December 8, 1999

Mr. Sloan Rappoport, Council
Senate Commerce Committee
Room 428, Hart Senate Office Building
Washington, D. C. 20510

Dear Mr. Rappoport:

Please find included, my testimony for presentation to the Subcommittee on Oceans and Fisheries of the Senate Committee on Commerce, Science, and Transportation regarding the Magnuson-Stevens Fishery Conservation and Management Act hearing to be held in New Orleans, Louisiana on December 14, 1999.

Due to pressing prior responsibilities and scheduling conflicts, I was unable to meet the deadline of December 3. I apologize for any inconvenience this may have caused.

Sincerely,

William S. “Corky” Perret
Director, Office Marine Fisheries
Mississippi Department of Marine Resources

WSP/il

Testimony by

William S. "Corky" Perret

Director, Office of Marine Fisheries

Mississippi Department of Marine Resources

on

Reauthorization of the Magnuson-Stevens Fishery Conservation and Management Act

Presented to

The Subcommittee on Oceans and Fisheries

of the Senate Committee on

Commerce, Science, and Transportation

December 14, 1999

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% 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 (Councils) generic acceptance as 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".

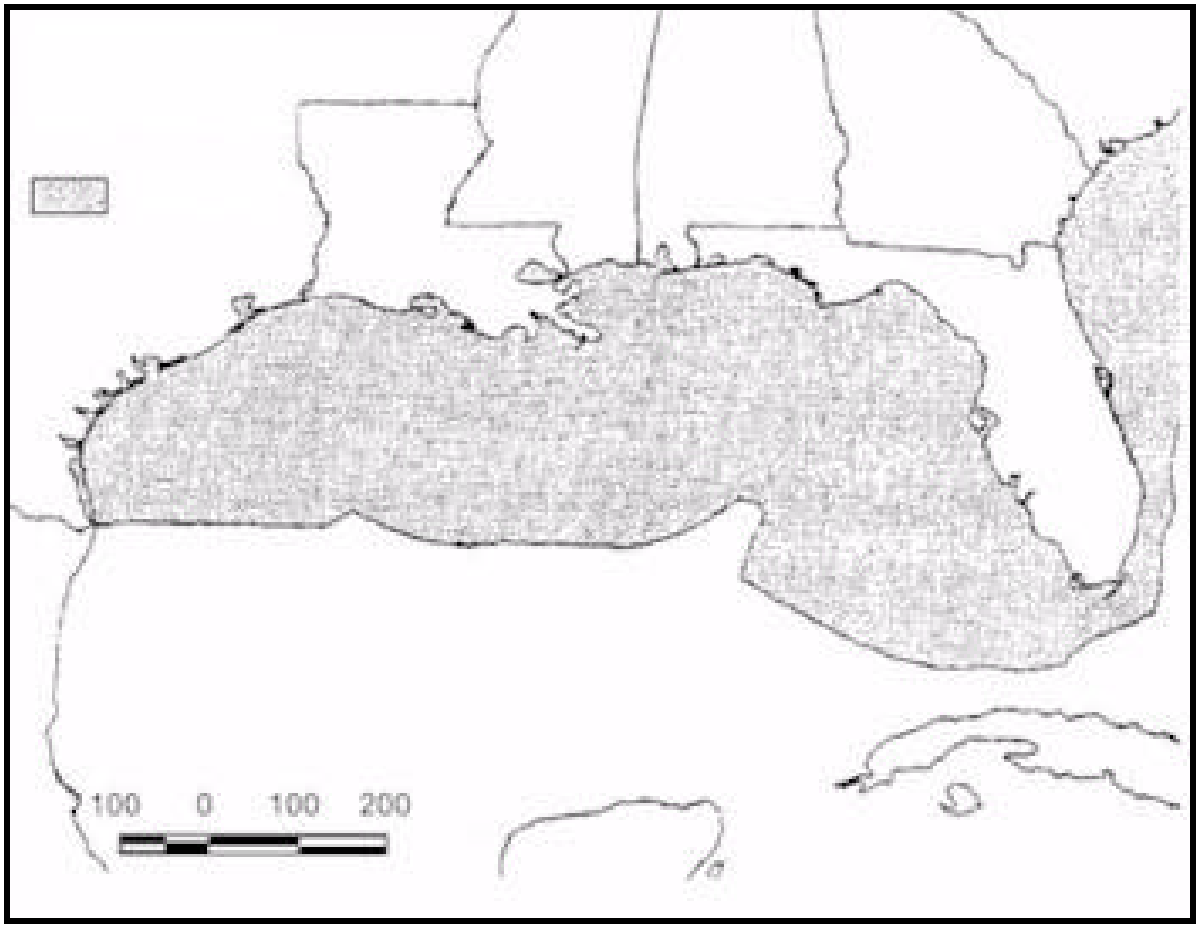
For these two examples, I submit that the finding of red drum and penaeid shrimp in these areas would only occur if found on a plate in a person's home or in one of the fine restaurants in the area.

(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 wellbeing of our nation.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Essential Fish Habitat

EFH Area

Gulf of Mexico

Figure 1. Map depicting the extent of Essential Fish Habitat in the Gulf of Mexico.
Source: N.M.F.S. Southeast Regional Office