

Response to Follow-Up Questions
from the U.S. Commission on Ocean Policy for
Testimony of Robert K. Mahood
Before the Commission on January 15, 2002

March 28, 2002

QUESTION #1: Where are the science voids in fisheries management?

The lack of adequate stock assessments is a major problem, especially for the snapper grouper species complex managed by the Council. In most cases, data necessary to conduct accurate assessments do not exist. For example, out of 73 snapper grouper complex species managed by the Council, there are only 3 species where enough data exists to conduct biomass based stock assessments as mandated under the Sustainable Fisheries Act (SFA). This situation leads to imprecise management guidance and puts managers in the unenviable position of having to make decisions affecting the fishery resources, and individual's lives and livelihoods based on poor or non-existent data. Also, under these circumstances fishermen and other constituents do not believe the assessments. Even scientists may disagree with each other on the status of the stocks leaving managers in a very difficult position. The greatest management challenge our Council has faced has been with the snapper grouper complex. Where data are available the Council has been able to implement successful management strategies that insure future maximum sustainable yields from the fisheries

Where is “the best science available” not sufficient?

A good example of when the “best available science” is not sufficient is currently unfolding with our snapper grouper management. During the March 7-8, 2002 meeting, the Council reviewed the draft options paper for Snapper Grouper Amendment 13. This amendment will bring our snapper grouper plan into full compliance with the SFA requirements for MSY, overfishing, overfished, rebuilding timeframes, and control rules. However, based on the material provided by NMFS it became apparent that a number of fisheries would be need to be closed. In other words, no directed harvest of several major species. The analyses that dictate closing these fisheries rely on the headboat Catch Per Unit Effort time series and, in most cases, estimates of current fishing mortality are based on very old data. In the case of yellowtail snapper, the current fishing mortality estimate is based upon a 1993 assessment using data through 1991. In all probability, many of these species are no longer overfished. The Council is very concerned about the public's reaction to the need for such closures based on data that are over 10 years old! The following table indicates how old many of our stock assessments are (best science available) for the “overfished” snapper grouper species.

Species	Overfished	Assessment Year	Data Through	Rebuilding Progress (*Est. pre SFA)
Black Sea Bass	Yes	1996	1995	Year 3 of 10
Yellowtail Snapper	Yes	1993	1991	Year 10 of 10*
Red Porgy	Yes	1999	1997	Year 2 of 18
Red Snapper	Yes	1997	1996	Year 11 of 15*
Red Grouper	Yes	2001	2000	Year 11 of 15*
Black Grouper	Yes	2001	2000	Year 2 of 15
Speckled Hind	Yes	2001	2000	Year 11 of 15*
Warsaw Grouper	Yes	1992	1990	Year 11 of 15*
Snowy Grouper	Yes	2001	2000	Year 11 of 15*
Golden Tilefish	Yes	2001	2000	Year 10 of 15*
Nassau Grouper	Yes	closed for 11 years		Year 11 of 15*
Goliath Grouper	Yes	closed for 11 years		Year 11 of 15*

QUESTION #2: What are your suggestions to streamline the efforts of the fishery management councils?

There are two areas that must be addressed to “streamline efforts” of the fishery management councils. These include appropriate amendments to the MSFCMA and developing a non-duplicative NMFS/NOAA review process that promotes co-operation and coordination between NMFS and the Councils.

(1) The following is a summary of amendments to the MSFCMA that would improve the process:

▪ Other Laws

The Congress needs to resolve conflicts between statutes in the Magnuson Stevens Fishery Conservation and Management Act (MSFCMA) and the National Environmental Policy Act (NEPA) in order to clarify and streamline the process. The process for social and economic analysis, scientific review, and public comment specified in the MSFCMA is substantially the same as the process specified under the NEPA. However, the timeline and administrative process under these two Acts often conflict. These conflicts have led to cumbersome and unnecessarily complex administrative procedures resulting in long delays between the time that decisions are made and regulations are adopted. They have also created significant opportunities for procedural lawsuits that frustrate Council conservation actions.

The Councils should be identified, for purposes of consultation, as being action agencies under the Endangered Species Act (ESA) and the Marine Mammal Protection Act (MMPA), thereby being able to participate in the development of biological opinions. ESA and MMPA considerations are playing an increasingly significant role in Council fishery management activities. The NMFS has stated that Councils “have a critical role in management of federal fisheries” and “must be aware of effects of proposed fishery management actions on listed

species”. However, NMFS and NOAA/GC have determined that the Councils are not federal action agencies; therefore, they are not included in the consultation process. By foreclosing the opportunity to participate in the consultation process, NMFS and NOAA/GC have made it virtually impossible for Councils to meaningfully address their responsibilities under MSFCMA, ESA, and MMPA. The MSFCMA should be modified to specify that the Councils are deemed to be action agencies for purposes of formal consultation under ESA and MMPA.

- Overfishing

There are a number of problems related to maximum sustainable yield (MSY) based definitions of overfishing. This is especially true for annual crop species such as shrimp and calico scallops. Data deficiencies may lead to inappropriate calculations of MSY, that in turn skew overfishing definitions. Ultimately, this could lead to unnecessary social and economic dislocation for fishermen who are subject to measures that are tied to stock rebuilding schedules skewed by unrealistic overfishing definitions. Additionally, the definitions for “overfished” and “overfishing” should be separated.

- Essential Fish Habitat

The Sustainable Fisheries Act (SFA) required Councils to identify and describe essential fish habitat (EFH), but gave little direction on how to designate EFH. The EFH definition, i.e., “those waters and substrate necessary for fish for spawning, breeding, feeding or growth to maturity,” allows for a broad interpretation. The EFH Interim Final Rule encouraged Councils to interpret data on relative abundance and distribution for the life history stages of each species in a risk-averse manner. This led to EFH designations that were criticised by some as too far-reaching. “If everything is designated as essential then nothing is essential,” was a common criticism. The current definition and descriptions of EFH serve a very useful purpose in the consultation process between NMFS and agencies that are responsible for permitting or carrying out proposed development projects in the marine environment. Those waters and substrates necessary to fish for spawning, breeding, feeding, or growth to maturity are all habitats of importance to each fishery stock, and the range of each stock from egg to maturity is overlapped by the ranges of hundreds of other stocks. The concept of using habitat areas of particular concern (HAPCs) as the next step in describing areas of EFH critical to certain life history stages for each stock, as proposed in the two Senate bills drafted in 2000. For years a number our Council has established HAPCs to protect pristine coral reef habitats and spawning aggregation sites.

- Congressional Prohibitions on IFQs and ITQs

The MSFCMA should be amended to provide maximum flexibility to the Councils to tailor IFQ programs to specific regional, social, economic, and fishery conditions. Councils should have clear authority to address transferability and ownership issues; include harvesters, processors, and communities in such programs; promote conservation; and include measures necessary to successfully monitor and enforce the provisions of such a program.

Approval of Plans and their Amendments and Regulations

The SFA amended Sections 304(a) and (b) of the MSA to create separate sections for the review and approval of fishery management plans (FMPs) and amendments, and for the

review and approval of regulations. Accordingly, the approval process for these two actions now proceeds on separate tracks, rather than concurrently. The SFA also deleted the 304(a) provision allowing disapproval or partial disapproval of an amendment within the first 15 days of transmission. Modification of these provisions to include the original language allowing concurrent approval of FMPs, amendments and regulations, and providing for the initial 15-day disapproval process is necessary.

- Collection of Economic Data

The MSFCMA specifies the collection of biological, economic, and social data to meet specific objectives of the MSFCMA, and requires the fishery management councils to consider this information in their deliberations. However, Section 303(b)(7) specifically excludes the collection of economic data, and Section 402(a) precludes Councils from collecting “proprietary or confidential commercial or financial information.” The NMFS should not be precluded from collecting such proprietary information so long as it is treated as confidential information under Section 402. Without this economic data, multi-disciplinary analyses of fishery management regulations are not possible, preventing NMFS and the Councils from satisfying National Standard 2: “...conservation and management measures shall be based upon the best scientific information...”, National Standard 8: “...to the extent practicable, minimize adverse economic impacts...”, and other requirements of the MSA and the Regulatory Flexibility Act (RFA). Resolution of these inconsistencies is necessary to eliminate the restrictions on the collection of economic data. Amending Section 303(b)(7) by removing “other than economic data” would allow NMFS to require fish processors who first receive fish that are subject to a federal FMP to submit economic data. Removing this current restriction will strengthen the ability of NMFS to collect necessary data, and eliminate the appearance of a contradiction in the law requiring economic analyses while simultaneously prohibiting the collection of economic data necessary for such analyses.

(2) The NMFS has been working on a “Regulatory Streamlining Plan” in consultation with the councils. However, the final plan has not been released (pending presentation to Congress) and it is unclear what the NMFS will actually do. To be effective the streamlining plan must transfer much of the decision making process to the regional offices, get rid of duplicative review (both in NMFS and NOAA GC) and promote cooperation between NMFS, NOAA GC and the Councils.