

Written Testimony of Ms. Julie K. Morris
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Fishery Council
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Introduction

Thank you for inviting me to speak to the Commission during the field hearing in Florida. My name is Julie Morris, and I coordinate the Environmental Studies Program at New College of Florida, a public liberal arts college in Sarasota, Florida.

From 1992 until 1999, I served as a Commissioner of the Florida Game and Freshwater Fish Commission. Beginning in 1999, I became a Commissioner of the Florida Fish and Wildlife Conservation Commission, and served two terms as chairman, retiring from the Commission in January of 2002. I am a new member of the Gulf of Mexico Fishery Management Council, having attended a training session and two full council meetings. In these comments, I will attempt to compare the Florida fisheries management process with the Gulf Council process. This testimony is my own, and does not represent the official testimony of either the Florida Fish and Wildlife Conservation Commission or the Gulf of Mexico Fishery Management Council.

Prior to serving on the Florida commission, I was an activist and volunteer leader in the Sierra Club, focusing on wildlife, wetland, and coastal issues. My "environmentalist" background is unusual, both on the Florida Commission and on the Gulf Council.

A review of the cumulative effect of federal laws

Fishery management measures proposed by the Gulf Council must conform to the 10 national standards of the Magnuson-Stevens Act (MSA), the National Environmental Policy Act (NEPA), Executive Order 12291, the Regulatory Flexibility Act, the Paperwork Reduction Act, the Endangered Species Act (ESA) the Coastal Zone Management Act, the Marine Mammal Protection Act (MMPA) and Executive Order 12612. The complexity of developing the analyses required in these nine federal acts is a heavy burden for the Councils and their staff. At the training session for new council members this fall, it was apparent that NMFS is committed to making the best of this situation, and we were coached on techniques to blend all of these analyses into one comprehensive document.

I am a strong supporter of NEPA, ESA, and MMPA. The federal mandate to consider the social and economic effects of fisheries regulation on small, independent fishermen and fishing-dependent communities is important and much stronger than the economic assessment required under Florida rules. However, the Council and NMFS have inadequate data and staff to accomplish credible social and economic assessments within the short time frames (12 months) allowed when a species is found to be overfished. The MSA national standards require us to seriously consider the impacts of management measures on fishing communities, and at the Gulf Council, we have only one staff member to develop these data. NMFS has only eight staff to fulfill this function in the southeast region (North Carolina to Texas and the Caribbean). Additional staff or additional money for contracts is necessary to address this issue in a credible fashion.

In the Gulf of Mexico, one of our seven Fish Management Plans covers the reef fish complex, which includes groupers and snappers. This plan was first implemented in 1984 and has been amended 17 times, with 18 and 19 currently under development. Red snapper are currently rebuilding from an “overfished” status. Some believe that vermilion snapper are now overfished because effort has shifted from red snapper. As we grapple with a rebuilding plan for red grouper, some predict that once harvest restrictions are in place, effort will shift both to gag grouper and deep-water grouper, and they will rapidly become overfished.

The MSA envisioned managing the Gulf reef fish as an interrelated group, with both ecological interactions and human-social, effort-shifting interactions. However, the complexity of preparing documents that address all nine required federal assessments pushes our Councils toward considering one species at a time, in order to complete the assessments. The single species focus fails to address issues of social and ecological interactions with other reef fish species. In addition, complying with all nine required assessments makes management decisions ponderous and slow, a poor match for the dynamic nature of fisheries.

A review of the relationships between federal, state, local governments and the private sector

Florida lies within two fisheries councils, South Atlantic and Gulf of Mexico, and two state fisheries commissions, Gulf States and Atlantic States. This makes sense because many targeted species of fish have Atlantic populations that are genetically distinct from Gulf populations. Unfortunately, fishermen in Monroe County (the Florida Keys) sometimes face conflicting regulations and the need for dual permits to fish on the Atlantic and Gulf sides of their home county. Most of these permits are under moratoria and are expensive, putting an

economic burden on the fishermen. Additionally, Florida's research and management staff must go to double meetings, which places a strain on resources for research and management.

Red Grouper is a species that is harvested in federal waters primarily by fishermen who live in Florida and land their catch in Florida. It may be useful to consider delegating fish management plans for species landed predominantly in one state to that state's fish management agency. A model to investigate is the FMP for spiny lobster, in which Florida takes the lead. The spiny lobster FMP contains a "Protocol and Procedure for an Enhanced Cooperative Management System." Under this procedure rules can be adopted by Florida through the FWC hearing process and submitted to NMFS and the Councils along with socioeconomic analyses, hearing summaries, and other supporting information. The Councils and NMFS must concur that the proposed rule is consistent with the FMP objectives and other federal law. NMFS, council staff, and FWC staff prepare the amendment and support documents. Rules are subject to NMFS approval after a public comment period.

In my experience, Florida's Federal Conformance Procedure is working very well. This procedure allows for expedited rulemaking to conform Florida's rules to new federal rules in a simple and straightforward fashion. Rapid adjustment of state rules to new federal rules is critical for effective law enforcement.

Florida has had a cooperative agreement with NMFS law enforcement since 1983 allowing Florida marine law officers to enforce all MSA regulations. Under this agreement Florida has provided patrols while NMFS focused on investigations. When this cooperative agreement was renewed in the late 1990's, modest federal funding became available for Florida patrol equipment improvements. These funds have allowed Florida to: add electronics to a patrol boat based in the Florida Keys; replace an engine in patrol boat based in the panhandle; and rehabilitate a seized boat for shrimper/crabber patrols based in Crystal River. More recently, annual Joint Enforcement Agreements have provided non-recurring funds to support Florida patrols for specific missions directed by NMFS Law Enforcement. Florida has used these funds to add a new patrol boat for the Atlantic coast, and to buy back overtime hours of Florida officers on specific missions. These law enforcement collaborations have been successful and the FFWCC looks forward to their continuation. Ideally, the Joint Enforcement Agreements should shift to become recurring funds, allowing Florida to add more officers specifically for federal patrols and MSA enforcement.

Recommendations for modifications to federal laws and the structure of federal agencies

COMPLEX PROCESS AND POTENTIAL OF FLORIDA MODEL

Once a Council takes final action on a Fish Management Plan Amendment, the plan is submitted to NMFS and two parallel timelines unfold. On one side, the MSA sets a clock of 95 days for approving or disapproving an amendment. If NMFS fails to act within this time frame, the amendment is automatically approved. On the other side, the rules and regulations that will implement the amendment have a much looser timeline. There are no consequences if the regulatory clock is delayed, and delays are common on controversial rules.

The FMP is sometimes ready and approved before the public comment on adopting the implementing rules has been received. Members of the public may not understand the implications of the regulations that will result from the FMP, and fail to comment on the FMP. When they wish to object to the proposed regulations, they are behind the curve, since the rule must be consistent with the already -approved FMP. Furthermore, controversial rules are often delayed by OMB's review, an additional review with an unclear purpose. These disjointed timelines and delays undermine the responsiveness and credibility of the federal fisheries management system.

The Gulf Council has its own small staff of biologists and economists, and relies on NMFS for research, NOAA for legal support and adoption of both rules and FMP amendments, and on NOAA and the Coast Guard for law enforcement. Amendments and rules recommended by the Council can be overturned by the Secretary of Commerce.

Before 1999, Florida managed marine fisheries with a process similar to the federal system. An independent Marine Fisheries Commission (MFC), with its own small staff of fisheries analysts and attorneys, set rules for commercial and recreational harvest of marine species in Florida waters. The research and data that the rules were based on were provided by another agency - the Marine Research Institute in the Department of Environmental Protection (DEP). These marine rules were enforced by the Marine Patrol, another division within the DEP. Rules adopted by the MFC could be rejected and referred back to the MFC for reconsideration, after review and public hearing by the Governor and Cabinet.

This system was awkward in several ways. Having enforcement and research in another agency with different priorities and a broader mission left a crack ripe for delays and miscommunication. The Governor and Cabinet review of MFC regulations was problematic. The MFC developed its rules following

workshops, public hearings, and serious consideration of stock assessments, blending science and public testimony. The Cabinet, when faced with a hall full of angry fishermen, could reject the MFC rule and send it back for rewriting, without making the hard allocation decisions themselves. Successive rejections and revisions of rules governing controversial fisheries created a ping-pong effect, thwarting any progress.

In 1998, voters approved a constitutional amendment that reorganized fish and wildlife management into a new agency, the Florida Fish and Wildlife Conservation Commission (FFWCC). Now, rulemaking, research, legal, and law enforcement functions for marine species are in one agency with one executive director. The primary mission of this agency is fish and wildlife conservation. The director works for an appointed commission, not directly for the Governor. Further, this agency has constitutional status – its rules on marine fish and shellfish cannot be overturned by the Governor and Cabinet or the Legislature. FFWCC rules regarding marine fish and shellfish are not challenges under the state administrative procedure act, but, instead, must be challenged in court.

The new agency is able to deliver a more effective and timely management system for marine fisheries, and may be a useful model for restructuring federal fisheries management.

TIMELINESS OF FEDERAL PROCESS

The process that Councils and NMFS must follow in responding to an “overfished” determination is too slow when the stock in question is commercially valuable and highly targeted. I would like to briefly go through the example of Red Grouper. Red grouper in the Gulf were determined to be overfished in November of 2000, starting a 12-month clock for a Council rebuilding plan. Documents were prepared, public hearings were held, skirmishes over the usefulness of Cuban data were resolved, and final action on a rebuilding plan was scheduled for July, 2001. Final action was postponed due to data errors, treating whole weights and gutted weights as if they were equal.

Final action was rescheduled first for November, then December, 2001. Once again, on the advice of NOAA general counsel, final action was postponed because the supporting NEPA analyses were not complete. At this point, the Council chose to lift the red grouper rebuilding plan out of Reef fish Amendment 18, and move forward with a slimmer regulatory amendment, with final adoption in March, 2002.

Just in the last 2 weeks, this timeline has been adjusted again, in light of the realization that the regulatory amendment for red grouper will need a

Supplemental Environmental Impact Statement. Final action is now scheduled for July 2002, and many Council members are thinking that we should wait for a new stock assessment, due in August. Another confounding issue has been raised. Since the Council is beyond its 12-month clock for adopting a red grouper rebuilding plan, the plan may have to be a Secretarial plan - uncomfortable territory for both the Council and the Secretary.

IMPROVING THE ROBUSTNESS OF SCIENCE AND THE UNDERSTANDING OF THE SCIENCE

As a new Council member, I expected to make science-based decisions, and resolved not to shy away from difficult decisions. I have found that the federal fisheries management process provides ample cover for ducking difficult decisions.

The scientific basis of fisheries management decisions is always questioned, particularly if the allocation decisions are difficult. Successful management decisions must be based on (1) fishery dependent and fishery independent information on a stock of fish, and (2) the analytical capability to assess the condition of each stock. Many species in need of management are data-poor.

Data on stocks would benefit from a greater emphasis on collection of data by observers. Observers can provide accurate information on bycatch, size composition, and discard rates, information, which is often inadequate in logbooks and trip tickets. New England's cooperative research plans, which involve fishermen in collection of data on bycatch and class strength of juvenile fish, are positive models that should be encouraged by Congressional funding.

In Florida, we have experienced tremendous growth in recreational fishing and catch and release fishing, both in state and federal waters. In order to develop effective stock assessments, we need additional resources for recreational surveys. For example we need better information on the sizes of released fish.

The stock assessment is the key document that underlies FMP amendments. Over the past decade the number of stocks being assessed, and the frequency that those assessments are needed, have outstripped the capacity of stock assessment personnel. The proposed budget for 2003 contains an issue called "Modernize Annual Stock Assessments," that would create 26 new stock assessment positions. This measure deserves your support.

Fisheries population biology is pretty hard for the lay person to grasp. When I first began working with marine fisheries, the concept of "spawning potential ratios" was difficult to understand. Now, after six months, I'm still struggling to understand the individual concepts of optimum yield, biomass at maximum

sustainable yield, minimum stock size threshold and how they all fit together to determine the allowable catch. For example, it is not uncommon to have several of years of robust landings at the same time that a stock is overfished. It is very tempting to accept the current abundance as proof of a healthy stock, and dismiss the complicated model predicting harvest declines and collapse. Council members and fishermen need to understand fish population biology better and gain more understanding and confidence in the data and analyses.

THE NEED FOR INDIVIDUAL TRANSFERABLE QUOTAS (ITQ) IN THE GULF

In order to reduce harvest on overfished species, we have a problematic set of tools. Closed seasons destroy markets and make it hard for fishermen to stay in business. Quotas create derbies, which reduce prices and make fishing more dangerous. Trip limits create fuel and time inefficiencies. Size limits cause regulatory discards and bycatch. Prohibiting the most efficient gear reduces CPUE, uses more fuel, and increases prices, but, may allow more small business participants and support local economic activity.

I would very much like to see Individual Transferable Quotas (ITQ) added as a management tool in the Gulf of Mexico. ITQ's may not be the most effective tool for species like shrimp with large fluctuations in annual harvest, although shrimp may need some form of effort management. However, ITQ's could be a perfect tool for snappers and groupers, allowing harvest to be reduced to sustainable levels without creating the dangerous derbies and market disruptions associated with closed seasons and annual quotas. I hope the Commission would support changes in federal law that would allow each fishery council to determine whether ITQ's would be a useful tool for their fisheries.

Sadly, the heart of fisheries management is rebuilding overfished stocks. If plans are effective, and harvest reductions have been significant, fishermen notice the rebound in stocks and immediately want to lift the regulatory load. It is very hard to keep rebuilding restrictions in place when fishermen are experiencing an abundance of fish.

FIRST, CONSERVATION GOALS, SECOND, MANAGEMENT PLANS

In our rebuilding plans, Councils have discretion both on biological parameters and allocation decisions. The targets for reducing harvest to sustainable levels are set by the same group that makes the allocation decisions, and it is inevitable that the Council is tempted to redefine the targets to ease the pain of allocation decisions.

The current process calls for a stock assessment to be prepared, and then reviewed by a stock assessment panel (scientists with fisheries stock expertise)

and a scientific and statistical committee. The stock assessment is then presented to the Council along with the discussion minutes and recommendations from the two scientific committees.

Based on my first six months as a Council member, I would like to see a change in the process where the Council's decision regarding the status of the stock and the conservation goals for the stock could be taken as a first step, focused just on the scientific analysis. The consideration and evaluation of the alternatives for reducing harvest to accomplish these conservation goals would be a second step, involving all of the economic, social and environmental considerations required by law. A model for this could be the endangered species listing process that the Florida Commission uses, which begins with a peer-reviewed biological status determination, followed by a management plan developed in a second phase.

Currently, alternative conservation goals are under consideration in the same NEPA documents that are analyzing alternatives for management. This contributes to unwieldy analysis and also leads inevitably to redefining the conservation goals to fit the least disruptive management alternative, instead of the alternative that will be most effective in reaching sustainable harvest levels.

ESSENTIAL FISH HABITAT

Essential Fish Habitat (EFH) is an important area of concern, but difficult to develop a management system for. In the broadest sense, EFH is all the waters of the Gulf, including estuarine and freshwater areas in state waters. It is absolutely clear that seagrass and low salinity areas are essential to Gulf fish during certain life history stages. However, neither the Council nor the state agency has the staff resources or the political power to affect all the activities in states that influence water quantity, water quality, timing of freshwater flows, and seagrass habitat. Our Council needs an EFH strategy that will allow us to focus on habitats that are truly essential, where we can make a tangible, positive contribution to fisheries conservation.

Summary

Preparing Fish Management Plans that are responsive to all nine federal laws and executive orders is a difficult task, especially when interrelated groups of species are involved. The process that Councils and NMFS must follow in responding to an "overfished" determination takes longer than the 12 months allowed when the stock in question is commercially valuable and highly targeted.

In order to prepare credible and timely assessments of the social and economic effects of fish management alternatives, the Councils and NMFS need more staff with socio-economic expertise.

Lying within two federal fishery councils presents difficulties for fishermen who fish on both the Atlantic and Gulf sides of Florida, and for Florida fishery researchers and managers.

The spiny lobster “Enhanced Cooperative Management System” is a good model for allowing a greater state agency role in the management of a fishery that is primarily landed in only one state.

Funding for Joint Enforcement Agreements with states should continue and be shifted to become recurring funds, allowing additional state personnel to be hired to patrol federal waters.

Delays in the NOAA and NMFS approval process for FMP’s and their implementing rules must be eliminated or reduced, and these parallel processes need to be better integrated.

The Florida Fish and Wildlife Conservation Commission may be a useful model for restructuring federal fisheries management.

Additional federal funding is needed to improve data (an expanded observer program, and expanded data on recreational catches) and to create more positions for stock assessment personnel.

Fishermen and Council members need a better understanding of fish population biology.

The federal law needs to be changed to allow each fishery council to decide whether to use Individual Transferable Quotas as a management tool.

The council process should establish conservation goals for an overfished stock in a first step, and then consider alternatives for reducing harvest to reach these goals as a second step, instead of considering both at the same time.

Conclusion

The mission of federal fishery management program is to manage for long-term sustainable harvests that will allow diverse and healthy marine ecosystems and support economically viable and socially healthy fishing communities. This mission is sound, and the participants, both in the private sector and in government, are talented and resourceful people committed to this mission.

Additional funding, stronger partnerships with states, and several process improvements will contribute greatly to accomplishing this mission. I wish to commend the Commission for taking on this difficult and extremely important work. Thank you holding a regional meeting in Florida, and for giving me an opportunity to testify.