

**Response to Additional Follow-up Questions
From the U.S. Commission on Ocean Policy**

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At the outset, I need to clarify that I am replying on behalf of myself, and cannot speak for the Gulf of Mexico Council, or councils in general.

What is the general perception of the fishery councils on overfishing, and are there concrete policy recommendations to verify and manage the present situation?

This question deals with the definitions of overfishing in the Sustainable Fisheries Act. I don't have any formal training in the fish population biology that forms the basis for the overfishing definitions. After nine months on the Gulf Council, I can grasp the meaning of the minimum standing stock threshold (MSST), maximum sustainable yield (MSY), maximum fishing mortality (MFMT), fishing mortality rate at MSY, biomass at MSY, and optimum yield (OY). I can look at graphs that compare fishing mortality rate with biomass and determine whether the data points fall in the overfished area. I find NMFS technical guidelines on biomass measures tremendously helpful. In addition, our Council has the written and oral scientific advice of both the stock assessment panel and the standing scientific and statistical committee before we decide whether a fish is undergoing overfishing, and before we choose biomass rebuilding targets.

However, I sometimes feel like a freshman in calculus class, desperately seeking a teaching assistant to deepen my understanding of these concepts and calculations. A revised version of the Sea Grant publication, "Understanding Fisheries Management," incorporating biomass-based overfishing measures would be very helpful. Council members, council staff and NMFS staff need training and materials that explain the overfishing definitions with abundant examples.

I believe that the overfishing definitions in the Sustainable Fisheries Act are sound, and will result in management actions that move toward maximum sustainable harvests. Our Council, our Council staff and our fish management plans are still in transition from SPR measures of overfishing to biomass

measures. At times, I sense both confusion and resistance during Council discussions of the new biomass measures.

The biomass portions of the definitions don't work well in data poor species. For many of our Gulf of Mexico species, we lack reliable estimates of biomass and have to use proxies, and, we don't always get agreement on the best proxy for biomass.

I believe the Council needs improved guidance from NMFS on an acceptable range of proxies for data-poor species, and, then, the Council needs flexibility to choose proxies within that range.

Please provide examples of your efforts to work through the Byzantine collection of fishery regulations, including examples of obstacles, voids in understanding and research needed to set priorities.

I will use recent deliberations regarding red grouper as an example to answer this question. So far, the Gulf Council and its committees have been working on an amendment for close to three years. During that time, we have had delays due to scientific disagreements, improper data analysis, meeting cancellations, and rapidly evolving legal advice from NOAA's general counsel. Red grouper is a valuable commercial and recreational stock. Our proposed rebuilding plan calls for 45% harvest reductions. Interest groups have been very active in our deliberations, and legal challenges to our amendment are likely. The council membership is sharply divided on the amendment.

In the summer of 1999, NMFS produced a stock assessment, which led the Reef Fish Stock Assessment Panel (RFSAP) to conclude that red grouper were significantly overfished. That fall, the Special Reef Fish Scientific and Statistical Committee (SSC) rejected that finding and NMFS asked the Center for Independent Experts for an unbiased peer review of the assessment. The following summer, August of 2000, this peer review was complete and the stock assessment was ready to move forward. This first year-long delay resulted from disagreements among scientists regarding the stock assessment methodology.

NMFS waited several more months, until late October 2000, before declaring red grouper overfished and experiencing overfishing. This started the 12-month clock for a rebuilding plan to be developed by the Council. At meetings in both August and December of 2000, the RFSAP discussed rebuilding scenarios and revised the peer-reviewed stock assessment, discarding Cuban harvest data based on recommendations from a reputable scientist representing a group of commercial harvesters. This resulted in a more optimistic assessment of stocks.

Disagreements within the RFSAP and between the RFSAP and an outside expert regarding data led to this additional 4-month delay.

The council received the revised stock assessment at a meeting in January of 2001, and began to develop a rebuilding plan. At this point, three months of the 12-month clock were already gone due to the scheduling of the RFSAP meeting. The council was already working on its 18th amendment to the reef fish management plan, and added red grouper to this amendment.

In February 2001, the council responded to a NMFS action plan, stemming from a NEPA court case, by adding an Essential Fish Habitat EIS to Amendment 18.

Between February and July 2001, Amendment 18 and its Supplemental EIS (SEIS) became increasingly complicated. During this time, NOAA's general counsel was developing new guidelines for SEIS's in response federal court cases, and these rapidly evolving guidelines increased the workload for Council staff writing the SEIS.

The Council scheduled reef Fish Amendment 18 for final action in July of 2001. However, during public hearings in June, it was discovered that whole and gutted weights had been mixed together in the rebuilding scenarios. After a productive six months of Council work on a large and complicated reef fish amendment, a new delay was caused by faulty data analysis.

Final action was deferred until September, but the Council review of the corrected data analyses was interrupted by the events of September 11. Final action was rescheduled for December, missing the November 12-month deadline for Council action.

Mounting legal challenges to fish management plans/rules across the nation led to additional guidance from NOAA legal counsel. The Council was told that all NEPA, SFA, RIR, RFA, and OMB documents must be completed and legally defensible before an amendment could be submitted to NMFS. The documents prepared for final action in December did not meet these evolving legal standards, and another delay was inevitable.

Out of time, the Council decided to pull the red grouper rebuilding plan out of the now ponderous and complicated Amendment 18, and move forward with an expedited regulatory amendment. In its December 2001, and January 2002, meetings the Council worked to streamline the red grouper regulatory amendment.

In February 2002, just as public hearings were about to begin leading up to final action in March, NOAA general counsel advised the Council that the regulatory amendment must be a Secretarial Amendment. Despite the change in name, the Council and Council staff continued with the work of developing the plan. Also, because of the magnitude of harvest reductions in the amendment (45%), the general counsel and Council realized that a SEIS would have to be prepared.

Final action for what is now the red grouper Secretarial Amendment and its SEIS is scheduled for July 2002, the latest possible date for the amendment to be complete. The SFA allows the Secretary an additional 6 months to develop a rebuilding plan for an overfished stock, if the council is unable to complete a plan during the initial 12 months

Ironically, a new stock assessment is scheduled to be available for review by the RFSAP in August 2002. The Council has discussed delaying action on the management plan in case the new stock assessment indicates a significant change in the stock. However, we have been convinced that the law requires a red grouper plan amendment no later than July 2002, and are striving to meet this deadline.

These red grouper deliberations have come at a time when the number of legal challenges to fish management plans have increased dramatically, and NOAA general counsel and NMFS have placed a priority on making sure that the process, the plans and their supporting documents are legally defensible. Adjusting to the changing legal environment has been difficult and caused many delays. Hopefully the transition is mostly behind us, and the communication problems between council staff, who prepare the supporting documents and the NOAA general counsel have been largely resolved.

The Marine Mammal Commission (MMC) oversees marine mammal issues for NOAA. Would establishing a council like MMC for fisheries help solve fishery management problems?

It is hard for me to see how a commission modeled on the MMC could help with marine fisheries issues. The MMC is a science-based group with a small staff that reports to the natural resource committees in Congress. It is an advisory, body, and not a regulatory body. The MMC researches issues and writes letters advocating policies, rules and management actions. Marine mammal responsibilities are splintered among many agencies (i.e. USFWS, NMFS, Animal and Plant Health Inspection, Military, State Department, state fish and wildlife agencies). Federal law requires agencies to provide written responses to MMC comments.

A fisheries commission would either be in addition to the current management structure, or it would replace some part of the existing structure.

Let me suppose that a new fisheries oversight commission would be science-based and advisory, and that it would advise Congress, the Councils, and NMFS/NOAA. The councils already have stock assessment panels and standing scientific and statistical committees with expertise in the regional fish stocks. I don't see the advantage of having a national commission also reviewing the science of regional fisheries, and instead see an additional forum for scientific review as another place for decision-making to get bogged down. The Councils themselves are advisory to NMFS and NOAA. Final regulatory action rests with the Secretary of Commerce.

I anticipate that the Ocean Commission will provide advice to Congress on changes that are needed in the Sustainable Fisheries Act and the current fisheries management structure. I think this kind of advice is best offered by a special commission such as the Ocean Commission, serving at 10-year intervals, rather than a continuous commission like the MMC.

If the idea is for a new commission to replace the councils, and prepare fish management plans at the national instead of regional level, I would raise several concerns. The workload would be large, and regional public participation would decline. There would be a tendency to apply national principles to situations, which require regional flexibility. Presumably such a national commission would develop plans and rules in a close working relationship with national NMFS staff and NOAA lawyers. I see a potential advantage in having a plan/rule development process that would remove the second-guessing of regional recommendations by the national NMFS and NOAA staff. But this advantage would be at the cost of losing the participation and "buy-in" of regional stakeholders.