

**TESTIMONY
OF
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EXECUTIVE DIRECTOR, TEXAS SHRIMP ASSOCIATION
BEFORE THE
U.S. SENATE COMMITTEE ON COMMERCE, SCIENCE AND TRANSPORTATION
SUBCOMMITTEE ON OCEANS AND FISHERIES**

**Oversight Hearings on the Magnuson-Stevens
Fishery Conservation and Management Act**

New Orleans, Louisiana

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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 pre-ordained 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 estuarine 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 1990s, 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 refereed 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 than 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, environmental 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 1970's 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% 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% 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% 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.