes failure.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. OLYMPIA J. SNOWE TO PETER EMERSON

Question 1. NMFS has been criticized for its implementation of National Standard 8 under the Magnuson-Stevens Act. Do you believe that NMFS has properly implemented National Standard 8? Please explain in detail, including whether or not you believe that the socioeconomic impacts of fisheries regulations should be adequately considered prior to finalizing these rules?

Answer. It is essential that the long- and short-term socio-economic impacts of fishery management options be better understood and considered by the Regional Councils and NMFS in managing the nation's fisheries. Fishery management decisions would benefit hugely from more comprehensive socio-economic data and complete analyses of short-term versus long-term effects of regulations early in the decision-making process.

Question 2. Would you please provide examples of instances where an increase in the use of precautionary approach would not have had negative economic impacts on fishermen and fishing communities?

Answer. Two examples of the "precautionary approach" in Gulf fisheries are: (1) using a "constant fishing mortality rate" instead of "constant catch" management; and (2) setting TAC and bycatch reductions goals that have a high (>50 percent) probability of achieving rebuilding targets. In the 1995 red snapper stock assessment, Goodyear projected—that given reductions in the TAC over five years—the rebuilding goal would be reached by the target date and total allowable catch levels were estimated to rise and exceed current levels by nearly 50 percent in 2005. These precautionary options were not adopted. As a consequence, the stock continues to struggle, rebuilding targets have been pushed back, and fishermen are locked into a low TAC with no potential for improvement in the foreseeable future.

Question 3. The National Marine Fisheries Service (NMFS) and the Councils have begun to identify a subset of essential fish habitat (EFH) called "habitat areas of particular concern." This subset targets critical areas such as places of spawning aggregations. Should these "habitat areas of particular concern" be the true focus of NMFS' work on EFH or has NMFS implemented the EFH provisions appropriately?

Answer. The Gulf Council has used narrowly-defined "habitat area of particular concern" (HAPC) designations since the early 1980's to prevent harm to selected bottom habitats from fishing gear. While additional HAPC designations need to be considered as fishing gear and techniques change and we learn more about their nega-

tive impacts, NMFS is taking the right approach in recognizing the need to address the broad array of both fishing and non-fishing activities (for example, pollution, oil and gas activities, dredging and filling of wetlands) that harm fish habitat and stocks.

Question 4. Many of our witnesses mentioned the need for increased participation of fishermen in the data collection process. Several also mentioned that we need to make management decisions that reflect a consensus within the region. Please explain how we can increase participation of stakeholders in research when there are such different views on how to proceed?

Answer. Existing logbook and observer programs should be expanded and improved, and new ones implemented where none exist, to gather crucial data and answer controversial questions.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. OLYMPIA J. SNOWE TO R. MICHAEL LYONS

Question 1. In his testimony, Dr. Wilson of Louisiana State University mentioned that reasonable progress has been made toward implementing essential fish habitat requirements. He also highlighted a problem that many others across the country have brought to our attention—the difference between essential and non-essential habitat. I know you have expressed similar concerns.

a. Would you please comment on this issue and provide the Subcommittee with examples of how your business has been adversely impacted by the lack of distinction between essential and non-essential habitat and the resulting threat of burdensome regulations? Please be specific with your examples, if possible.

b. Have you had any routine permit requests or other projects that have been delayed or otherwise adversely impacted by a threat of a "headquarters-level" review based on the EFH consultation requirements? Again please be specific.

Answer. a. The problem we have with the broad characterization of "essential fish habitat" is that it subjects a significant percentage of the development activity in the State of Louisiana and the Gulf of Mexico to yet another scope of review. Virtually all of this activity affecting the broad area designated is *currently subject to review* under both the Corps of Engineer 404/Section 10 permit process and the Louisiana Coastal Zone Management permit process. The effects of habitat alteration are fully addressed under both these programs. The National Marine Fisheries Service (NMFS) currently participates in both these programs. We feel "essential fish habitat" concerns are adequately addressed by these existing habitat protection programs. If there are areas of particular or unique concern, which are not otherwise covered or which would benefit from some special review, perhaps we could understand. Unfortunately, the same areas now subject to habitat review and mitigation will be looked at again, by the same agency, for essentially the same purpose.

b. I know of no permit actions delayed by threat of "headquarters-level" review.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. OLYMPIA J. SNOWE TO WILLIAM S. "CORKY" PERRET

Question 1. At the hearing, there was some discussion of the difference between essential and nonessential habitat. What statutory changes, if any, do you recommend to provide NMFS with the ability to identify and protect truly essential habitat?

Answer. I do not believe that a statutory change can be made that would allow for better identification of EFH. Making a rule is not going to allow scientists to define EFH better than it has already been defined. As defined in the interim final rule (62 FR 66551), "Essential fish habitat means those waters and substrate necessary to fish for spawning, breeding, feeding, or growth to maturity. For the purpose of interpreting the definition of essential fish habitat: 'Waters' include aquatic areas and their associated physical, chemical, and biological properties that are used by fish, and may include aquatic areas historically used by fish where appropriate; 'substrate' includes sediment, hardbottom, structures underlying the waters, and associated biological communities; 'necessary' means the habitat required to support a sustainable fishery and the managed species' contribution to a healthy ecosystem; and 'spawning, breeding, feeding, or growth to maturity' covers a species' full life cycle."

To identify and describe EFH following the above definition, NMFS produced guidelines calling for analysis of existing information at four levels of detail. At Level 1 the presence/absence of distributional data are available for some or all portions of the geographic range of the species; at Level 2 habitat-related densities of

the species are available; at Level 3 growth, reproduction, or survival rates within habitats are available; and at Level 4 production rates by habitat are available. The guidelines also call for applying this information in a risk-averse fashion to ensure adequate areas are protected as EFH of managed species.

In order to more accurately define EFH, better science is needed. Level 3 and 4 information is not currently available. It will only become available through further scientific research, not statutory rulemaking. The Councils, however, are being forced to act on data that do not exist and lacks the funds to obtain the needed scientific information.

Concerning essential and non-essential habitat. Yes, the entire E.E.Z. in the Gulf of Mexico has been defined as EFH. What you must consider is that the Gulf of Mexico is home to hundreds of different fish and shellfish species all utilizing different habitats. The Gulf of Mexico Fishery Management Council is responsible for managing almost 60 fish and shellfish species and over three hundred coral species. When defining EFH for eggs, larvae, juveniles, and adults, an extensive area is defined for each species managed. The entire Gulf of Mexico is not defined as EFH for one single species. The entire Gulf of Mexico is defined as EFH only when all of the managed species' areas are combined. Every part of the Gulf of Mexico is essential to one species or another. You can label certain habitats as non-essential to some species, but that does not change the fact that the habitat is still essential to other species.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. OLYMPIA J. SNOWE TO LARRY B. SIMPSON

Question 1. NMFS has been criticized for its implementation of National Standard 8 under the Magnuson-Stevens Act. Do you believe that NMFS has properly implemented National Standard 8 and would you suggest any changes to the Act to better protect traditional fishing communities?

Answer. The NMFS has done an extraordinary job of advancing management measures which ensure the prevention of overfishing and rebuilding of stocks; however, this standard is broader than just that. National Standard 8 involves effects to fishing communities and minimizing adverse economic impacts on those communities. In the latter considerations, I think the NMFS has not adequately considered the impacts to those heavily-dependent fishing communities. As with much of management, the cumulative impacts are most heavily felt. It is not so much the single management measure that is felt but the cumulative effect of management as a whole. The problem is relatively easy to see; the solutions are much more difficult. Leaving management measures in place for longer periods of time (two to three years) will provide some stability to fishermen in the long-term; however, this is not the cure. It is accepted that when significant changes occur in management, all users will be impacted, but the extent of "the hit" needs to be weighed against the immediate benefits of the management measures themselves.

Question 2. At previous hearings, some witnesses have questioned whether it is appropriate to continue to use Maximum Sustainable Yield (MSY) as the target for fisheries management.

a. Is MSY a reasonable goal and do you recommend any modifications to the management process which would make achieving such a goal more feasible?

b. How do you view ecosystem management as it relates to the management of species at MSY?

Answer. I do not believe that MSY is nearly as useful as other population measures such as spawning potential ratios (SPRs). When a population reaches an overfished status, MSY is not really valid anymore. Recovery requires sustainability, and yield falls from the equation. In most cases the concept of MSY is still valid and useful, but these other approaches like SPR may provide more insight into the status of the population rather than the fishery. Those involved in population dynamics live and die by finite numbers which, when considered, often do not rise to a threshold of making a discernable difference. Yet, we change or are pressured to make changes that we all know intuitively cannot be measured properly under current data programs. I feel that heightened attention to better quality and quantity of fishery-dependent and independent data collection and administration will help tremendously. The solutions I feel are appropriate involve longer term goals and not so much single year changes which our data and models are really inadequate to be sensitive to.

In a broader scope, multi-species or ecosystem management philosophies are useful given there is real effort to consider the various effects on multi-species interactions in closely related fisheries. While this approach is not new, it has not been

widely examined. The work being done by the Atlantic States Marine Fisheries Commission should be watched carefully by all managers as they evaluate the feasibility of multi-species assessment techniques for future fishery management plans.

Question 3. The National Marine Fisheries Service (NMFS) and the Councils have begun to identify a subset of essential fish habitat (EFH) called "habitat areas of particular concern." This subset targets critical areas such as places of spawning aggregations. Should these "habitat areas of particular concern" be the true focus of NMFS' work on EFH or has NMFS implemented the EFH provisions appropriately?

Answer. Yes, the NMFS definition of EFH is on the right track in the critical areas it is identifying (spawning habitat, nursery habitat, etc). The Commission agrees with and endorses the EFH provisions fully.

Question 4. Many of our witnesses mentioned the need for increased participation of fishermen in the data collection process. Several also mentioned that we need to make management decisions that reflect a consensus within the region. Please explain how we can increase participation of fishermen in research when there are such different views on how to proceed?

Answer. The NMFS suffers from an intense public relations problem. Most fishermen distrust the fisheries service and naively feel that if they could just show the scientist their side, the scientist would understand—and everything would be fine. Most of the fishermen do not understand the importance of research rigor or the relative importance in collecting and comparing both fishery-independent and fishery-dependent data sets. Clearly, both the NMFS and the fishery user groups need to communicate more often and freely to bring fishermen into the process. Some, not all, of what a fisherman knows about their fishery is useful; however, their perception is that the NMFS has very little knowledge regarding the fishery. In fact, the NMFS already knows much of what the fishermen have to offer. Unfortunately, many of the management recommendations provided by fishermen, while logical, are impractical or simply too costly to implement. Again, communication between the NMFS and user groups would reduce the sense of being ignored that many fishermen complain about. We in the Gulf of Mexico have cooperative research projects which actively involve the fishermen. For example, observers and charter boat research platforms obtain data on that sector. Public perception and involvement is a constant strain for the NMFS and an area in need of increased priority.

WRITTEN QUESTIONS OF HON. JOHN B. BREAUX TO PENELOPE DALTON

Best Available Science

Question 1. National Standard 2 states that management plans must be based upon the best scientific information available. Yet NMFS acknowledges that we don't have enough information to determine the status of 64 percent of species we manage. Long-term, dependable scientific information seems critical to making good management decisions. What is the biggest hurdle you face in getting the data and scientific analyses needed for important management decisions?

Question 2. Will better scientific information on Gulf fisheries lead to better management decisions? Why or why not?

Question 3. How is NMFS helping the Councils appropriately incorporate scientific advice into the decision making process under the Magnuson-Stevens Act? Please address situations in which scientific advice provided to the Council admits a high degree of uncertainty with respect to stock status or other projections—how should a Council use this information?

Question 4. Do we need to modify any provisions of Magnuson-Stevens Act to ensure that Councils are relying upon the "best available scientific information"?

MSY-based Management

Question 5. I understand that NMFS regulations interpreting the SFA require the Councils to determine whether a stock is overfished using both fishing rate (F) and stock size (biomass) criteria. While fisheries have traditionally been managed using fishing rate criteria, Councils are now required to use stock size (biomass) as an overfishing criterion. I understand that biomass estimates are calculated using a concept called "maximum sustainable yield" (MSY), and that calculating MSY is difficult in species for which we do not adequately understand the relationship between the stock and its recruitment potential.

Red snapper are one such stock for which the stock recruitment relationship remains unclear. As the Council attempts to implement the SFA, I'm wondering how they can manage based on MSY in a situation where the available data make it difficult to use this to estimate stock biomass reliably using MSY. They seem to think

they have no choice but to use MSY. Do your rules provide the Councils any way to use other means of estimating stock biomass based on the biology and information available for the stock being managed, or must all FMPs be based on MSY?

Question 6. If there is flexibility, please explain how the Councils can (or do) exercise it.

Question 7. If Councils are not taking advantage of this flexibility, how is NMFS planning to communicate this information to them?

Essential Fish Habitat

Question 8. We heard from a few witnesses of some examples of essential fish habitat designations that were of questionable merit. Please provide us the following information with respect to these concerns. What were the facts behind the two permit notices mentioned by Mr. Lyons and Mr. Perret? Were these NMFS EFH designations and consultations?

Question 9. Of the total number of Federal permits processed in the State of Louisiana to date, how many and what percentage have gone through the NMFS EFH consultation process? Please provide these statistics for other states, and the entire nation, if currently available.

Question 10. Have these consultations resulted in any permitting delays?

Question 11. I'd like to follow up on a statement made at the hearing by Larry Simpson. He expressed some confusion concerning the funding needs identified in the NMFS report to Congress, "Proposed Implementation of a Fishing Vessel Registration and Fisheries Information System." My questions deal solely with the Fisheries Information System (FIS) portion of the report. Of the funding requirements identified to establish and operate the FIS, how much is already being provided to NMFS? Please use as an example the FY1999 and FY2000 funding levels and identify the activities and amounts provided for such activities (include budget account for each activity). How much more annual funding will be required, and for what activities, to put the FIS into operation?

Question 12. Of the funding requirements identified for states or regional marine fisheries commissions (such as the Gulf States Fisheries Commission), how much is already being provided to them? Again, please use as a point of reference the FY1999 and FY2000 funding levels. What activities are they already performing? How much more will these commissions annually need to perform the work identified in the FIS?

The witness did not provide a response.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. JOHN B. BREAUX TO FREDERIC L. MILLER

Question 1. Mr. Miller, you mentioned that recreational fishermen are not an easily regulated group, that recreational catches are very difficult and expensive to count accurately, and that existing data on recreational fisheries are poor. Do you think the data we have on commercial fishing are more or less complete than the data we have on recreational fishing?

Answer. Yes, Senator, I think the data on commercial fishing are more complete than the data on recreational fishing. Additionally, I think that data on commercial fishing in the Gulf of Mexico are going to improve over the next year as each state in the Gulf gets its Trip Ticket system up and running. Louisiana is fully operational, Florida is almost there. Texas is in the process of converting its system. Mississippi and Alabama are making progress and should be up and running by year end.

The fundamental difference between the data gathered in the Gulf for commercial and recreational fisheries is that the commercial data have the design potential to be real time data. The recreational data, relying on the NMFS MRFSS system, are flawed in both its design and NMFS' attempted use of the data. There is no way MRFSS data can be accurate, nor can it be utilized to make management decisions.

Question 2. Please describe the specific recreational fishery data gaps that need to be filled. Please be sure to identify information you think necessary to allow the existing recreational quota management requirements to work.

Answer. The recreational data gaps that need to be filled are very large. NMFS' focus is entirely upon commercial fisheries and its data gathering is geared to obtaining commercial data. NMFS has attempted to impose its management paradigm for commercial fisheries onto recreational fisheries and it simply does not work. NMFS cannot manage recreational fisheries utilizing its present data or the data it gathers under the present system. The states in the Gulf are the best source of

recreational fishing data. They are closest to the recreational fisheries and to the recreational fishermen who dock in state waters.

I do not believe that adequate data can be realistically and economically procured to support recreational quota management. Fishery managers all over the Gulf tell me that quotas are not the proper way to manage a recreational fishery. No state agency in the Gulf manages any recreational fishery in its jurisdiction through a quota. There are too many recreational fishermen on the water at any given time, who launch from their homes/camps or at public/private launch facilities or who utilize for hire vessels. To accurately count the recreational catch is virtually impossible. Therefore, managers rely upon limits—numbers and sizes—and seasons to manage the recreational fishery.

Question 3. What sectors should be involved in the data collection effort, and how would you advocate structuring the data collection for each sector?

Answer. The states simply must be involved in recreational data collection. The states conduct the MRFSS now, but their effort is small and a great number of recreational fishermen are never surveyed. As a recreational fisherman who spends more than 60 days on the water each year, *but* who lives outside of the coastal parishes, I have never been surveyed. Further, none of my friends who live in Shreveport have *ever* been surveyed. The data collection effort must focus on the two sectors of the recreational fishing community that fish in federal waters:

1. The purely recreational fisherman who fishes in his own boat or with friends. Aggressive dockside sampling is the key to obtaining these data.

2. The "for hire fleet" that services the recreational fisherman who fishes only occasionally and hires the services of a guide, charter boat or headboat. Logbooks, report forms and dockside sampling can all be utilized in the "for hire" fishery as the numbers are finite and the owners are used to record keeping.

Question 4. Are any of these gaps already identified and addressed in NMFS' report to Congress, "Proposed Implementation of a Vessel Registration and Fishery Information System"?

Answer. No, not really. The VHS/FIN as proposed is primarily addressed to the commercial fishing industry.

Question 5. Are NMFS or the states already attempting to address these gaps?

Answer. Yes, but again the attempts are primarily directed at the commercial fishing industry.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. JOHN B. BREAUX TO JOHN ROUSSEL

State Based Law Enforcement

Question 1. Mr. Roussel, I agree 100 percent that we must solve the current need for fisheries enforcement through the use of state-based programs. I understand that South Carolina has had a highly successful cooperative enforcement program between NMFS and SCDNR, and it is unfortunate that we don't have such a program in the Gulf.

Would the state based law enforcement program be similar to the one in South Carolina?

Answer. The South Carolina cooperative enforcement program involves only one state. I would propose that Congress consider a Gulf-wide program. Although the South Carolina program has been extremely successful as an isolated example of what can be accomplished along a portion of the East Coast, a region-wide approach would have a much greater chance of success in achieving a sufficient level of compliance with ongoing management efforts.

The South Carolina cooperative enforcement program was funded from moneys within the Department of Commerce. It is my understanding there are currently no funds available within the Department of Commerce for a region-wide program in the Gulf of Mexico. A region-wide program would require a new and reoccurring funding mechanism.

Question 2. Can you explain how such a program might work?

Answer. The Program itself could be implemented as a "Joint Project Agreement." These types of programs have been accomplished in the past in other states. The agreements would authorize state law enforcement officers with marine law enforcement responsibilities to perform duties of the Secretary of Commerce relating to enforcement of the provisions of the Act by providing a framework for joint enforcement and prosecution of Federal and state marine resource laws. The key features

of the program to be implemented by the agreement would be overt presence by state law enforcement officers, voluntary compliance activities, and efficient cooperative prosecution procedures that will serve as an adequate violation deterrent. The NOAA Fisheries Office for Enforcement has had experience in drafting and executing such agreements.

Question 3. How much annual funding do you estimate would be necessary to run such a program in the Gulf region? Please include both state and federal share.

Answer. A successful Gulf-wide program would cost approximately 18 million dollars annually. Each state's share would be based on the volume of the industry located within its jurisdiction. Although the states would not likely be unable to provide any new funding on match type bases, as I indicated in my testimony, state enforcement agencies currently produce more than seventy percent of all the cases initiated for violations of the Act. The current state enforcement efforts related to the Act should be recognized as state match. It is my understanding that some law enforcement estimates of the economic loss to the economies of the Gulf States due to unlawful taking of living marine resources run in excess of one billion dollars annually. Increased and more efficient funding of cooperative law enforcement efforts has the potential to provide significant economic returns to the nation.

WRITTEN QUESTIONS OF HON. JOHN B. BREAUX TO DR. ROBERT SHIPP

Multi-Species Management

Question 1. It is becoming increasingly apparent that single-species management can't take into account ecosystem issues, most notably the relationship of disparate fisheries through predator-prey and competitive relationships. This is particularly true of the reef fish complex in the Gulf, where species overlap and interact with each other during most stages of their life histories. Fishing affects those relationships in ways that need to be taken into consideration in fishery conservation and management plans.

While some scientists and environmentals recommend the development of Fishery Ecosystem Plans as a first step towards ecosystem or multi-species management, others, including the National Academy of Sciences, recommend *not* moving away from single-species stock assessment. This debate seems extremely pertinent to management of reef fish in the Gulf, and in fisheries like the Gulf shrimp fishery, where the industry has struggled with the incidental catch of juvenile red snapper. Are our scientific and management capabilities ready to make the leap from single-species management to multi-species or ecosystem based management?

Question 2. Should we make such a change, and if so, how should we proceed?

IFQ Program for the Gulf

Question 3. I heard loud and clear from the hearing tht we must stop the increasing derby fishery for red snapper. However, I understand that even if an IFQ system is available for the Gulf, it would take some time to come to agreement on, as well as to actually design and implement. Assuming the IFQ moratorium expires in 2000, how long would it take to get agreement on the structure of an IFQ program in the Gulf Council? How long would it take to design a program and implement it? When is the earliest it could take effect through the Council process?

Question 4. What other types of management approaches would allow us to address the red snapper derby right now? Is it possible to put these approaches into place now so that we can start dealing with the issue before an IFQ program is established?

The witness did not provide a response.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. JOHN B. BREAUX TO DR. CHUCK WILSON

Question 1. Dr. Wilson, I appreciate your very constructive comments and proposals relating to EFH. I understand that you are involved in some pioneering scientific research attempting to quantitatively link habitat to fisheries using acoustic technology. Could you elaborate on your research and what sort of information it could provide us?

Answer. Several researchers at Louisiana State University have combined their interests in fisheries acoustics (myself), geological acoustics (Dr. Harry Roberts), and oyster habitat (Dr. John Supan), to establish MHACS (Marine Habitat Acoustic Characterization System). This system utilizes state of the art side scan sonar and sub-bottom acoustic imaging to establish the acoustic geo-technical properties of the

surface and shallow sub-bottom in coastal Louisiana. At the same time, we use dual-beam hydroacoustics to establish the density and size-frequency distribution of fish overlying these different habitat types. The side scan sonar identifies areas of high reflectance, and in Louisiana this is either man-made objects or oysters. By establishing where the oyster reefs are located, the fish communities associated with those oyster reefs, and the subsurface geotechnical properties, we can then quantitatively describe Essential Fish Habitat in Louisiana shallow water bottoms, as well as elsewhere in the world. This technology was originally stimulated by the various Breaux Act projects and Corps of Engineers-sponsored river diversion projects to track the impact of river diversion on our resident oyster fishery. In the process of perfecting the use of this technology, we have come to realize that it has major implications for documenting Essential Fish Habitat. The reason this will be so important in the future is due to new technology in positioning; our data are accurate to within 20cm, and the new digital side scan technology provides a resolution of 10-20cm. Consequently, we can identify very small objects and pinpoint those objects over and over again.

Over time, we hope to develop bottom acoustic images of coastal Louisiana that can be used in the future to accurately track the impacts of river diversion, hurricanes, trawling, dredging, and oil and gas activities. This imagery is very important and will have the same type of value and application as some of the early 1900 aerial photographs that are so valuable today in tracking things like shoreline retreat. I envision this type of technology will be fairly commonplace in the next ten years to describe and model essential fish habitat, particularly for those species that are dependent upon specific bottom types.

Question 2. Through identification of "habitat areas of particular concern," will we be able to avoid the potential over-regulation that you mentioned, while maintaining the ability to consider habitat as an important component of fisheries management? If not, do you have any other suggestions?

Answer. The concept of habitat areas is of particular concern as a step in the right direction for delineation of, for lack of better words, high-value and low-value essential fish habitat. However, as we are going to be faced with government agencies such as the Corps of Engineers and/or developers seeking permission to disrupt certain types of habitat; will the resultant designations (Essential Fish Habitat and Habitat Areas of Particular Concern) be sufficient?

I am sure if you asked five scientists you would get five different answers as to how a continuum should be structured. For starters, I think it is important that we identify habitat that is critical to bottleneck stages of fish life history. For example, in red snapper, it appears that the habitat upon which juvenile red snapper depend is the bottleneck. We think this habitat is where they are most vulnerable to overfishing activity (at the current time we believe this to be shrimp trawls). As for salmon, essential fish habitat appears to be the access to the spawning grounds. In the development of legislation, if we declare the spawning grounds for the salmon which are upriver, as well as the passage through the river to the Habitat Areas of Particular Concern, it may lead to regulation that may prevent any damage to both types of habitat. Currently the most important habitat is the spawning grounds, industries (e.g power companies) have developed ladder system to restore passageways that allow fish access to those critical spawning grounds. I am not sure I have the entire answer, but thinking out loud I might propose that we identify Critical Fisheries Habitat, (specific habitat types that are critical to bottleneck life stages of the species of concern), Habitat Areas of Particular Concern, (not quite as important to the survival of the species), and Essential Fish Habitat, (that habitat that that species occupies during some part of its life history).

Question 3. Do you think the existing statute needs modification? If so, what do you recommend we change?

Answer. I believe the existing statute is fine, although I would like to see language in interpretation to encourage consideration of my answer to Question 2.

LETTER IN RESPONSE TO SENATOR SNOWE'S POST HEARING QUESTIONS TO FREDERIC L. MILLER

February 13, 2001

Ms. MELISSA MURPHY,
Committee on Commerce, Science and Transportation,
United States Senate,
Washington, D.C.
Via Facsimile No. 202–228–0326

Re: Senator Snowe's Post Hearing Questions

Dear Melissa:

In response to your facsimile of February 13, 2001, enclosing Senator Snowe's post hearing questions, I am pleased to respond as follows.

Essential Fish Habitat. In my opinion, what is truly needed is a clear working definition of Essential Fish Habitat (EFH). However, the problem faced with EFH in Louisiana is one closely akin to the chicken and the egg. Louisiana's coastal habitat is the most fertile estuarine system in the Gulf and perhaps in the nation. Louisiana's estuaries are undergoing assault daily from a number of environmental forces—subsidence, salt-water intrusion, wind and wave erosion. The leveeing and channeling of the rivers that feed the estuaries have served to deprive the estuaries of much of the nutrient laden silt needed to replenish the estuarine eco-systems. The pollutants in the waters flowing from the northern reaches of the watershed—agricultural, industrial and household—have exacerbated the decline of estuarine health.

The point may have been reached that damage to the estuaries is irreversible. If that is so, then the decline in habitat will reflect directly upon the productivity of estuary.

Thus, where to draw the line between essential habitat and habitat that is non-essential is most troublesome. Yes, funds are needed to protect truly essential habitat, but what is needed most is a unified national effort aimed at restoration of what has been lost and the protection of what remains

Individual Transferrable Quotas (ITQs). If ITQs were allowed in the Gulf of Mexico, it is the stated position of Coastal Conservation Association (CCA) that the ITQs should be truly transferrable on a willing buyer/willing seller basis. It is equally important that the quota purchased may not be removed from the TAC allowed in the directed Red Snapper fishery. The recreational sector would entertain the notion of purchasing a portion of the ITQ and transfer the purchased portion of the quota to the recreational quota.

The impact of an ITQ system in the Red Snapper fishery in the Gulf of Mexico on consumer prices is unknown at this time. It is thought that prices might decline because commercial fishermen can time their catch to seasons and markets, rather than engage in a derby fishery that holds ex vessel prices down.

Inasmuch as the Charter Boat sector, or the "For Hire Fleet," is classed as a segment of the recreational sector and share in the recreational quota of Red Snapper in the Gulf of Mexico, an ITQ or other limited entry system for them makes little sense to me. CCA opposes any scheme that arbitrarily restricts access of recreational fishermen to fisheries resources. However, if the For Hire Fleet were to be allocated its own quota, separate from either the commercial or recreational quota, perhaps an ITQ or limited entry system might work.

With my best regards, I am

Very truly yours,

Frederic L. Miller

PREPARED STATEMENT OF BOB JONES, EXECUTIVE DIRECTOR, SOUTHEASTERN FISHERIES ASSOCIATION

My name is Bob Jones. I have been the Executive Director of Southeastern Fisheries Association (SFA) since 1964. SFA is a 501c6, non-profit commercial fishing association. We are located at 1118-B, Thomasville Road, Tallahassee, Florida. We were founded in 1952 in Jacksonville, Florida and have members from North Carolina to Texas. SFA represents fishing companies in all segments of the seafood industry. We are organized into the following sections: Shrimp, Fish, Crab, Lobster, Oyster/Clam, Baitfish, Import/Export, Charterboat, Seafood Restaurant Alliance & Florida Offshore Fishing Consortium. We have over 450 company members that employ at least 10,000 people in the seafood industry.

First of all, we support the statement presented by the Southern Offshore Fishing Association. If there has ever been a group of fishermen who were mistreated by their government it would have to be the shark fishermen. They were encouraged to enter the shark business by NMFS and are now being savaged by NMFS. Only through the actions of a U.S. Federal Court are they still somewhat economically alive. Please, if you don't read anything else on fisheries, read the record of the District Court in Tampa, Florida, and see how it feels about the abuse of power by the Office of Sustainable Fisheries.

We submit the following issues for your review.

1. Have your staff provide you with a graph of what has happened to food fish landings in the Gulf of Mexico since M–SFCMA.

2. Determine the cumulative impact of the never ending NMFS regulations for fisheries. We had robust fisheries in the Gulf before M–SFCMA. We had a healthy industry. We had 500 shrimp boats unloading in Key West during the pink shrimp season before M–SFCMA and now are lucky if we have 50.

3. Encourage NMFS to enforce fishery regulations equitably across the board. Do not allow NMFS to put vessel monitoring systems on commercial fishing boats without the full support of the sector of the industry for which NMFS wants to monitor. Keep Big Brother at bay for as long as possible.

4. Don't let NMFS use the Essential Fish Habitat policy to further close down commercial fishing. Watch what NMFS is doing on marine preserves. Make them work with all affected citizens and not just the environmentalists.

5. Force NMFS to heed comments made at public hearings. Many citizens have lost faith in this part of the process and figure why come to one when the decisions have already been made.

6. Conduct more oversight hearings on NMFS policies and actions. Give Dr. Gary Matlock a chance to be heard before your Subcommittee at the same time you hear testimony by others who either support or oppose his relentless zeal to close commercial fishing. You could draw a crowd to such a hearing.

The red snapper fish management plan is a prime example of how not to manage a federal fishery resource. NMFS actions keep the industry, both commercial and recreational, in a state of confusion. They indicate an opening date for the season will be this and it ends up being that. The litigation is ongoing and the horrid science has caused a fight between the shrimpers and charterboat fishermen that might not be able to be healed.

Shrimp bycatch is the new poster child but great strides have been made by the industry in reducing the non-targeted species and even more can be accomplished if the industry can ever convince NMFS that the Andrews soft TEDS in most instance can reduce bycatch as much as 70 percent. We know it is harder for the law enforcement officers to measure a soft TED but do we want to reduce more bycatch and make measurement a bit harder or do we want to force easy to measure gear on the industry which kills more fish? Shrimping has been taking place in many areas for over 75 years and the biomass is still robust and the shrimp are still there each year. Don't let NMFS use the bycatch demon as a tool to further stop commercial fishing. One NMFS document I believe says shrimpers catch 88 percent of the juvenile red snapper. We very strongly dispute that scientific fact. We don't think we could catch 88 percent of anything in a directed manner. We wish NMFS and the USCG would help us stop the stealing that goes on when other boats come alongside our shrimp trawlers and trade a case of beer for 20 or 30 pounds of shrimp. The boat owners prohibit alcohol on the vessels but sometimes the captains and crew want some beer and trade the owners shrimp. They are at fault but so are the boaters and yachtsmen who are on the receiving end of an illegal transaction. It has become so rampant in some ports around the Fort Myers Beach area that some boaters come back and sell their contraband shrimp at flea markets. Its stealing when you trade beer for shrimp unless you make the trade from a boat owner who happens to be on board. There are not any owner captains that will trade $200 worth of shrimp for $6 worth of beer.

We recommend a moratorium on all new regulations until Congress reviews NMFS operations in depth. There are no fisheries in dire need of more management, there is no fishery about to collapse and there are no unregulated fisheries demanding NMFS attention. It's time to just stop and look at what has happened to the seafood industry in the past almost quarter of a century since a federal fishing zone was created and since a federal agency was given the power to control it.

We echo what Bob Spaeth asks of Congress which is for it to say, "Wait a minute, it is not now nor has it ever been our intent to destroy an important food producing segment of our national economy!" He continues saying, "But destroying us is exactly what NMFS is doing through the Sustainable Fisheries division." Help us. The

burden of this governmental yoke known as NMFS is unbearable even for strong men and women.

Thank You for your time.

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