MINUTES
GULF OF MEXICO FISHERY MANAGEMENT COUNCIL
ONE HUNDRED AND FORTY-NINTH MEETING
POINT CLEAR, ALABAMA
NOVEMBER 13-14, 1996

The one hundred and forty-ninth meeting of the Gulf of Mexico Fishery Management Council was called to order by Chairman Robert Shipp at 8:32 a.m., Wednesday, November 13, 1996. Council members in attendance were:

VOTING MEMBERS

Pete Aparicio .............................................................. Texas
Irby Basco ................................................................. Texas
Maumus Claverie ....................................................... Louisiana
Felicia Coleman .......................................................... Florida
Frank Fisher ............................................................... Texas
Karen Foote (designee for James Jenkins) ......................... Louisiana
J. Scott Green ............................................................. Florida
Philip Horn ..................................................................... Mississippi
Andrew Kemmerer ...................................................... National Marine Fisheries Service
Albert King .................................................................... Alabama
Karl Lessard ................................................................... Florida
R. Vernon Minton ......................................................... Alabama
Hal Osburn (designee for Andrew Sansom) ......................... Texas
Robert Shipp .................................................................. Alabama
Roy Williams (designee for Russell Nelson) ......................... Florida
Glade Woods .................................................................. Mississippi

NONVOTING MEMBERS

Larry Simpson ............................................................. Gulf States Marine Fisheries Commission
Doug Frugé (designee for Noreen Clough) ............................... U.S. Fish and Wildlife Service
LCDR Mark Johnson (designee for Timothy E. Josiah) ............... Eighth Coast Guard District
STAFF

Wayne Swingle ...................................................... Executive Director
Richard Leard .................................................... Senior Fishery Biologist
Steven Atran .................................................. Population Dynamics Statistician
Antonio Lamberte .................................................... Economist
Camilla Moyer .......................................................... Transcription Specialist
Anne Alford .......................................................... Travel Coordinator
Judson Feder (designee for Michael McLemore) ...................................................... NOAA General Counsel

OTHER PARTICIPANTS

Wilma Anderson ........................................ Texas Shrimp Association, Aransas Pass, Texas
Brian Annan .................................................. Orange Beach, Alabama
Al Armitt ............................................................ Daphne, Alabama
Pete Barber .................................................. President, Alabama Seafood Association, Coden, Alabama
George Barisich ........................................ United Commercial Fishermen's Association, Violet, Louisiana
Jimmy Beason .................................................. Orange Beach, Alabama
Steve Branstetter ........................................ Gulf & South Atlantic Fishery Development Foundation, Tampa, Florida
James Burgess ............................................... National Marine Fisheries Service, St. Petersburg, Florida
James Cowan .................................................. University of South Alabama
Nathan Cox .................................................. Orange Beach, Alabama
Kim Davis .................................................. Center for Marine Conservation, St. Petersburg, Florida
Chip Day .................................................. Orange Beach, Alabama
David Dertes .................................................. Mobile, Alabama
James Duffy .................................................. Gulf States Marine Fisheries Commission, Ocean Springs, Mississippi
Debra Evans .................................................. Gulf Shores, Alabama
Maurice Fitzsimons .................................................. Daphne, Alabama
Don Flournoy .................................................. Orange Beach, Alabama
Steve Foust .................................................. Orange Beach, Alabama
Jodie Gay .................................................. South Atlantic Fishery Management Council, Charleston, South Carolina
Gary Gee .................................................. The Coast Digest, Fairhope, Alabama
Phillip Hinesley .................................................. ADEC Coastal Programs, Daphne, Alabama
Judy Jamison .................................................. Gulf & South Atlantic Fishery Development Foundation, Tampa, Florida
Michael Justen ............................................... National Marine Fisheries Service, St. Petersburg, Florida
Wendell Lorio .................................................. Mississippi
Thomas McIlwain ............................................... National Marine Fisheries Service, St. Petersburg, Florida
Malcolm Miller .................................................. Orange Beach, Alabama
Mary Mullins .................................................. Fairhope, Alabama
Joseph Nash .................................................. Orange Beach Fishermen’s Association, Orange Beach, Alabama
Chris Nelson .................................................. Bon Secour Fisheries, Bon Secour, Alabama
LCDR Ed Pino .................................................. Seventh Coast Guard District, Miami, Florida
David Rainer .................................................. Mobile Press Register, Mobile, Alabama
Allen Risenhoover ............................................... National Marine Fisheries Service, Silver Spring, Maryland
Mike Rowell .................................................. Orange Beach, Alabama
Michael Salley .................................................. Pensacola, Florida
Russell Smith .................................................. Pensacola, Florida
Neil Trimbale .................................................. Orange Beach, Alabama
John Ward .................................................. National Marine Fisheries Service, St. Petersburg, Florida
Donald Waters .................................................. Pensacola, Florida
John Watson .................................................. National Marine Fisheries Service, St. Petersburg, Florida
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LCDR Mark Johnson (designee for Timothy E. Josiah)........ Eighth Coast Guard District
Kay Williams ................................................. Save Our Seafood Industry, Pascagoula, Mississippi
Bob Zales, II ..................................................... Panama City, Florida

Dr. Shipp read the opening statement and asked for voice identification.

• Adoption of Agenda

The agenda was adopted with the following change: If time permitted, complete as much of Thursday's agenda as possible on Wednesday.

• Approval of Minutes

The minutes were approved with the following changes:
Page 1, remove Timothy Josiah from the voting members list.
Page 5, first bullet, verify the statement.
Page 30, third paragraph from the bottom, change to read ..."was issued to a person, to a vessel, and that vessel was boarded and that particular vessel was not"...
Page 51, second paragraph, substitute the word "attorneys" for "students."
Page 60, sixth paragraph, change "Denton" to "Ditton."
Page 60, seventh paragraph, fourth line, delete ...completed and a report written within a” and insert “started with improvements initially which is an”...
Page 60, seventh paragraph, fourth line from the bottom, insert “Gulf” before RecFin.
Page 60, seventh paragraph, last line, delete “complete” and insert “handle.”

• Approval of Committee Membership

Dr. Shipp stated that Mr. King and Mr. Lessard had requested to switch their memberships in the Deep Water Crab and Coastal Migratory Pelagic Management Committees. He recommended assigning Mr. Aparicio as Vice Chairman of the Habitat Protection Committee and remove Andy Martin from the Habitat Protection Committee. Dr. Kemmerer asked to be appointed to the Butterfish Management Committee and Dr. Shipp so recommended. With these changes, committee membership was approved with no objection.

• Public Testimony on Shrimp Amendment 9

Mr. King requested to testify as a public citizen. After a brief discussion, this request was approved. Dr. Shipp noted that there were 13 cards submitted by persons wishing to testify and asked for opinions from Council members on the time period to be allotted to each speaker. Dr. Kemmerer suggested that 10 minutes be allowed for each person testifying on Shrimp Amendment 9. There were no objections to this recommendation by the Council members.

Wilma Anderson, Aransas Pass, Texas, Executive Director of the Texas Shrimp Association (TSA) stated that her organization remained opposed to Shrimp Amendment 9. She read a prepared statement (see attached).

Mr. Osburn noted that Texas recognized that the wild-caught shrimp fishery was the most valuable commercial fishery and that aquaculture, importation of shrimp, as well as utilization of shrimp while in the estuaries, had created a negative effect on the shrimp industry. He asked Ms. Anderson if an important management consideration would be a minimum of gear restrictions or attempts to control overfishing of
juvenile shrimp in the bays. Mrs. Anderson responded that TSA acknowledged that overcapitalization in the bays was a serious problem, but had not involved themselves with the bay industry limited entry program, and had left this matter to the discretion of the Texas Parks and Wildlife Department. She pointed out that every time a hole was cut in a net, shrimp were lost. TSA had researched what measures would be feasible and would enhance protection of the turtles, bycatch and shrimp. TSA suggested a closed area 6.2 miles offshore of the majority of the Texas coast and slightly more off the upper Galveston coast. The small inshore fleet were required to pull turtle excluder devices (TEDs). The larger boats fished offshore and the greatest shrimp loss occurred in deep waters.

Kay Williams, Pascagoula, Mississippi, Vice President of Save America's Seafood Industry (SASI), stated that in the newly reauthorized Magnuson-Stevens Act Congress required new studies of shrimp and bycatch measures and new data on red snapper. She questioned whether Shrimp Amendment 9, as presently drafted, ensured full compliance with the Magnuson-Stevens Act. The Shrimp Advisory Panel had requested that National Marine Fisheries Service (NMFS) assess all the untrawlable bottom. In 1990, NMFS had estimated that a reduction in bycatch of red snapper by the shrimp industry by about 60 percent was needed in order to allow a directed harvest of only 1 million pounds of red snapper. The directed total allowable catch (TAC) was 4 million pounds in 1991-1992, 6 million pounds in 1993-1995, and in 1996 9.12 million pounds. She noted Dr. Goodyear had stated in 1995 that, if the TAC was reduced to zero for the red snapper industry and the shrimp industry did not reach their 50 percent red snapper bycatch reduction, then the red snapper stock would not reach the 20 percent spawning potential ratio (SPR) goal. In September 1996, Dr. Goodyear stated in his report that the commercial harvest had been constrained by size limits and quotas. In the most recent years the commercial harvest had been near the commercial allocation; however, the recreational harvest had greatly exceeded its allocation. She felt the red snapper commercial fishery had been unjustly penalized. The Shrimp industry was also aware they had not received sufficient credit for their bycatch reduction of red snapper and Shrimp Amendment 9 would penalize them. The red snapper stocks were healthy; NMFS and the Council should reevaluate their scientific data before placing further regulatory restrictions on this fishery. The red snapper fishery could not afford further reductions in TAC.

George Barisich, Violet, Louisiana, President of the United Commercial Fishermen's Association, served on the Louisiana Seafood Marketing Council, and was a commercial fisherman. He felt that NMFS was indifferent to the needs and recommendations of fishermen. Mr. Barisich noted he had made a "win-win" proposal at a meeting in Washington, D.C. that had been rejected. He questioned why, if red snapper were endangered, recreational fishermen were catching almost twice their quota. Commercial fishermen were filling their quota in nearly one-third of the time this took three years ago, and with less crew. He maintained that the juvenile snapper that were released through a device tended to re-enter the net after escaping. He believed there was no resource problem with any species of the Gulf exclusive economic zone (EEZ) or inshore waters of Louisiana. He contended that shrimp loss using bycatch reduction devices were between 12 to 18 percent, rather than the 3 percent claimed by NMFS. He contended that predation would reduce the biomass by a considerable amount. Most of Louisiana's inshore and nearshore areas were soft mud bottom, a condition that made slow retrieving of the trawls impossible. Slow trawl retrieval was necessary in order for the bycatch reduction devices (BRDs) to operate properly. He maintained that statistics proved that in some areas the very species that had been excluded were now overpopulated and had caused imbalances in aquatic ecosystems. He maintained that sharks and dolphins would follow the BRDs to provide themselves with an easily acquired meal and that they would damage the equipment. The commercial fishing effort had already been reduced by 40 percent since the implementation of TEDs had diminished the number of license holders (32,000 down to 14,900), though NMFS had stated this would not occur. He felt that a new bycatch program was needed, due to the reduction of fishing effort and a 35 percent decrease in bycatch that had resulted. He contended that no bycatch program could be initiated.
because the language of Shrimp Amendment 9 stated that the program could not be implemented if it adversely affected the $400 million-a-year shrimp industry. The data clearly indicated that a shrimp loss could be as low as 3 percent, but as high as 20 percent. Further, the biomass of the shrimp would be reduced 11 to 18 percent by increased fish predation, stemming from a fish population explosion caused by BRDs. Mr. Barasich felt that if BRDs were to be imposed on fishermen TEDs should be discarded. He maintained that TEDs had caused from 5 to 23 percent of shrimp to be lost from nets, resulting in half of shrimp fishermen leaving the industry. He cited instances where TEDs had caused accidents, such as hitting him on the head while working in rough weather or having a catfish drop out of the 26-inch hole and strike him on the shoulder and back. He stated that stress related to loss of income had caused a friend who was a shrimp fisherman to commit suicide. At this point, Mr. Barasich expressed his belief that two Council members were unfit for their position. Mr. Williams objected, stating these remarks were not pertinent to Shrimp Amendment 9. Dr. Shipp sustained this objection.

Dr. Claverie asked for details of Mr. Barasich's "win-win" proposal. Mr. Barasich replied that he had recommended, in lieu of pulling a TED in inshore waters, a $200.00 permit fee be collected which would have netted the U.S. Government $3.4 million. He contended that no biological evidence existed to prove that there were turtles in the inshore waters of Louisiana. Dr. Claverie commented that his belief was that Louisiana law precluded shrimpers from having to pull a TED in state waters. Mr. Barasich responded that this was not true and that TEDs were required in Louisiana state waters. Mr. King asked if Mr. Barasich felt that if the BRD requirement was passed by the Council it would lead to requiring BRDs in inshore waters. Mr. Barasich responded affirmatively, remarking that for three or four months during the summer there were areas of "jelly water" and, under these conditions, everything escaped through the hole of a fish excluder device. Mr. King asked how much area in the offshore waters (10 fathoms and outward) was not trawlable, either because there were no shrimp there or because of obstructions. Mr. Barasich was unable to reply to questions about offshore waters, but responded that inshore Louisiana waters, from Saint Bernard Parish to Baton Rouge (5 miles wide) was sanctuary and could not be fished.

Dr. Claverie noted that Mr. Barasich had commented on hazards related to pulling TEDs and asked if he considered this gear to be a safety problem and what his thoughts were on adding a BRD. Mr. Barasich replied that a BRD was not as heavy or as bulky as a TED, but in rough weather, and at night, catch could fall out of the device onto fishermen working on deck. Mr. Horn referred to the statement of Mr. Barasich's that Louisiana shrimp licenses had decreased from 32,000 to 14,900 over a period of several years. He asked if Mr. Barasich was aware of a similar depletion in licenses in adjoining states. Mr. Barasich replied he had no knowledge of the number of licenses in other Gulf states. Mr. Horn inquired if the decrease in licenses had enabled shrimp fishermen to redouble their efforts. Mr. Barasich replied that fishermen with boats that were paid for were the only persons who could afford to continue fishing. Mr. Horn restated his question, asking if less competition allowed Mr. Barasich to work for longer periods of time. Mr. Barasich responded that he must work longer hours than he had prior to the implementation of TEDs in order to maintain the same level of income.

Nathan Cox, Orange Beach, Alabama, President, Orange Beach Fishing Association (OBFA), member of the Red Snapper Advisory Panel (AP), and an owner/operator of a charterboat noted that the present red snapper management measures had proved successful in the recreational fishery, including the charter and head boat industries. He had assisted in educating the public in red snapper conservation and he believed the 5-fish bag limit, 15-inch size limit was as low as his industry could afford to go in order to remain economically stable. He felt that the red snapper stock were prospering under present management, but felt bycatch must be further reduced.
Mr. King asked Mr. Cox if he had to make a choice, would he prefer reducing the bag limit or closing for part of the season, given that the recreational fishery consistently overfished their quota, in violation of the requirements of the Magnuson Act. Mr. Cox responded that other options existed, such as reducing bag limits for the crew or limited entry; of the two choices Mr. King had offered, a partial closure would be his selection. Mr. King felt that red snapper issues should be addressed in that fishery, rather than in the shrimp fishery. He asked if Mr. Cox had experienced any difficulties, aside from storms, that would prevent him from catching enough fish to satisfy his parties. Mr. Cox responded negatively. Mr. King asked if Mr. Cox could compare his charterboat catches with those experienced over the past 6-7 years. Mr. Cox replied that his present red snapper catches were the most numerous and the largest sizes that they had ever been. Mr. King asked Mr. Cox what he felt the effect would be if, in the future, there were 10 times more red snapper than there were at present. He explained that the NMFS' model indicated that there was less than a 2 percent SPR level. Scientists who developed this model had informed him that 20 percent SPR was the target goal. Therefore, there should be 10 times more red snapper when this goal was reached than presently existed. Mr. Cox replied he did not know how to respond to this question, but he stated that, over the past 4 years, the recreational fishery had been required to adjust their TAC and bag and size limits and if they did not achieve a 50 percent reduction, at least as perceived, the recreational fishery could be reduced to a zero bag limit. Mr. King replied that this statement reinforced his belief that decisions were being based on a flawed model, rather than on the absence of red snapper in the Gulf of Mexico. Mr. Cox stated that if Shrimp Amendment 9 was not passed, or was altered, the result could be that the shrimp industry could cause the red snapper industry to go out of business. Dr. Kemmerer commented that Mr. Cox had taken him out on his boat and shown him a great number of snapper in the Gulf.

Mr. Woods remarked that none of the regulations would be successful without enforcement. He asked Mr. Cox how often he checked for number of red snapper aboard his boat. Mr. Cox replied that this was closely regulated and it was standard procedure at every fishing spot that the deckhand count the fish. Mr. Woods asked how often enforcement personnel checked his boat. Mr. Cox responded that enforcement officers had not boarded his boat during the present year, but during the preceding two years had twice checked his boat. His boat was often met at the dock by data collectors who measured the fish and did a creel count.

Mr. Simpson asked the opinion of Mr. Cox on limited entry. Mr. Cox replied that he had conflicting feelings about limited entry since he was unsure whether this approach was constitutionally or morally right. If these considerations were satisfied, he felt this might be a viable option. Mr. Simpson inquired how long Mr. Cox had been involved in the fishing industry. Mr. Cox replied he had been a charterboat fisherman for six years, but had been fishing all of his life. Mr. Simpson asked Mr. Cox about how many charterboats had been located in his area in the 1970s as compared to the present time. Mr. Cox did not have this information, but stated that 5 years ago there were about 90 charterboats and there were presently 108. A member of the audience remarked that there had been about 20 charterboats in the Orange Beach area during the 1970s.

Mr. Aparicio commented that Mr. Cox had stated that the recreational sector of the industry had done its share and it was time for the shrimp industry to do their part. He asked how that related to the fact that the recreational sector had exceeded their quota consistently over the last four years. Mr. Cox responded that the commercial fishery quota was tracked more closely than the recreational fishery who were only informed by NMFS of the status of their quota in the following year. At that time adjustments to bag and size limits were set by NMFS. Mr. Aparicio noted that, nevertheless, recreational overfishing had remained a persistent problem over the past four years.
Dr. Claverie asked Mr. Cox if he ever observed shrimping being conducted in the areas where he fished. Mr. Cox replied that in the places he personally fished, he saw very little shrimping activity. He explained that he fished in the artificial reef zone off Alabama and this area was avoided by shrimp fishermen because the reefs created a hazard to their nets.

Mr. Basco stated his faith in the NMFS model as the best available scientific information. He commented that overfishing, such as occurred with mackerel during the 1970s before restrictions on landings were applied, could decimate a fishery rather quickly. He asked if this was Mr. Cox's perception. Mr. Cox replied that red snapper stock seemed to be steadily improving. He felt the measures adopted by the Council and NMFS was responsible for the rebound of the species and that the use of TEDs had also contributed to this improvement. Mr. Basco felt that a continued increase in stocks would allow the TAC to be raised accordingly and would benefit the industry. Mr. Minton commented that the OBFA had demonstrated fairness to other fishing industries, markedly during the gill net controversy, when OBFA had not taken a stand against gill net fishing. He stressed that the same model that had reduced recreational fishing bag and size limits was the identical model that stated bycatch must be reduced by 50 percent in order to successfully restore the red snapper fishery. Mr. Osburn asked if Mr. Cox fished primarily in the Special Management Zone (SMZ) off Alabama that comprised about 1000 square miles. Mr. Cox responded affirmatively. Mr. Osburn inquired whether the artificial reefs that proliferated in this area, preventing shrimp activity, would account for the large numbers of red snapper found in this area. Mr. Cox replied that this might be the case; however, he doubted that spawning activity occurred there. Mr. King asked if Mr. Cox fished near oil rigs, or if any fishermen in the OBFA did so. Mr. Cox responded he did not fish near oil rigs but many members of his association did so. Mr. King expressed doubt that shrimpers were to be found trawling near oil rigs.

Steve Foust, OBFA, a charterboat fisherman from Pensacola, Florida, stated his support for Shrimp Amendment 9.

Pete Barber, Coden, Alabama, President of the Alabama Seafood Association, objected to a situation that caused dissension between fishery groups. He stated that the Magnuson-Stevens Act required an independent peer review prior to taking final action. He felt that, anecdotally, the red snapper population was good and getting better, despite the fact that the environment did not presently include BRDs. He stated that he was a sales representative for the largest shrimp producer in South Carolina and the majority of his business came from that state. To date, his production level, computed over the past 6 years, was down by 47 trailer-loads of shrimp. These trailer loads typically averaged about 27,500 pounds, putting him about $1.3 million pounds short of a normal year. Taking into account a down cycle, this was the first year Georgia and South Carolina had had to pull number 1 hard TEDs in front of the fisheye BRD. The data that was collected last year in the samplings in South Carolina indicated that shrimp loss ran 10 to 20 percent, above the amount that the Council considered acceptable. In actuality, the shrimp loss presently exceeded 20 percent. He emphasized that anything that affected the cable tension, such as rough seas or water currents, caused a mass exodus forward and out the BRD hole.

Mr. Green asked Mr. Barber for further marketing information. Mr. Barber replied that he only shipped fish out of South Carolina when the local markets were filled since the prices they received at the docks were greater than when shipping out of the area. Mr. Green asked how much competition Mr. Barber had experienced in dealing with the New York and Chicago markets. Mr. Barber replied that these markets bought his shrimp indirectly since his sales were to Sea Pearl, Jubilee Foods or Custom Pack, processors who then sold the frozen product to the New York and Chicago markets. Mr. Green asked how many truckloads per year Mr. Barber averaged from all sources. Mr. Barber responded he averaged from 80 to
100 truckloads per year. Mr. Green inquired how many truckloads of shrimp he had shipped this year. Mr. Barber replied that he believed less than 20 truckloads had been shipped this year.

Brian Annan, a charterboat fisherman from Orange Beach, Alabama, supported Shrimp Amendment 9, stating he could not afford to have the red snapper bag limit further reduced.

Mr. King asked if Mr. Annan was fishing prior to the implementation of the 5-fish bag limit. Mr. Annan replied affirmatively. Mr. King asked if charterboat trips declined when the bag limit was changed from 7 fish to 5 fish. Mr. Annan responded that trips did not decrease, but complaints had increased and he believed a further cut in bag limits would be fatal to the industry.

Charles Day, Jr., a charterboat fisherman from Foley, Alabama, supported Shrimp Amendment 9.

Mike Rowell, Orange Beach, Alabama, OBFA, supported Shrimp Amendment 9. He had recently purchased his boat and had charterboat fished for eight years. He felt the stocks were improving and the fish were growing larger. He commented that he had no wish to harm the shrimp fishery, but expressed concern that, if the model was correct, a possibility existed that the recreational bag limit would be impacted and the industry could not survive such action.

Mr. Simpson asked Mr. Rowell if he had fished aboard another person's boat until the recent purchase of his own boat. Mr. Rowell replied affirmatively. Mr. Simpson asked if the boat was new to the fishery. Mr. Rowell responded that the boat had been purchased as used from a person who had recently acquired a new boat. Mr. King commented that he understood Mr. Rowell's position in trying to protect his way of life, but he maintained that the model contained erroneous information.

Maurice Fitzsimons, an owner/operator charterboat fisherman from Daphne, Alabama, who fished out of Orange Beach, Alabama, represented a fleet of 22 boats. He stated that one charterboat fishing trip had generated $6,000 for the local economy. The persons participating were attracted to the area because of the red snapper. He supported Shrimp Amendment 9. Mr. Williams asked what the exvessel value of red snapper was to his business. Mr. Fitzsimons estimated that a $1,000 Saturday trip for 10 people catching 50 snapper equaled $20. Mr. King asked if his parties experienced any difficulty in achieving their red snapper bag limit. Mr. Fitzsimons replied this was not usually a problem. Mr. King inquired what sizes of red snapper were generally caught. Mr. Fitzsimons responded that red snapper fishing had never been better and that there were many juvenile fish as well. Mr. Horn inquired what would be the average number of times the charterboat vessels achieved their bag limit. Mr. Fitzsimons replied that it would be difficult to answer this question for other vessels; he noted that the length of the trips by the individual boats would probably impact how many fish were caught. Mr. Woods asked what was the condition of undersize fish that were returned to the water. Mr. Fitzsimons replied that he believed that the mortality rate was under 5 percent for these fish, though in deeper waters the survival rate was lower. Mr. Simpson asked in what depth of water Mr. Fitzsimons fished. Mr. Fitzsimons responded that he generally fished in waters from 75 to 125 feet.

Chris Nelson, Bon Secour Fisheries, Bon Secour, Alabama, noted he had provided written comments on Shrimp Amendment 9 and comments at the public hearing held in Mobile, Alabama. He felt the majority of the shrimp industry did not favor the status quo. Nevertheless, he did not mean to imply that they felt Amendment 9 provided acceptable answers to the bycatch problem. He acknowledged that this issue was complex. He expressed the belief that interpreting computer models and dictating policy based upon them was a recipe for success as far as convincing the public that these results were legitimate and correct.
People were no longer willing to place their trust in what had been told them by managers, particularly when data had been called into question, even by the United States Congress. He enjoined the Council members to try to understand the frustration of the shrimp fishermen in trying to deal with one more piece of gear.

Mr. King asked Mr. Nelson to explain the background of a videotaped interview that he had received from Mr. Nelson. Mr. Nelson advised that his company had worked cooperatively with the Gulf and South Atlantic Fishery Development Foundation (G&SAFDF) in the characterization of the bycatch and testing of experimental BRDs. Mr. Charles King had taken observers aboard his boat over the past 2-1/2 years testing various types of BRDs for proof of concept and design. The interview consisted of Mr. King’s comments on the BRDs tested. When Mr. Charles King was asked if a bycatch excluder had been developed that he felt was acceptable. Mr. Charles King's response was that the expanded mesh excluder was the best and that he had used this BRD extensively; however, it still needed a good deal of modification since, under certain circumstances, a lot of shrimp were lost. One of Mr. Charles King's comments was that, in certain parts of the Gulf a great deal of skates were caught, and these could create real problems. Overall, Mr. Charles King was very supportive of the efforts of G&SAFDF and Texas A&M.

Mr. Minton asked if he, or Mr. Charles King, believed the BRDs could be improved. Mr. Nelson replied that Mr. Charles King felt, and hoped, that both the expanded mesh and the fisheye BRDs could be improved. Mr. Aparicio noted that, during the interview, Mr. Charles King had mentioned that in using a hard TED he had caught two turtles, but in using the soft TED he had not caught any turtles. Mr. Aparicio asked if both trips had encompassed about the same length of time. Mr. Nelson replied that he was not aware of how long either of the trips had been, but they had been taken on consecutive days in the same area and with an observer on board. Mr. Charles King had stated a preference for the Andrews soft TED, and for using this device in lieu of a BRD. He felt that using one device, as opposed to two devices, would be advantageous in retarding shrimp loss. Mr. Aparicio asked if Mr. Charles King had mentioned which TED most successfully excluded bycatch. Mr. Nelson replied that Mr. Charles King believed the Andrews TED (both soft and hard) produced the most significant reduction in bycatch; his personal preference was the Andrews soft TED. Mr. Basco inquired if Mr. Nelson felt that an improved BRD would eventually be developed. Mr. Nelson replied that he felt this to be possible, noting that the fisheye BRD had been in use by fishermen for many years since they did not want the bycatch in their nets either. Mr. Basco remarked that this was his understanding also. He noted that Shrimp Amendment 9 had a provision for the adoption of newly developed NMFS-certified gear. Mr. Nelson commented that this was a good feature of the amendment; however, development was difficult and expensive. Mr. Horn asked how extensively the fisheye BRD had been utilized by shrimp fishermen. Mr. Nelson responded that, in his conversations with boat captains, it appeared that, under certain circumstances, the fisheye BRD had been used by most vessels. These conditions included when fishing in an area that contained large numbers of fish. The quad-rig trawl, with its sled, had excluded a great deal of bycatch, because of the way it fished. The ability to use plotters allowed shrimp fishermen to avoid areas heavily populated with other species.

Russell Smith, a charterboat owner/operator from Orange Beach, Alabama supported Shrimp Amendment 9. He stated that he had lost a few customers when the red snapper bag limit was reduced to 7 fish and a few more when the bag limit was reduced to 5 fish. He felt the stock was improving, though he believed bycatch was a problem.

Malcolm Miller, an owner/operator of a charterboat based in Orange Beach, Alabama, supported Shrimp Amendment 9. The NMFS model seemed to be working for the recreational fishery and he felt the charterboat industry would not be able to sustain a further reduction in red snapper bag limits. Mr. Woods asked the survival rate of the fish on his boat that were caught and released. Mr. Miller replied that it
depended on how the fish were hooked. When a bleeding fish was returned to the water it was eaten by triggerfish even though they might swim down. If their bladder was punctured and they were returned to the water they had a good chance to survive. Mr. Woods asked for an estimated mortality rate. Mr. Miller replied that it was difficult to make a determination; about 90 percent swam down but might be attacked by other fish on the bottom.

Debra Evans, Gulf Shores, Alabama, Administrator of the OBFA, supported Shrimp Amendment 9 and all efforts by the Council to reduce shrimp trawl bycatch and enhance the red snapper fishery and management of the natural resources. She commented that, if future information proved these management measures to be incorrect, adjustments should be made at that time.

William Perret, Mississippi Department of Marine Resources, Biloxi, Mississippi, noted that the issue under discussion had first been addressed by the Council in 1989-1990 when they passed a motion to require a 50 percent reduction in red snapper bycatch, based on an average through 1984-1989, and prior to implementation of TEDs. Mr. Perret questioned what was the goal for Shrimp Amendment 9. He quoted from the minutes of the Shrimp Management Committee meeting held in September in New Orleans, Louisiana. "Dr. Leard believed the Council's goal was to reduce mortality of age 0 and age 1 fish." (Later in the paragraph) "Mr. Swingle recalled the goal was to restore the red snapper stock." (Next paragraph) "Dr. Kemmerer responded the goal always was the reduction of bycatch mortality by 50 percent and he did not understand why that goal was being limited only to juvenile fish." Mr. Perret commented that these statements had been made two months ago and no one seemed to agree on the goal. (Last sentence) "Dr. Kemmerer suggested his staff and Dr. Leard work together to revise the language of the goal." He stressed that Council members needed to make a decision on what was the goal of Shrimp Amendment 9. He emphasized that, while the Council utilized the best scientific data, there was reason to question this data. In 1986, he had been asked to speak about the United States shrimp production at a world shrimp conference. In preparation for this presentation, Mr. Perret had requested landings information from NMFS' New Orleans office, Galveston office, the Southeast Science Center, and the Washington, DC Headquarters office. He stated that the statistical data he received from each of the various NMFS' offices was contradictory. Attempts to acquire efforts data met with a similar result. Mr. Perret noted that a well-respected statistician, who had performed work for the Council, had stated in a letter to the Louisiana Department of Wildlife and Fisheries that he had seen better effort data prepared by third-world countries. He stressed he had no objection to the NMFS' model, but seriously questioned the data being inputted into the model. He commented that hit-or-miss sampling efforts and storms impacted data-gathering results. He felt that the fisheries were being forced into opposing each other and emphasized the necessity of maintaining a balance in the ecosystem. He noted that the Magnuson-Stevens Act mandated a NMFS report to be peer-reviewed, and he counseled delaying action on Shrimp Amendment 9 until this had been accomplished.

Mr. Osburn inquired if Mr. Perret was inferring that implementing a management measure that would reduce the incidental take of literally billions of organisms, primarily fish, was not assisting ecosystem management. Mr. Perret responded that he felt if habitat was properly managed the fishery would benefit; however, he did not mean to imply that bycatch should not be reduced. He maintained that enforcement of the provisions of Shrimp Amendment 9 would be difficult to attain.

Donald Flournoy, board member of the OBFA, Orange Beach, Alabama, stated that techniques had been developed to prevent high mortality of fish being returned to the water. Most fish could be returned safely if a hook had not become imbedded. About 1 in 20 released fish would swim down, though it was difficult to determine whether a predator intercepted it once it was out of sight. He stated that he had been a
charterboat fishermen operating out of Destin prior to the imposition of limits and had witnessed the decline of the industry. Since the setting of limits had occurred, the fish had been rebounding. A technique was used by charterboat fishermen in his area to avoid catching the smaller fish.

Kimberly Davis represented the Center for Marine Conservation, St. Petersburg, Florida. She stated that her organization had previously submitted extensive comments on Shrimp Amendment 9 [Tab D, No. 7(f)]. She quoted from a Council report stating that 20 million juvenile red snapper, 3.2 million Spanish mackerel, 1.3 million king mackerel and 5.6 billion croaker died in shrimp nets each year. The organization supported Shrimp Amendment 9.

Joseph Nash, Orange Beach Fishermen's Association, Orange Beach, Alabama, was an owner/operator of a charterboat. He spoke in support of Shrimp Amendment 9 and careful management of the fishery. He noted that there had been some economic impact caused by customer objections to the smaller bag limit.

Mr. Woods inquired how many trips per year Mr. Nash made with his charterboat. Mr. Nash replied he made about 180 trips per year. Mr. Woods asked Mr. Nash for an estimate of the percentage of undersize fish that were released on an average fishing trip. Mr. Nash replied that this was determined by how well deckhands were trained; however, most fish swam down. He avoided areas where most of the fish appeared to be juveniles. Mr. Woods asked if Mr. Nash found it difficult to achieve a quota on the charterboat trips. Mr. Nash replied that this was a situation that varied, depending on the trip length, type, and species targeted by customers. At one time, more triggerfish and mingo were caught than snappers; now it was easier to catch snapper. The experienced fishermen tended to catch more fish than novice fishermen. Mr. Simpson asked Mr. Nash how long he had been operating his charterboat. Mr. Nash replied he had been charterboat fishing for about eight years. Mr. Simpson inquired if Mr. Nash's boat was new. Mr. Nash responded that he recently purchased another boat, not new to the fishery. The previous owner was having a new boat built. Mr. Aparicio asked the average number of customers Mr. Nash took fishing per trip. Mr. Nash replied a typical charterboat trip averaged between 8 to 12 customers. Mr. Aparicio inquired how many of the approximate 180 fishing trips Mr. Nash took each year specifically targeted snapper. Mr. Nash estimated that about 50 percent of his charterboat customers targeted snapper.

Bob Zales, II, a charterboat fisherman from Panama City, Florida, and a member of the Ad Hoc Red Snapper AP, questioned the validity of the Marine Recreational Fishery Statistical Survey (MRFSS) data. He supported Shrimp Amendment 9, stating that the snapper fishery was dependent upon the 50 percent reduction in bycatch. He felt that the models developed and used by NMFS were good, but believed information input into the models was flawed. He commented that both the human population and the charterboat industry had increased dramatically since the 1970s. This was, in large part, due to the promotion of the industry by the state of Alabama and the creation of vast numbers of artificial reefs along their coastline. He specifically questioned what he perceived as inflated snapper recreational harvest levels for 1979 (Figure 3 of Shrimp Amendment 9). He pointed out that, at that time, the numbers of boats were far fewer than at the present time. He felt the question as to whether charterboat fishermen would prefer a reduced bag limit or a seasonal closure was unfair. The Magnuson-Stevens Act specifically stated that when a harvest level was achieved the fishery would be closed. When persons stated they would prefer a seasonal closure to a reduced bag limit he suspected it was because they believed the closure would occur during their off season. The only way a closure could be effective was if it occurred during prime fishing conditions. He noted that persons living in Orange Beach and in most other areas of the Gulf had not experienced a closure; however, Florida had. Business had expanded in Orange Beach in 1986 due to the king mackerel closure in Florida state and federal waters which drew fishermen northward into other
fisheries. He felt that both commercial and recreational fishermen should exhort NMFS to obtain better, more reliable data on the red snapper fishery.

Mr. Horn asked Mr. Zales if he believed mandatory logbooks on all for-hire vessels would be beneficial. Mr. Zales felt that a logbook requirement was very necessary in order to achieve reliable data. He noted that a request by the Council to NMFS to implement such a system was passed on by Dr. Kemmerer to the Miami Laboratory. Mr. Zales felt that this effectively extinguished any hopes that a logbook system would be activated since the Miami Laboratory was already overburdened with a backlog of assignments. He believed permit renewal should be contingent upon the submission of a logbook. Mr. King asked if, during a closure, Mr. Zales had taken fishing parties on a tag and release trip. Mr. Zales responded negatively. He remarked that customers might not catch any red snapper on a trip, but if they knew that even if they did catch a red snapper they could not keep it, they tended not to go fishing. Mr. King stated that logbooks had been discussed at the Socioeconomic Recreational Demand Fisheries Workshop that he had attended during the previous week. He noted that it was stated at this workshop that NOAA was being required to considerably reduce its workforce. Information received at this gathering indicated that the 1994 survey data had not yet been completed and released and probably would not be available until 1999. Mr. King commented that it would soon be 1997. Mr. Zales commented that this survey was being conducted from the Panama City Laboratory and that understaffing and lack of funding was creating serious problems for these types of projects. He did not feel, however, that the survey effort underway would be successful. He felt that the states did the best surveys, noting that Alabama, with its smaller coastline, could accomplish this task more easily than, for instance, Florida.

Mr. Simpson asked for Mr. Zales' opinion on limited entry, as separate from an ITQ system. Mr Zales replied that, in his area, they had achieved limited entry through the lack of dock space. He did not anticipate that the state of Florida would be building any new docks, due to their environmental concerns. He pointed out that persons new to the charterboat industry fished less than those well established fishermen, at least until they had built up a clientele. Mr. Williams commented that he had found that charterboat operators favored keeping logbooks since this practice potentially led to better data. Mr. Zales felt that this attitude was typical among charterboat fishermen and that they would be interested and willing to help devise a logbook format.

Neil Trimble, a charterboat fisherman from Orange Beach, Alabama supported Shrimp Amendment 9. He had previously worked on a shrimp boat and felt that he could understand both sides of the issue. He stressed that his shrimp fishing experience in 1981-1983 was that a huge number of bycatch fish had died while being separated (in a salt box) from the targeted shrimp. He felt that an excluder device was necessary in order to save the juvenile fish. He emphasized that the charterboat industry could not survive if the bag limit was further reduced. He commented that he had tagged 200 snapper over one summer. Mr. Aparicio asked where Mr. Trimble had been shrimping during 1981-1983. Mr. Trimble replied that he had been fishing in Mississippi Sound and off the coast of Louisiana. He pointed out that species other than red snapper, such as croaker and mackerel, would benefit from the excluder device. Mr. Aparicio remarked that Texas A&M had recently released a study that explained what had occurred with croakers. Mr. Trimble related that he used to catch croakers for bait during the 1960s, but they seem to have disappeared. Mr. Aparicio asked Mr. Trimble how numerous red snapper appeared to be. Mr. Trimble responded that recent storms had destroyed reefs that he had relied upon, but prior to that occurrence, he had been able to successfully target red snapper. Presently, if he travelled further offshore, he might locate red snapper. Mr. Aparicio asked if Mr. Trimble was aware that an Andrews 5-inch TED presently in use excluded 77 percent of the class 0 and the age 1 red snapper, noting that this was a TED that NMFS wanted to discontinue.
Al Armit, Daphne, Alabama, a member of the Shrimp AP, represented Emerald Coast Seafood. He maintained that the Council did not seriously consider the testimony from members of the shrimp industry. He cited the closure of the Tortugas area to shrimping that had resulted in extreme economic hardship in the Key West area. He commented that the recreational fishery consistently exceeded their red snapper quota. He noted that members attending the recent scientific and statistical committee (SSC) meeting, though without a quorum present, concluded that sufficient evidence did not exist to support Shrimp Amendment 9. It was his understanding that the Magnuson-Stevens Act prohibited implementing regulations that were not based on sound scientific data. He recommended Alternative A.1 (no action - status quo). He pointed out that red snapper had been considered recovered to the extent that the Council had recently increased the quota.

Michael Salley, charterboat fisherman and member of the Orange Beach Fishing Association from Pensacola, Florida, had been in the industry for 15 years and supported Shrimp Amendment 9.

Albert King, Sr., a Gulf Council member since 1991, from Gulf Shores, Alabama, stated he had made his first trip on a shrimp boat at the age of 7, out of Cameron, Louisiana. By the time he was 21 years old he owned and operated his own shrimp boat and fished throughout the Gulf. He contended that the shrimp trawl bycatch was not the cause of a decrease in landings of red snapper. He maintained that flawed scientific data had received such widespread attention that it had been accepted as fact. Mr. Basco asked if Mr. King believed that shrimp bycatch was wasteful. Mr. King replied negatively, stating that marine animals consumed the discarded bycatch, as they would do in natural circumstances and was a form of recycling. He stressed that if an animal did not have to seek out his own food he attained a higher growth rate. Mr. Basco commented that he had fished since he was in his teens and had observed bycatch floating off that seemed to exceed the amount eaten by fish travelling in the wake of the boat. Mr. King contended that crustaceans on the bottom ate bycatch that reached the bottom; also, seabirds consumed these fish. Mr. Basco asked how seabirds had survived before the advent of shrimp boats. Mr. King replied that he could only address what occurred when shrimp fleets left an area; these birds had nearly starved, and in Key West fed from the town landfill. Dr. Claverie, noted that Mr. King had stated that he did not disagree with NMFS' use of a model, but felt data being inputted to the model was flawed. He asked whether Mr. King agreed with the opinions of some persons who believed the model should be examined further to determine whether it was properly structured. Mr. King stressed that the data-gathering process needed refining in order to produce more accurate information.

• Committee Reports

Budget Committee

Mr. Woods read the committee report. The committee reviewed the activities and administrative costs in the calendar year (CY) 1997 budget (Tab L, No. 3). Mr. Swingle indicated that NMFS had instructed the Council to limit the budget to $1.3 million. If other Councils released some of the funding available for CY 1997, the Council could amend the budget to increase it by that amount. On behalf of the committee, Mr. Woods moved that the Council accept the $1.3 million budget. Mr. Swingle advised that instructions from NMFS were to use FY 1996 as a base and that the Gulf Council had experienced a shortfall of $54.5 million. Also, if any of the Councils were not going to utilize their allocation under their ratio for FY 1996 they should advise NMFS that these funds would be available. Thus far, only the Caribbean Council had volunteered to contribute $10 thousand of their FY 1996 funding. Mr. King commented that the budget should probably be accepted, but questioned whether it would meet the Council's needs. Mr. Swingle noted that NMFS had been notified that the $1.3 million allocation would not be sufficient to maintain the
Council’s operations. Dr. Kemmerer advised that, at the request of the Budget Committee, he had made an attempt to contact John Oliver in order to derive more background on the allocation of the FY 1997 budget. He had left messages for Mr. Oliver and hoped to have an answer by the following day. He suggested that a letter be drafted from the Council Chairman and directed to Mr. Schmitten stating the impact of a reduced budget as related to the new requirements of the Magnuson-Stevens Act. **Motion carried.**

Mr. King moved that the Council Chairman and Executive Director draft a letter to Mr. Rolland Schmitten stating concerns regarding the 1997 budget shortfalls, and stating that in order to conform to the Magnuson-Stevens Act requirements, the 1997 budget should be increased. **Motion carried.**

Mr. Woods continued the committee report. The committee then reviewed proposed adjustments to the CY 1997 budget under TAB L, No. 4. This proposes an additional $54.8 thousand be added to the budget for other needed activities. These activities are principally related to the tasks of identifying and describing essential habitat, as mandated by the Magnuson Act amendments. The committee considered the proposed activities and costs as realistic needs. They, however, pointed out the amendments would create a need for the Council’s Administrative Policy Committee to address several issues, such as reclusal policy and revision of Council SOPPs. They also anticipated other unfunded costs would occur as a result of the Magnuson Act amendment provisions applying to the Gulf reef fishery.

**Stone Crab Management Report**

Mr. Lessard gave the committee report. The committee reviewed the summary of the Stone Crab Advisory Panel under Tab H, No. 3, which included recommendations to the Council. The AP principally discussed the need for a limited access system for the fishery and alternatives for structuring such a system. The AP concluded that it lacked sufficient data on the fishery to develop recommendations on the structure of such a system and requested the Florida Department of Environmental Protection (FDEP) provide additional information to the Monroe County Commercial Fishermen, Inc. (MCCF) and Organized Fishermen of Florida (OFF) so that recommendations could be developed prior to the December meeting of the Florida Marine Fisheries Commission (FMFC). That information is summarized in Tab H, No. 3, Attachment 2. On behalf of the committee, Mr. Lessard moved that the Council convene the AP to develop recommendations to the Council, after those data become available.

Mr. King asked if there had been any discussion as to when the information would be available. Mr. Swingle advised that Mr. Tom Matthews of the FDEP staff at the Marathon, Florida Laboratory had attended the AP meeting. He had summarized the data needs of both industry associations and had forwarded that request to Mr. Joseph O'Hop at the FDEP in St. Petersburg, who was responsible for compiling this data. Mr. O'Hop's initial response was that he was uncertain whether his workload would allow him to assemble this data prior to the December meeting of the FMFC. He felt it might be more effective if the Council were to send a letter requesting the information, which the Council subsequently did (Tab H, No. 3, Attachment 2). Mr. O'Hop had indicated that part of the problem with providing this data was that a conflict existed with other information that had also been requested by the FMFC for their December meeting. Mr. Swingle was uncertain about the current status of the Council's request for the data set. Mr. Lessard commented that it was his impression that the FMFC had also requested this information for their upcoming meeting. Mr. Swingle replied that the FMFC had not requested the information. Mr. Lessard remarked that, in his talks with industry representatives, he felt this information was necessary in order to make recommendations to the Council. Mr. King asked whether it would be useful for the Stone Crab AP to also present a request for the information.
Mr. Williams felt the Stone Crab AP should be convened so that they could make suggestions as to whether they felt limited entry or other measures should be implemented for their fishery. He felt regulations would be ineffective if they were imposed in a hostile, badgering manner. Mr. Williams felt that a request for this type of information could usually be responded to with four to six weeks. He doubted whether there would be enough time to convene the Stone Crab AP prior to the FMFC meeting in December. Mr. Swingle commented that the Stone Crab AP had requested to meet again and make their recommendations to the Council. Dr. Kemmerer remarked that Florida would probably take the lead in developing a limited entry program for this fishery, and questioned why the stone crab industry had not initially approached the FMFC. Mr. Williams responded that the suggestion for management measures for the fishery had originated with the FMFC staff working with industry representatives. He had discussed this matter with Mr. Lessard and Mr. Sanchez during the FMFC's October meeting. This had actually been poorly timed since the stone crab trap season was ongoing, creating a conflict. The invitation to attend and participate in the December meeting in Fort Lauderdale had been extended to the Florida stone crab industry. At that meeting the FMFC would develop legislative programs to be pursued by their staff. Mr. Swingle commented that Mr. Williams had suggested at the September Council meeting that a letter be written to the FMFC regarding this issue. The Council had felt it would be appropriate to first convene the Stone Crab AP and ask for their recommendations. The consensus of that subsequent panel meeting was that a form of limited access was necessary. However, the AP was reluctant to make recommendations until they received the data that had been requested from the FDEP. Dr. Kemmerer inquired whether it would be appropriate for the Council to write a letter to the FMFC suggesting a cooperative effort of the two entities on stone crab management measures. Mr. Williams felt this would be a suitable gesture, but reminded Council that the FMFC could take no action that was not approved by the Florida Legislature. Mr. Lessard advised that the document produced in the Legislature for spiny lobster differed from the recommendations of the FMFC and industry. Industry was hoping that, working with the Council in conjunction with the FMFC, a bill containing changes from the original document would not be passed in that altered form by the Legislature. Dr. Kemmerer emphasized that both the FMFC and the Council must work together on management measures or they would not be successful, due to the nature of this fishery. He felt that if the Council wished the FMFC to take the lead on this issue, the letter should be clear on this point. Mr. Lessard remarked that he felt the AP should be convened, regardless of whether the initiative on management measures was taken by the Council or the FMFC. Motion carried that the Council convene the AP to develop recommendations to the Council, after those data become available.

Dr. Kemmerer moved that the Council write a letter to the FMFC indicating a desire to work with the Commission with regard to developing a limited entry program for the stone crab fishery. Motion carried, with Mr. Lessard abstaining for the reason he had a financial interest in the outcome of this issue.

Mr. Lessard continued the committee report. It was noted in the AP discussion that the only reliable estimate of the total number of traps being fished was that of NMFS. NMFS collects these estimates by interviewing all the dealers purchasing stone crabs. On behalf of the committee, Mr. Lessard moved that the Council encourage NMFS to continue collecting that information on the number of traps through dealer interviews. Motion carried.

Reef Fish Management Report

Mr. Horn read the committee report.

SAP, SEP, SSC and AP Review Schedule (Tab B, No. 3)
Mr. Swingle reviewed the schedule for upcoming meetings. He asked SAP Chairman James Cowan if it was possible that an allowable biological catch (ABC) might be determined for greater amberjack. Dr. Cowan responded that he thought an ABC could be specified, but there were some errors in the original stock assessment and he has not yet seen the revisions. In response to a question from Dr. Claverie about trends, Dr. Cowan replied that there seemed to be regional variability, but some trends suggested that some management actions might be needed.

Chair and Members for Ad Hoc Red Snapper AP (Tab B, No. 4)
Mr. Swingle stated that, due to some individuals on the AP list declining to serve, the list was down to 10 persons, and up to 5 persons could be added to the AP. Mr. Wendall Sauls of Florida and Mr. Wayne Werner of Louisiana indicated an interest in serving on the AP. In addition, Vernon Minton nominated Frank Brose, Jr. of Alabama. The committee felt that any further discussion of personnel for the AP should be held in closed session.

Dr. Shipp advised that he had discussed this matter with Mr. Swingle and they had decided to convene a closed session later in the meeting. Mr. Osburn requested that the closed session take place as the first order of business on the following day, in order to allow him time to verify willingness to serve by a candidate he planned to nominate. Hearing no objections, Mr. Osburn's request was granted.

Annual Schedule for TACs (Tab B, No. 5)
Mr. Swingle reviewed his memo outlining the rationale for moving the date for Council action on reef fish back to September and possible consequences of such an action. Dr. Kemmerer clarified that the Regional Office does not have a problem with action being taken in November, but it can create confusion with the public by implementing rule changes after the season opens. Mr. Williams suggested changing the start of the red snapper season to March 1. Dr. Shipp noted that this would allow fishing during part of the Lenten season, but to move it any further ahead might create conflicts between the commercial and recreational fisheries. A motion was made by Mr. Minton to set the TACs in September, conditioned upon the stock assessments being completed and reviewed by the appropriate committees. Otherwise, TACs would be set in November. He noted that availability of the Summer SEAMAP data was an important consideration. However, Mr. Horn felt that there were additional complexities in the fishery that did not exist five years ago, and this move would not give the groups enough time to review the materials. A substitute motion to change the starting date of the red snapper fishing year to March 1 was ruled out of order, and the original motion was then withdrawn. Dr. Kemmerer stated that NMFS has not had a chance to work out a schedule for producing stock assessments, and suggested tabling the issue. The committee voted to table further discussion of the date for setting reef fish TACs until Dr. Kemmerer could work out the logistics for scheduling.

Mr. Horn stated that it was his understanding that reef fish TACs were scheduled for November since that was the date for receiving the assessments from NMFS. Previously, TACs had been set at the September Council meeting. It was necessary for NMFS to complete these assessments by August 1 in order to allow time for the Council to act upon them in September. Dr. Kemmerer commented that he would like to meet with the Southeast Fisheries Science Center and work out a schedule and also to work with recreational fisheries representatives on when data would be received.

Other Business - Stock Assessments for 1997
Mr. Swingle noted that NMFS would be able to complete two reef fish stock assessments in 1997. Red snapper would likely be one of the assessments, and staff had discussed red grouper or gag as the other. Roy Williams felt that gag was the species with the most difficulties. He also asked if routine fishery data
such as landings trends and size data, but not a full stock assessment, could be collected for gray triggerfish. Dr. Kemmerer indicated that it could be done since the data collection is done by different people than the stock assessments. On behalf of the committee Mr. Horn moved to recommend that a full stock assessment for gag grouper be conducted in 1997, and that biological and fishery data be collected for gray triggerfish. Mr. Horn added that this motion was made with the assumption that an assessment of red snapper would also be done.

Dr. Coleman requested that the gag grouper assessment include the effects of the declining male population on the declining stocks, particularly focusing on how this might affect the SPR calculations. If at all practicable, also determine the effective population size of gag grouper in the Gulf of Mexico, rather than just on the spawning stock. Mr. Swingle commented that in the last gag grouper assessment they had noted the new data on the change in the male/female ratio in the population, but did not, in that instance, set an allowable biological catch (ABC) range. They did indicate the SPR levels, which were fairly high (about 30 percent). Dr. Coleman pointed out that, since SPR was based on the fecundity of the females, and the proportion of males in the population had declined from 20 percent of the population to 1 percent, there would be an effect on the spawning population. It had been observed already that many of the females remain inshore and never go offshore to the reefs to spawn. This may be in response to the absence of males. Mr. Swingle suggested adding Dr. Coleman's request to the letter requesting the stock assessments. Motion carried unanimously adding Dr. Coleman's request to the letter requesting the stock assessments. Motion carried unanimously to recommend that a full stock assessment for gag grouper be conducted in 1997, and that biological and fishery data be collected for gray triggerfish.

Mr. Horn continued the committee report.

Other Business - Resubmission of Rejected Amendment 12 Section (handout)
Florida has proposed an aggregate 5-fish bag limit for banded rudderfish and lesser amberjack, and a size slot limit of 14 to 20 inches. They feel that this will allow fishermen to have some access to the banded rudderfish and lesser amberjack stocks, while providing some protection to juvenile greater amberjack. Mr. Swingle suggested that the range of bag limit alternatives for these species in Amendment 12 ranged from 1 fish in the Proposed Alternative to no limit under status quo. Therefore, a 5-fish bag limit was within the range of alternatives and could be implemented through resubmission. However, he felt that a slot limit might require a new amendment since Amendment 12 contained no maximum size limit proposals. NOAA General Counsel concurred, and also noted that the comments to NMFS by the public on this issue had not been reviewed by the Council. Mr. Williams felt that the slot limit could be implemented through resubmission because it was a less restrictive size limit than the 28-inch minimum size limit originally proposed by the Council, and he asked for a second legal opinion. He also asked for additional public hearings, particularly in southwest Florida, before any new amberjack rules are proposed. Dr. Kemmerer stated that, while new rules have been approved for the recreational sector, no additional restrictions have been placed on the commercial sector, and although that sector's landings have been stable, the Council should be doing something to keep it from growing. Mr. Swingle noted that if a greater amberjack TAC was adopted, the commercial sector would be allocated 14 percent based on the historical guidelines, which would reduce their catch. Dr. Kemmerer noted that in recent years the commercial sector accounted for about 50 percent of the catch because of reductions in recreational harvest. Mr. Horn suggested that staff work with Mr. Williams to develop a public hearing schedule for amberjack alternatives.

Mr. Horn asked if the Council would be getting a second legal opinion on this issue at this time. Mr. Feder responded that he had discussed this matter with Mr. McLemore and he had agreed that the slot limits, per se, had not gone through the necessary public hearing process. However, this did not mean that amendment could not be resubmitted. Mr. Swingle asked if Mr. Feder was stating that if the issue was taken to public
hearings the slot limit could be included in the resubmission document. Mr. Feder replied that there were two separate issues, but in either case the issues needed to go through the public hearing process. Dr. Kemmerer expressed concern that the Council might have to consider some limits on total harvest by both commercial and recreational fisheries. He felt that no action should be taken until the assessment was completed and had been reviewed. Mr. Swingle noted that if an ABC range was given for greater amberjack the Council would have the authority under the framework procedure to set recreational bag and size limits, seasons, and commercial quotas. If there was no ABC range from which to set TAC, then any other changes for the greater amberjack would have to go forward through a new plan amendment. The other two species, banded rudderfish and lesser amberjack, would not be affected by that stock assessment. Dr. Kemmerer stated that his understanding, based on the Magnuson-Stevens Act ruling, was that the same time-frame for amendments and resubmission documents was indicated. He advocated having the assessment reviewed by the stock assessment panel (SAP) and SSC so the Council could consider a broader range of issues at the same time. Mr. Swingle commented that this issue could become part of Reef Fish Amendment 15. He noted that Dr. Kemmerer had indicated that some sort of limit should be placed on the commercial sector, in which case options would need to be developed for the Council's consideration. Dr. Kemmerer replied that he believed this should be considered. Mr. Williams commented that, after the SAP reviewed the amberjack assessment, and an ABC range was then set, a regulatory amendment would probably follow. In this case banded rudderfish and lesser amberjack could be dealt with in a parallel fashion as a resubmission of Amendment 12. Mr. Swingle replied that a resubmission for Amendment 12 could be done at any time. Formerly, a faster implementation schedule had existed; instead of 140 days, implementation had only taken 90 days. The quickest method would be not to elect to go through public hearings, but simply submit a banded rudderfish bag limit and slot limit. If it was decided to go through a public hearing process then the document should probably be submitted as Amendment 16.

Mr. Horn asked Dr. Kemmerer if the landings for the commercial sector had changed or had remained stable. Dr. Kemmerer responded that the commercial landings were stable at 50 percent Mr. Horn asked for clarification of Dr. Kemmerer's comments, which he had interpreted to mean that he believed the commercial industry should be receiving a smaller percentage of the catch. Dr. Kemmerer replied that his concern was that the recreational fishery should be reduced, but the recreational fishery felt they had already been reduced from 3 fish to 1 fish and all the rest was being caught by the commercial fishery. Dr. Kemmerer asked how this could be addressed and noted that the commercial fishery was relatively new. Mr. Williams remarked that the amberjack fishery had grown appreciably when the red drum fishery was constrained during the mid to late 1980s, but had stabilized. Dr. Kemmerer interjected that the Gulf landings of amberjack had been decreasing recently. He felt there was no need to take immediate action, and counseled waiting for the results of the stock assessment. He moved to delay taking further action on smaller amberjack species until the January 1997 Council meeting when the Council will have a review of the greater amberjack stock assessment. Motion carried unanimously.

Mr. Horn continued the committee report.

Other Business - Convening Reef Fish AP
Mr. Swingle noted that only the Red Snapper AP was currently scheduled to review the stock assessments for red snapper, vermilion snapper and amberjack, but the Reef Fish AP may need to be convened if an amberjack ABC is specified. Mr. Williams noted that vermilion snapper were frequently caught in the Florida Panhandle, and felt that the Reef Fish AP needed to be convened. On behalf of the committee, Mr. Horn moved to recommend that the Reef Fish AP be convened to review the stock assessments, Reef Fish Stock Assessment Panel (RFSAP) and Socioeconomic Panel (SEP) reports.
Mr. Horn asked if this motion would force the Council to have to reconvene the AP again if another amendment was drafted concerning other reef fish species. Mr. Swingle replied that the Reef Fish AP would have to first be convened to review the stock assessments and SAP and SEP reports on setting TACs for at least vermilion and greater amberjack. Probably they would also have to be convened again to review other material at a later time if another amendment was to be created. Motion carried unanimously.

Mr. Horn continued the committee report.

Other Business - Closure of Recreational Red Snapper Fishery
Mr. Swingle noted that the Council would be taking action through a regulatory amendment in January, which would probably be implemented by July, to implement rules for a recreational red snapper closure as required by the Magnuson-Stevens Act reauthorization.

Mr. Horn speculated that this action was necessary in order to bring the Council into compliance with the reauthorization of the Magnuson-Stevens Act. Mr. Swingle commented that the resolution developed under the Reef Fish Fishery Management Plan (FMP) provisions of the amendment include the requirement to close the recreational fishery for red snapper when their allocation was reached. The language for this addition would be drafted by Mr. Atran in time for review at the January Council meeting. Mr. Horn requested an agenda item for the January Council meeting for limited access and/or seasonal closures for the recreational fishery. Mr. Swingle asked if Mr. Horn meant the discussion to cover limited access as it related to red snapper or the whole reef fish complex within the recreational sector. Mr. Horn replied that this issue should be discussed in depth. Mr. Swingle noted that the Northern Pacific Council was in the process of drafting a limited access system for the recreational for-hire sector. He did not know if development had reached a stage where it might be useful to study the structure of their document. Mr. Williams asked when Mr. Atran developed the options would Council be able to specify how a recreational estimate would be made. He pointed out that there was a great deal of variability in the MRFSS data and, in his opinion, contained statistical errors. He speculated whether a three-year running average would be an acceptable method of dealing with that fishery or whether there was a legal requirement to base decisions on the most recent MRFSS estimate. His preference was to utilize the three-year average. Dr. Kemmerer advised that he had spoken to the MRFSS staff early last week about the possibility of their making a presentation at the January Council meeting about some revisions they were proposing to the charterboat survey portion of the MRFSS. He felt this might be the appropriate time to discuss these issues with them. Mr. Swingle commented that discussion of closing a fishery implied that NMFS would take this action. Mr. Williams stated that single-year estimates of landings were an unreliable method of setting allocations. He cited an instance that occurred when one year the South Atlantic Spanish mackerel recreational fishery had unprecedentedly large catches and the allocation was split 50-50 between recreational and commercial sectors. The recreational sector never again caught their quota of this species. He favored a running average system for setting allocations. Dr. Kemmerer suggested discussions with the MRFSS staff in attempting to arrive at solutions.

Mr. Horn continued the committee report.

Other Business - Amendment 15 Schedule
Mr. Swingle noted that the schedule for development of Amendment 15 was as follows:

<table>
<thead>
<tr>
<th>Month</th>
<th>Event</th>
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<tbody>
<tr>
<td>December</td>
<td>AP/SSC review of options paper</td>
</tr>
<tr>
<td>January</td>
<td>Reef Fish Committee recommends Preferred Alternatives</td>
</tr>
<tr>
<td>March</td>
<td>Council reviews draft Amendment 15 and approves public hearings</td>
</tr>
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</table>
late April Public hearings
May Council final action

Other Business - Red Snapper Exvessel Prices
Mr. Basco asked what the exvessel price was for red snapper during the February-April season compared to the September-October season. Mr. Horn responded that in the first season the lowest prices were $1.50/lb, and in the second season they were as low as $1.75, but were usually closer to $2.00. Because of bad weather, red snapper were scarcer during the second season.

Dr. Kemmerer commented that he had received a lot of calls during the second red snapper season (September-October) and was told that prices were running consistently at $1.50 per pound and they were having trouble selling their fish. He added that most of the callers were from Louisiana and Texas. Mr. Horn remarked that prices last year were as low as $1.10 and $1.25 per pound.

• Habitat Protection Committee

On behalf of the committee, Dr. Fisher moved to support reauthorization of the Coastal Wetlands Planning, Protection and Restoration Act by writing to the task force responsible for implementing it with a view of maintaining or improving marine organism productivity and access. Motion carried.

On behalf of the committee, Dr. Fisher moved to query the Mississippi Governor regarding the status of the state's coastal wetlands protection policy. He advised there had been a great deal of concern expressed by the Mississippi/Louisiana AP members as to the governor's policies and intent. Mr. Woods felt it would be wrong to single out one of the Gulf states. He offered an amended motion to query the Gulf states' governors regarding the status of their coastal wetlands protection policies. Mr. Williams asked what issue had prompted this motion. Several voices answered "casinos." Mr. Frugé asked Mr. Woods if the state was currently in the process of developing a coastal wetland policy. Mr. Woods replied that Mississippi already had a coastal wetlands policy but was in the process of updating it. Mr. Frugé commented that the fact that the policy was undergoing revision might provide the justification for directing the letter solely to Mississippi. Mr. Woods remarked that he would be interested to learn the policies of all the Gulf states. Mr. Swingle felt the governor's offices would simply refer the letters to the Coastal Zone Management (CZM) agency within their state. Mr. Woods stated that a letter directed to the state of Mississippi would be forwarded to him. Mr. Osburn agreed that the letters should be directed to the appropriate state government agencies. A discussion followed about whether a motion was needed since this only involved information gathering. Dr. Fisher stressed that Mississippi panel members were concerned about this matter and had requested that the next habitat protection AP be convened in Mississippi. Mr. Woods offered the committee's third recommendation as a substitute motion to convene a future habitat advisory panel meeting in Mississippi and include in the agenda a review of all Gulf states coastal wetland protection policies. He felt this would be helpful in revising Mississippi's coastal wetlands policy. Dr. Shipp suggested that the "cleanest" way of handling the motions on the floor would be for Mr. Woods to withdraw his substitute motion, vote down the amended motion, and then reintroduce Mr. Woods substitute motion as a new motion. Mr. Woods subsequently withdrew his substitute motion. Amended motion failed. Dr. Fisher moved to convene a future habitat advisory panel meeting in Mississippi and include in the agenda a review of all Gulf states coastal wetland protection policies.

Mr. Horn spoke in support of inviting the chairmen of the other two habitat protection APs to attend the Mississippi/Louisiana Habitat Protection AP meeting and provide information about coastal wetlands policies in their states. Mr. Williams concurred. Mr. Osburn supported the motion, but commented that
there might be an individual on the AP who was more informed about the coastal wetlands policies of their state than was the chairman of his panel. In this case, it might be better is a designee were to attend in place of the chairman. **Motion carried.**

On behalf of the committee, Mr. Fisher **moved** to write a letter urging the U.S. Department of Commerce to fund a study to investigate potential effects of the Gulf of Mexico hypoxia on fishery resources. Mr. King asked Mr. Dalton if there were NMFS projects underway to study hypoxic conditions as related to fishery resources. Mr. Dalton replied that he had no knowledge of ongoing research of this nature by NMFS. Mr. Woods commented that there were expanding hypoxic zones in Mississippi waters that had created some concern. Dr. Fisher asked if these conditions were being studied by the state. Mr. Woods responded affirmatively. Mr. Frugé remarked that he believed he had heard that Louisiana State University (LSU) was in the process of undertaking a similar study. Mr. Swingle commented that, of the 1 or 2 million fish ponds or lakes that were managed for bass/bream combinations that were fertilized with 100 pounds of 8-8-2 per month for 8 months, each summer the oxygen leaves the ponds beyond a depth of 6 feet. This condition has continued for 40-50 years throughout the southeast. The populations of bass or bream survive unless very windy conditions caused an overturn (killing the fish). Mr. King remarked that Mr. Minton had informed him that the present meeting was being held in a hypoxic zone of Alabama. Mr. Frugé commented that this was an important fisheries issue that merited investigation. **Motion carried unanimously** to write a letter urging the U.S. Department of Commerce to fund a study to investigate potential effects of the Gulf of Mexico hypoxia on fishery resources.

Dr. Fisher noted that the next recommendation by the committee did not require a motion (distribute mariculture policy to appropriate entities.) The policy would be distributed to all concerned state and federal agencies. Dr. Fisher stated the Mr. Jim Burgess, Acting Director of Habitat Conservation (NMFS), had attended the Habitat Protection Committee meeting on the previous day and discussed the effects of the Magnuson-Stevens Act. There was a draft guideline document on implementation of the new requirements due to be completed late in December by NMFS. The committee had discussed forming an ad hoc committee prior to the January Council meeting to address implementation of these new guidelines. The panel's charge would be to develop a definitive assessment of the guidelines and suggested comments for the Council's response to NMFS. It would be composed of Doug Frugé, who would chair the meeting, habitat protection AP chairmen, Frank Fisher, Larry Simpson (or alternate) and two staff members, for a total of 8 participants. A response to the Secretary from this Council would be due in about six months. Mr. Burgess had provided a one-page document from the **Federal Register**.

Dr. Leard commented that the committee motion had been slightly altered to delete Council staff members from the proposed ad hoc panel since they were precluded from serving on Council panels.

On behalf of the committee, Dr. Fisher **moved** that prior to the January Council meeting, convene an ad hoc panel to review NMFS' draft habitat guidelines for implementing the new Magnuson Act requirements, and to develop a definitive assessment and suggested comments for Council's review. The ad hoc panel would be as follows: Doug Frugé, Chairman, the three chairmen of the Habitat Protection Advisory Panels, Frank Fisher, and Larry Simpson (or alternate).

Mr. Swingle interjected that he recalled there had been discussion regarding inclusion of the state representatives on the ad hoc panel and noted that only one of the chairmen is a state representative (Phil Bowman from Louisiana). The other was Bob Jones, who was an industry representative. Dr. Fisher replied that he, and probably the committee, would be amenable to including state representatives. It would certainly increase the size of the panel, and they had planned to contain membership. He remarked that this
would add two members. Mr. Simpson felt the additions might be beneficial in providing further input. Mr. Osburn concurred with this statement. Dr. Fisher advised that the guidelines were expected to be received about December 20 and would then be disseminated to the three habitat protection AP chairmen who would forward the documents to state organizations.

Dr. Claverie offered a substitute motion that prior to the January Council meeting, convene an ad hoc panel to review NMFS' draft habitat guidelines for implementing the new Magnuson Act requirements, and to develop a definitive assessment and suggested comments for Council's review. The ad hoc panel would be as follows: Larry Simpson, Chairman, the three chairmen of the Habitat Protection Advisory Panels, Frank Fisher, and Doug Frugé. His rationale was that, while Mr. Frugé presented a balanced outlook to issues, historically, his agency had not been oriented toward this particular issue. Mr. Simpson spoke in support of Mr. Frugé as chairman of the ad hoc panel. Mr. Frugé remarked that he was very concerned with marine fisheries issues and had their best interests at heart. Substitute motion failed for lack of a second.

Mr. Williams offered an amendment to the motion to add Dr. Coleman to the ad hoc panel.

Amended motion carried that prior to the January Council meeting, convene an ad hoc panel to review NMFS' draft habitat guidelines for implementing the new Magnuson Act requirements, and to develop a definitive assessment and suggested comments for Council’s review. The ad hoc panel would be as follows: Doug Frugé, Chairman, the three chairmen of the Habitat Protection Advisory Panels, Frank Fisher, Larry Simpson (or alternate), and Felicia Coleman.

Dr. Kemmerer recommended that Mr. Andreas Mager (NMFS Habitat Officer) be invited to attend the ad hoc panel meeting in an advisory capacity. Agreed without objection.

- **ICCAT Advisory Committee Report**

Mr. King stated that International Committee for the Conservation of Atlantic Tunas (ICCAT) had instituted a system of species working groups within their membership. The groups included bluefin tuna, swordfish, billfish, and bays (skipjack, bigeye, albacore, and yellowfin tuna). Rebecca Lent had covered the same material at the ICCAT meeting as she had discussed at a previous Council meeting. Mr. Swingle noted that Mr. King had served on the working group for bluefin tuna; he asked if Mr. Basco wished to serve on a different working group, how this could be arranged. Mr. King replied that he should contact Mr. John Graves, who was the advisory panel chairman and submit his request. Mr. King stated he had chosen to serve on the Bays Working Group because of the 10 million pounds of yellowfin tuna that was landed annually in the Gulf of Mexico. This exceeded the landings of red snapper in the Gulf.

Dr. Shipp stated that he had represented the Council at the ICCAT AP meeting in Silver Spring, Maryland. The purpose of the meeting was to formulate a policy with the three U.S. Commissioners who would be attending the ICCAT meeting in Madrid, Spain. A concern for which there was a consensus among all four groups was compliance among the signatory countries. The U.S. was particularly troubled about the non-compliance on quotas by these countries. In earlier years, there was an eastern Atlantic stock and a western Atlantic stock. At that time, there was no major concern on the part of the U.S. if compliance was not that good in the eastern sector of the Atlantic, but recent tagging data indicated there was a good deal of interchange between the two stocks. For this reason, there was potentially a serious impact on western stocks. A particular concern was bluefin tuna, where the stock was only 13 percent of what was needed to maintain maximum sustainable yield (MSY). Unfortunately, the first two days of the meeting was taken
up with rather trivial issues. The most crucial and contentious matter was not discussed until rather late in the meeting. This was the establishment of a quota for the western Atlantic for bluefin tuna. The scientists indicated that the quota would need to be lowered to attain the stock rebuilding schedule. User groups, of course, wanted a higher quota of the stock. The quota was 2,400 metric tons and the panel was equally divided on whether to lower or raise it. Since this was an advisory panel, the Commissioners were not bound by their decision. With non-compliance among the eastern Atlantic countries, this appeared to be a losing situation. The non-complying signatory countries included Spain and France in the eastern Atlantic/Mediterranean area. In the eastern Atlantic non-complying signatory countries included Panama, Belize, and Honduras. ICCAT worked with the U.S. State Department to try to threaten trade sanctions, but there seemed to be little optimism regarding rebuilding of these stocks. These meetings were not open to the public and anyone wishing to sit in on these proceedings was required to pay $2,000 for this privilege. The US. delegation was urging the removal of the fees, but some of the other cultures (notably oriental) opposed this measure.

Mr. Aparicio asked Dr. Shipp to clarify his statement regarding 13 percent and the bluefin tuna stock. Dr. Shipp responded that, of the total MSY percentage required to maintain bluefin tuna stocks, only 13 percent of that percentage was now available in the biomass. The billfish working group was dealing with a similar situation, since only 22 percent of the MSY percentage required to maintain their stocks presently existed. They were attempting to get the Japanese to take part in the tag and release program, but unsuccessfully thus far. Mr. King interjected that, for those not familiar with archival tags, they were actually miniature computers that were inserted in a species. These computers recorded the location of the fish and where it had been. When the fish was captured, a substantial reward was offered for the return of the fish and the archival tag. These tags provided valuable information about the species and their migration patterns. The implanted device also recorded temperatures and water depths.

- **Enforcement Reports**

LCDR Johnson stated that it had been a quiet season for enforcement. Altogether, the units issued a $2,000 summary settlement, one case for $242 pounds of red snapper without a permit on board. In two other cases, warnings were issued to exceeding trip limits by less than 5 percent. The red snapper fishery closed without incident on October 7. In the first half of October there were three TED violations cited off the coast of Louisiana, all for escape openings sewn shut.

Dr. Claverie asked if the "forgive and forget" policy had been implemented by the Coast Guard. LCDR Johnson replied that the Coast Guard had been directed by Washington Headquarters office not to activate this program until all the Coast Guard Districts had undergone training. This was recently accomplished and they were awaiting authorization to begin implementing the new penalty schedule.

- **Directors Reports**

**Louisiana**

Ms. Foote advised that the Commission had recently finalized the 10-flounder bag limit for recreational fishermen. In conjunction with the states of Mississippi and Alabama, red tide organisms were being collected and examined.
Mr. Horn asked the status of the mullet harvest. Ms. Foote replied it began well, with large fish bearing a lot of roe, but tapered off quickly. Fishermen were reporting a large number of "spent" fish; it was uncertain if these were actually "spent" or had not been carrying eggs at all.

**Texas**

Mr. Osburn reported that Texas had also experienced red tide, probably the worst incidence since 1986. They documented at least 12,000 bull red drum dead on the beach. There were also hundreds of thousands of bait fish killed by red tide. The areas most seriously affected were in the vicinity of Corpus Christi. Most of the coast was closed to oyster harvesting. The buy-back application period for the limited entry program for shrimp would continue in effect through the month of November and about 16 boats had been offered for purchase. The stocks of spotted seatrout had rebounded very well; however, fishermen had found that these fish were fond of live croaker and now croaker was in too great a demand.

**Florida**

Mr. Williams reported that at the last meeting of the FMFC the Gulf king mackerel two-fish bag limit, excluding captain and crew, was adopted. Four public hearings were held on amberjack, two on the Gulf coast and two on the Atlantic coast. The FMFC attended a final hearing on an amberjack rule and made a number of policy decisions and recommendations to staff. They delayed final action to allow time to consult with the two Councils on developing consistent regulations for amberjack. The FMFC voted to lower the recreational bag limit for greater amberjack to one fish and to prohibit the sale of any amberjack from March through May; also, to prohibit the sale of any amberjack less than 36 inches in length and require that all amberjack be landed whole. He noted that two assessment on amberjack had been prepared by NMFS, one for the Atlantic and the other for the Gulf of Mexico. These had not, however, been finalized. He felt that the general perception of the public was that amberjack were in a far more depleted condition than the NMFS assessments indicated. In some areas (Panhandle and Key West) they were fairly reduced in number. The FMFC approved an emergency mullet rule that prohibits the use of tarpaulin (tarp) to harvest mullet. Fishermen had begun experimenting with other types of gear, such as net interspersed with tarp. Initially, FMFC, realizing how difficult it would be to lift a laden tarp, felt this gear would not become a problem. As time passed, however, more of this type of gear appeared.

Mr. Minton asked about the provision to prohibit fishing for mullet on week-ends and holidays. Mr. Williams replied that the commercial mullet fishery was closed from 4:00 p.m. on Friday through about 7:00 or 8:00 o'clock on Monday morning. Mr. Minton inquired whether this rule had been implemented in an attempt to achieve a 30 percent catch reduction in that fishery. Mr. Williams responded affirmatively. Mr. Minton asked how these regulations co-existed with the total closure of the gill net fishery. Mr. Williams replied he did not have a good answer to this question; however, mullet were still considered an overfished species. The goal was to achieve a 35 percent SPR and was now only at about 20 percent SPR.

Mr. Horn asked Mr. Simpson if the Gulf States Marine Fisheries Commission (GSMFC) had taken some action with regard to the mullet fishery. Mr. Simpson replied mullet fishing had been approved Gulf-wide.

**Alabama**

Mr. Minton reported that Alabama had also been experiencing an outbreak of red tide and this was the first occurrence of this phenomenon that they had ever documented. The first confirmed concentrations of numbers was about three week previous and seemed to be moving from east to west, primarily along the
outer banks. The highest concentrations were just west of Gulf Shores. Earlier this week Health Department officials had noted that concentrations had reached very high levels on the oyster reefs. As a result, all shellfish harvesting areas in Alabama had been closed. There were no extensive fish kills.

Mississippi

Mr. Woods reported that red tide had moved into the state from the east and oyster reef areas were closed. About one week ago water samples in Area 2 showed very high levels of the organism and had to be closed to oyster harvesting. The Mississippi Department of Marine Resources (MDMR) was investigating the possibility of implementing limited entry programs for some of the state fisheries. Artificial reefs were being established in each of the three coastal county areas in the nearshore and offshore waters. About 33 reef sites had been identified. By utilizing the Coastal Zone Management (CZM) funds and further funding from the National Oceanic and Atmospheric Administration (NOAA) and the Environmental Protection Agency (EPA) they had purchased some coastal preserve areas and now had acquired about 20,000 acres of coastal habitat. They had applied for a national estuarine research reserve grant with NOAA and the designated site was in Jackson County, near the Alabama/Mississippi state line. The first week of December they would be undergoing a CZM review of their policy. He noted that there were about 20 casinos in the Mississippi coastal areas.

Mr. Frugé asked the status of the marine estuarine research reserve. Mr. Woods replied that the grant request had been approved by the governor and then been submitted to NOAA about three weeks ago.

Gulf States Marine Fisheries Commission

Mr. Simpson reported that the GSMFC had met in September and he referenced a letter he had written to the Secretary of Commerce (Tab M, No. 4) on the "fix it notification" (FIN) policy. Resolutions had been adopted concerning marine resources, specifically on artificial reefs and obsolete ships and had been forwarded to the agencies involved. A letter had also been sent that addressed the concerns on the definition of headboats and charterboats. GSMFC was in the process of obtaining approval to administer the charterboat option of the MRFSS as a precursor to the other recreational data administration on behalf of the states. The also had sent a letter concerning the Magnuson Act standardized data collection programs, indicating it was their opinion that the RecFin and ComFin activities would satisfy the requirements. He believed GSMFC would soon obtain the funding necessary to support a red drum tag and recapture program.

Mr. Williams asked for details concerning the charterboat option Mr. Simpson had mentioned. Mr. Simpson replied that the MRFSS had a charterboat/headboat option that stated data must be collected from that segment of the fishery. This function had not been assigned and, subsequently, it was suggested that the GSMFC coordinate charterboat/headboat data collection and approval for this operation was pending. Initially, only data from the west coast of Florida was to be collected; however, it was his understanding that the activity would be expanded to include other Gulf states. Mr. Williams asked if charterboat fishermen would be issued a logbook to complete. Mr. Simpson replied that his understanding was that, through an intercept program, logbooks would also be used.

U.S. Fish and Wildlife Service

Mr. Frugé reported that, with regard to fish hatchery transfers to the states, in September he had incorrectly indicated that the Bo Ginn National Fish Hatchery at Millen, Georgia had been transferred to the state of
Georgia on September 9. The transfer had not actually taken place until September 30. Regarding other transfers, the state of South Carolina was interested in the McKinney Lake Hatchery and negotiations on that transfer were proceeding. On October 4, the Service had held a Southeast Region Fisheries stakeholders meeting in Hot Springs, Arkansas. The purpose of this meeting was to obtain input from the state agencies, other federal agencies and nongovernmental organizations. Approximately 30 people attended this meeting. The Southeast Region's draft Fisheries Vision document was being reviewed and should be published this winter. The Southwest and Southeast Regions were tentatively planning to hold a Gulf coastal fisheries stakeholders meeting immediately following the Council meeting in Corpus Christi, Texas in January. Invitations would be issued to Council members and other interested entities. Tentative plans were to begin the meeting on the afternoon of January 16 and conclude at noon on the following day.

Regarding the Volusia County, Florida, habitat conservation plan for sea turtles, the Jacksonville field office had recommended that this plan be approved. A decision was expected within two days. The St. Vincent National Wildlife Refuge in Florida reported that this was the second-best year for sea turtle nesting since they began recording this data. As of October 1 of this year, the National Biological Service (NBS) was incorporated as a division of the National Geological Survey (NGS). This included fish and wildlife cooperative research units at various universities throughout the country, and also the regional science centers.

He had been informed that there was expected to be an approximate 18 percent increase nationwide in federal aid funding to the states for this fiscal year, as compared to the previous fiscal year.

Mr. Williams inquired why Volusia County was going to be given an incidental take for sea turtles. Mr. Frugè replied that there had been beach driving or other problems and, under the Endangered Species Act, there was a provision that allowed the Service to issue an incidental take permit (Section 10(a)). The permit was issued with the understanding that the permittee would take certain measures to address these issues. Mr. King commented that his grandfather had homesteaded and he, personally, had grown up in the area under discussion and it was impossible to drive the beach since, at high tide, the car would completely sink.

Mr. Osburn asked why the NBS had been incorporated into the NGS. Mr. Frugè replied that Secretary Babbitt had wanted to make the functions within the Department of the Interior more objective, not subject to political forces that affected regulatory and resource agencies.

THE MEETING RECESSED AT 5:09 P.M. AND RESUMED AT 8:30 A.M. THE FOLLOWING DAY.

8:30 A.M.-9:30 A.M. - CLOSED SESSION to select Ad Hoc Red Snapper Advisory Panel and Chairman.

LCDR Mark Johnson introduced LCDR Ed Pino of the Seventh Coast Guard District office in Miami, Florida.

- Shrimp Management Committee Report

Mr. Woods presented the committee report. Dr. Philip Goodyear presented the results of his analyses of possible bias in bycatch estimates based on adjusting bycatch mortality downward by 14 percent and 33 percent and replicating the 1995 assessment analyses for bias adjustments of 0, 14 percent and 33 percent. Dr. Goodyear showed possible changes in SPR assuming various changes in TAC and bycatch reduction
scenarios, including a constant F assumption, from 1985 to 2020. He also noted potential increases in future harvests for a constant F after achieving a 50 percent bycatch reduction in 1997 using the GLM and the general linear model (GLM) with 14 percent and 33 percent bias assumptions. He observed that the 14 percent and 33 percent error scenarios would only slightly improve the current estimated status of the red snapper stock, and they would not be sufficient to have a meaningful effect on the need to reduce bycatch by the shrimp fishery.

Mr. Swingle stated that problems had been encountered with establishing the Statistical Review Panel (SRP) and scheduling a meeting. These problems included legal questions regarding the mail balloting of the SSC to establish the SRP, questions regarding compensation of SRP members or the inability of some potential members to serve, and the inability to provide notice of a SRP meeting in the Federal Register. He noted that General Counsel has advised that not having this SRP review represents a procedural flaw in the approval process of Shrimp Amendment 9. He stated that the SRP could be selected by Council staff and compensated at $50.00 per hour/$400.00 per day; thereby they would be consultants, and a Federal Register notice would not be required.

On behalf of the committee, Mr. Woods moved that the Council convene a SRP to provide recommendations; however, the Council is not precluded from moving forward with final action on Amendment 9.

Mr. Horn inquired by what process the dollar amount for compensation had been chosen. Mr. Swingle replied that this sum represented a typical sum paid to Council consultants. In speaking to Dr. Gallaway, he had been informed that some consultant fees were higher. Mr. Minton asked if Mr. Swingle could provide information on job descriptions for work accomplished and salaries paid to former Council consultants. Mr. Swingle responded that Dr. Goodyear had been paid $50.00 per hour to conduct an assessment for the Council and Dr. Thomas had prepared a social impact analysis of the red snapper fishery at a comparable rate of pay. Mr. Minton expressed concern that a precedent was being set to pay panel members for performing work. Mr. Swingle responded that the Council was precluded under the Magnuson-Stevens Act from paying SSC or AP members. Special groups on fishery-related issues were drawn from some of the universities within the Gulf region that served without compensation. However, most of the theoretical statisticians were far removed from the fisheries and rarely involved in these issues. In order to be assured of participation and to avoid another 20-day waiting period and then filing a Federal Register notice for them to serve as an advisory panel member, it seemed to him that a better way to proceed was to hire them as consultants. He felt this gave a better chance of assuring that those persons that were selected would attend and participate. Mr. Feder asked for clarification that it was planned to hire individual consultants to submit individual recommendations. Mr. Swingle responded that, in discussions on the previous day, Mr. Feder had suggested that issues be presented to them as a group and they produce independent evaluations that staff would then summarize for the Council. He stated that Mr. Feder had believed that if an opinion was expressed jointly by the group a problem might exist under the Federal Advisory Committee Act (FACA). Mr. Swingle noted that he could understand where this could present a problem if Dr. Kemmerer was involved since he represented the Secretary of Commerce; however, the Council was not a federal agency and was not prohibited under Civil Service statutes. Dr. Kemmerer interjected that he saw no hindrance to the group meeting to discuss an issue and then presenting their recommendations. He did not feel they would need to reach a consensus.

Mr. Aparicio asked why the Council would wish to proceed on an issue without having received full and complete data. Mr. Swingle felt this was not the issue; he realized that when LGL did their first analysis of the bycatch data it had differed from Dr. Nichols conclusions. He believed this was because, in their
treatment of the data, they had not used all of it. The issue that had surfaced at the Council meeting, and had not been relayed to either the SAP or the SSC, was that the data that had been used by NMFS in the GLM should have been subjected to a logarithmic transformation. Dr. Kemmerer responded that it was the opposite; the way the GLM model worked was there was a logarithmic transformation inherent in it with a constant 1 to the numbers. Their objection was the use of the transformation. Mr. Aparicio asked for further clarification of the response to his question. Mr. Swingle responded that the General Counsel had identified the issue as a procedural deficiency in that the Council, in September, did request that the group be convened prior to the present Council meeting to resolve the issue. This had not been possible due to further procedural problems, since he had not felt there was sufficient time to file a 20-day Federal Register notice for a conference call meeting of the SSC wherein they would provide a selection of candidates and then file another 20-day in advance Federal Register notice for the SRP to do the review. He also felt that the SSC had the right to conduct a closed session to select candidates. For this reason, he felt it would be acceptable for members to individually recommend persons to serve and providing this information to the SSC Chairman, who would then provide it to the Council staff. General Counsel believed the process should have been done in an open public forum before the SSC or, at the very minimum, through a conference call. Council staff were unable to accomplish all this. Once candidates had been named in order of priority, Dr. Lamberte experienced difficulty in trying to get the top choices to serve on the SRP. He had been forced to move lower down the list in order to find four persons who would be willing to serve. Mr. Aparicio replied that he understood that difficulties were involved in this process; however, the Council had been assured that the data would be available and now were being told they must proceed without it.

Dr. Claverie expressed concern about the language in the motion. His first concern was that the recommendations that were to be provided were not specified and, second, did the final clause in this motion mean that the Council could not decide to delay taking action on Shrimp Amendment 9. Dr. Shipp interpreted the motion as stating that the Council was not precluded from taking action, but also was not required to take action. Mr. King asked what, exactly, was the charge to the SRP. Dr. Claverie remarked that he could not understand, from the language in the motion, what the SRP was being required to do. Dr. Kemmerer replied that his understanding was the SRP was being asked to review the procedure to expand bycatch data, specifically the use of the transformations. If they feel that the current method is not the best way, they would be asked to recommend an alternate approach. Mr. King referenced a letter from NOAA General Counsel that had been read to the committee that stated that if the Council was content with the science, they could move ahead on Shrimp Amendment 9. This also meant to him that the Council should not be forced to move on this issue until they were satisfied they had sufficient data to do so. Mr. Feder recommended that the motion clarify that individual consultants were being hired to give their recommendations and that a panel was not being established to give recommendations to Council. On the surface, it appeared to be another AP, and if that was the case, it should follow the provisions of Section 302(i) of the Magnuson-Stevens Act. Dr. Kemmerer offered a substitute motion that the Council hire 3-5 applied statisticians on a consulting basis to provide individual recommendations on the use of the transformations of the bycatch data. Mr. Simpson asked if the consultants would be limited to addressing only what was stated in the motion. Dr. Kemmerer replied affirmatively. Mr. Simpson responded that he realized the focus would be upon what was included in this motion, but felt they should not be precluded from making any other recommendations. Dr. Shipp stated that this motion would not preclude that statisticians from making other suggestions. Substitute motion carried by a vote of 13 to 2.

On behalf of the committee, Mr. Woods moved that with regard to the selection of the SRP, that statistical experts that are independent of the Council, it supporting agencies, and the industry, and should be selected by the SSC.
Dr. Kemmerer offered a substitute motion that, with regard to the previous motion, the statistical experts should be independent of the Council, its supporting agencies, and the industry, and be selected by the SSC. Mr. Green asked if it was appropriate to have the SSC select the candidates, given that they have failed to meet their quorum for their meetings. He felt it might be more expeditious to have Council staff make the selections. Mr. Swingle's concern was that the staff be given the authority to select candidates of a lower priority on the list provided by the SSC in case the higher priority candidates declined to serve. Mr. Green reiterated that the motion should include giving authority to the Council staff to make substitutions in the candidates, when appropriate. Mr. Green offered an amended substitute motion that, with regard to the previous motion, the statistical experts should be independent of the Council, its supporting agencies, and the industry, and they will be selected by the Council staff from the prioritized list provided by the SSC. Dr. Kemmerer suggested that Council staff contact each of the prioritized names on the SSC candidate list before the next SSC meeting to determine whether they were willing to serve. Amended substitute motion carried.

Mr. Woods reported that Dr. Leard presented a summary of public hearing comments, public comment letter, the Shrimp AP report, and the SSC report on Amendment 9. Mr. Swingle noted that, in light of legal counsel comments regarding the lack of a quorum at the SSC meeting, ratification of the SSC actions could be taken at the December 9, 1996 meeting.

On behalf of the committee, Mr. Woods moved that the SSC consider ratification of its actions at the December 9, 1996 meeting.

Mr. Williams asked if the SSC would also review Dr. Goodyear's report that was presented to the Council the previous day. Dr. Shipp responded that he expected that this would occur. Motion as modified carried unanimously that the SSC consider ratification of its actions at the December 9, 1996 meeting and report by Dr. Goodyear dated October 30, 1996.

Mr. Woods reported that during the committee meeting Dr. Kemmerer presented NMFS' comments on Amendment 9, and Mr. Jodie Gay described the experiences of the South Atlantic Council in implementing BRDs. He also stated that Dr. Leard presented data on the percent of bycatch reduction needed to meet the 50 percent reduction goal, assuming that a 10 percent reduction in effort has occurred. He also presented data on percent reductions in bycatch of age 0, age 1 and cumulative age 0 and age 1 for various BRDs. Dr. Lamberti explained efforts to address SSC criticisms and further modeling of the economic impacts of Amendment 9. Mr. Woods noted the committee then addressed the specific alternatives of the amendment.

On behalf of the committee, Mr. Woods moved that, with regard to Alternative A, Alternative A.2, with options (a) and (c) be approved to read as follows: BRD requirements - Require the installation of NMFS-certified BRDs that meet or exceed the bycatch reduction criteria established by the Council in each net used aboard vessels trawling for shrimp in specified areas of the Gulf of Mexico EEZ. Exempted are vessels trawling for royal red shrimp beyond the 100-fathom contour and vessels trawling for groundfish or butterfish. A single try net with a headrope of 16 feet or less per vessel and rigid-frame roller trawls such as those used in the Big Bend area of Florida are also exempted.

Dr. Claverie inquired whether the rigid-frame roller trawl was 16 feet or less in width. Mr. Swingle replied that he believed the rigid-frame roller trawl was limited to 12 feet in width and that one could be pulled on each side of the vessel. He noted that, at one time, some of the vessels were pulling 5 of these roller trawls. The state later restricted these trawls to 12-foot widths. Dr. Claverie asked, if these trawls were fishing beyond Florida waters, would they still be under these restrictions. Dr. Kemmerer replied that he was
unaware of any of these vessel operating in federal waters; however, he felt the language in the motion should be clarified. Dr. Claverie expressed concern that vessels with rigid-frame roller trawls exceeding 16 feet could operate in the EEZ without a BRD. Mr. Feder speculated, if the next committee motion was going to be concerned with the area where the requirement would apply within the 100-fathom contour, what would be the significance of the first exemption. Mr. Horn questioned whether it would be permissible to use more restrictive language in the motion, since discussions of roller trawl size had not been presented at public hearings. He asked if it was certain that no legitimate royal red shrimping was occurring inside the 100-fathom contour. Mr. Swingle replied that the rigid-frame roller trawls had been discussed at public hearings; however, he was not certain whether they had been referred to as being 12 feet or 16 feet in width. Mr. Osburn commented that no one was being precluded from having a royal red fishery inside 100 fathoms, but they would need to carry BRDs. Further, he stated that the motion was more liberal than was presented at public hearings and, therefore, should be acceptable. In a general discussion it was agreed by consensus to amend the motion to read: To adopt Preferred Alternative A.2: BRD requirement - Require the installation of NMFS-certified BRDs that meet or exceed the bycatch reduction criteria established by the Council in each net used aboard vessels trawling for shrimp in specified areas of the Gulf of Mexico EEZ. Exempted are vessels trawling for royal red shrimp beyond the 100-fathom contour and vessels trawling for groundfish or butterfish. A single try net with a headrope of 16 feet or less per vessel and no more than two rigid-frame roller trawls limited to 16 feet or less, such as those used in the Big Bend area of Florida are also exempted. Amended motion carried by a vote of 10 to 5, with 1 abstention.

On behalf of the committee, Mr. Woods moved to adopt Preferred Alternative B.2: Require the use of the NMFS-certified BRDs in shrimp trawls in the EEZ of the Gulf of Mexico within the 100-fathom contour west of Cape San Blas, Florida.

Dr. Claverie questioned the urgency of taking action on Shrimp Amendment 9 at this meeting. Dr. Kemmerer replied that the increase of red snapper TAC was predicated on a 50 percent reduction of the bycatch of juvenile red snapper, beginning in 1997. It would take about 5 to 6 months to implement the amendment, thus would already be well into 1997 and the height of the fishing before this action would become effective. Mr. Minton asked General Counsel to state, for the record, an opinion on proceeding with this amendment when the SSC did not have a quorum. He also noted that the Council had previously requested that a statistical group be convened to review the transformation of the data. He stated that he understood the feeling of urgency, but it seemed to him that Washington could reject the plan due to procedural inadequacies. He agreed with Dr. Claverie that it would be better to delay action on this amendment pending the results of the SRP recommendations. If this issue was not carried forward in a correct manner, the Council would be vulnerable to any legal actions taken against it. Mr. Feder replied that, in his opinion, the failure of the SSC to give a final recommendation would not be disastrous, though it would be beneficial if the SSC met later and confirmed their earlier actions taken without a quorum. The Secretary of Commerce could review the supporting documentation, and even with this procedural flaw, the amendment could be approved. Mr. Aparicio stated he would have preferred that the peer review on the accuracy of the statistics be accomplished before taking action on the amendment. Dr. Shipp asked for Mr. Feder's comments on Mr. Aparicio's concerns. Mr. Feder replied that proceeding on Shrimp Amendment 9 would not be constrained for the reason that the peer review had not taken place. Mr. King asked whether the Council must necessarily take action on the amendment, despite their legitimate concerns. Mr. Feder responded that the Council must be satisfied that the amendment conformed with the Magnuson-Stevens Act and the National Standards and that the action would result in good conservation management. If not, they should act accordingly. Mr. Minton inquired what NMFS' position would be with regard to the red snapper TAC if final action on the amendment was delayed until the January Council meeting. Dr.
Kemmerer replied that the 1997 red snapper TAC had been predicated on the passing of this amendment. He could not predict what action the Secretary would take if the Council did not pass the amendment. He reminded members that this amendment process had begun in 1989-1990. A draft of the amendment had been presented at public hearings and then Congress had insisted that a 3-year study be conducted. Subsequently, they extended the time period for the study to allow for further data collection. The study was completed and an analysis done. He felt the amendment should be adopted by Council.

Mr. Woods asked whether the more relaxed enforcement policy would apply to BRDs, as well as to all other aspects of the Gulf fisheries. Dr. Kemmerer felt that enforcement would be uniform throughout the Gulf fisheries, varying only by the seriousness of the violations. Mr. Horn expressed the belief that there were many questions about the fishery that needed to be resolved before taking final action on this amendment. Dr. Kemmerer reiterated that the 1997 red snapper TAC had been predicated on the passing of this amendment. TAC had been increased from 6.0 million pounds (MP) to 9.12 MP. He asked, if the amendment was not adopted by Council, should TAC be reduced. Mr. Horn noted that many people had testified that long-time red snapper fishermen claimed that red snapper catches were the best they had ever been. He asked how this had been accomplished, even though BRDs had not been implemented. Mr. Aparicio maintained that reductions had already been made by shrimp fishermen that had resulted in increased landings of red snapper. He questioned Dr. Kemmerer's statement that the Council should adopt Shrimp Amendment 9 because Dr. Goodyear had reviewed the numbers. He asked whether Dr. Kemmerer considered that as having been peer-reviewed. Dr. Kemmerer replied negatively, stating that Dr. Goodyear's analysis was in regard to the issue that was raised by LGL (which had never been peer-reviewed) and even at the highest bias level (33 percent) there would be no effect on the fishery. These assessments had been reviewed by the SAP and the SSC and the last review was considered to be the best available science.

Mr. King reiterated his position on flawed information being inputted into the models. He contended that basing decisions on the results of the poor data-collecting procedures of earlier years had skewed the NMFS' study. Mr. Williams maintained that the 50 percent bycatch reduction would only barely solve the overfishing problem in the red snapper fishery. The calculations indicated that 20 percent SPR would only barely be reached by the year 2019. He maintained that if bycatch could be reduced by greater than 50 percent the goal would be reached much sooner. Congress had mandated, through a new standard in the Magnuson-Stevens Act, that Council must minimize bycatch and solve the overfishing problem. He contended that, though red snapper was showing definite signs of rebounding, it could not compare with the amount of stock that existed in Florida waters 50 to 60 years ago. Mr. Osburn noted that the Council had been forbidden by Congress to initiate an ITQ program for red snapper, a management tool that would greatly enhance the rebuilding of stocks in this fishery. However, he quoted from the Magnuson-Stevens Act, Section 405(d)(1): "The Secretary shall develop technological devices and other changes in fishing operations necessary and appropriate to minimize the incidental mortality of the bycatch in the course of shrimp trawl activity to the extent practicable." He emphasized that, based on this statement, Shrimp Amendment 9 should be adopted by the Council. Dr. Claverie stressed that, to him, the science question was paramount, and he felt he was receiving mixed signals from the Regional Administrator. He had gotten the feeling that Dr. Kemmerer did not believe the review was absolutely critical, but that it should be done anyway. It was his impression that the review was intended to determine which methodology should be used in assessing the impact of shrimp bycatch on the red snapper fishery. He emphasized that he did not believe in taking action that would have socioeconomic impacts unless there was a certain biological reason for so doing. Dr. Kemmerer replied that Dr. Goodyear's methodology was the best available and had been reviewed and accepted by a number of entities. Dr. Gallaway's report had shown that further reviews would probably not impact the final outcome. Dr. Claverie asked why the Council should pay $50.00 per hour to each individual in a group to review the analysis when it was not expected to make an important
difference in the outcome. He also did not understand why waiting two more months would make a great difference in the long run. Dr. Goodyear had stated that the greater the reduction in red snapper bycatch, the greater would be the results from reducing that bycatch. If, in truth, the bycatch in the fishery was not very high, then a 50 percent reduction would do little, as compared to a situation where bycatch was at a high level. Dr. Kemmerer replied that this was why Dr. Goodyear had done a worst case estimate (33 percent). He reiterated that the analysis had been peer-reviewed many times over. Mr. King commented that the problem with the analysis was, and always had been, associated with the data-collecting process. Mr. King offered a substitute motion to table Shrimp Amendment 9 until the January Council meeting. Substitute motion failed by a vote of 4 to 9.

Mr. Horn commented that the Council had taken no dramatic action to cause red snapper stock to rebound, yet it undoubtedly had done so. He questioned NMFS' conclusions on management of this fishery. He opposed Shrimp Amendment 9.

A roll call vote was held to adopt Preferred Alternative B.2: Require the use of the NMFS-certified BRDs in shrimp trawls in the EEZ of the Gulf of Mexico within the 100-fathom contour west of Cape San Blas, Florida.

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Motion carried by a vote of 11 to 4, with one abstention, to adopt Preferred Alternative B.2: Require the use of the NMFS-certified BRDs in shrimp trawls in the EEZ of the Gulf of Mexico within the 100-fathom contour west of Cape San Blas, Florida.

On behalf of the committee, Mr. Woods moved that, with regard to Alternative C, the bycatch reduction criteria be set at 44 percent, which is based on a 10 percent reduction in effort as assumed in the stock assessment. Consequently, the first paragraph of Alternative C.1. would read as follows: It must reduce the bycatch mortality of juvenile red snapper (age 0 and age 1) by a minimum of 44 percent from the average level of mortality on those age groups during the years 1984-1989. Any bycatch reduction contributed by a TED within the net is included as a part of an overall BRD reduction in the bycatch.

Mr. Horn asked for clarification on why a base year continued to be used to denote reduction; those numbers were irrelevant if a reduction was considered to be a percentage of the overall shrimp landings. Mr. Swingle replied that the Council had asked the SAP to identify what the reductions should be and they selected the base year. They stated there should be a 50 percent reduction in the fishing mortality rate on the age 0 and age 1 red snapper using the base period F as a standard. This was F=2.12 and was subsequently changed to 2.06, which made the F to be achieved equal to 1.03. Dr. Leard, based on Dr. Goodyear's analysis, put in the 10 percent reduction in effort for 24-hour fishing days that had been used in the model and readjusted it to a 44 percent level. These figures only included fishing mortality, as
opposed to natural mortality. Dr. Claverie commented that if the intent was that the criteria was based on
the time period before TEDs were used, and did not include any part of the year 1989 when TEDs were
used, he would like to have language inserted in the motion to indicate this. Mr. Swingle replied that the
figures did include all of 1989. Dr. Claverie maintained for part of 1989 the bycatch reduction had already
begun, due to the introduction of TEDs. Mr. Swingle stated a difficulty existed in assessing the reduction
in finfish, undoubtedly created by the use of TEDs, was in determining any value for the reduction of red
snapper. Members of the Council who had served on the bycatch steering committee had suggested that,
in that program, naked nets should be compared with nets with TEDs and a BRD. This was prohibited
because of concern that the naked net might catch a turtle during those experiments. The focus was on
testing TEDs and not on separating and counting species. Dr. Claverie reiterated his concern that the
language in the motion be more specific in content. Dr. Kemmerer commented that, only toward the end
of 1989 were TEDs used and compliance at that time was quite low.

Mr. Williams raised the question that lowering the standard from 50 percent to 44 percent bycatch reduction
might create problems at a later time. He noted that shrimping effort was presently in a decline, but could
reverse itself. Mr. Swingle replied that this possibility could not be discounted; however, data in the
amendment indicated that the average shrimp boat was 17 years old. Mr. Williams cited newspaper
accounts of new, bigger and more highly powered shrimp vessels being built in local shipyards.

Dr. Coleman stated that she had been involved in a bycatch study several years ago. She had tested a naked
net against a net with a TED, two other nets were equipped with both TEDs and BRDs. The work was
conducted in Florida in inshore waters. It was discovered that the TED reduction of small fish was not
significantly different from the naked net. Even though towing did not occur in an area where red snapper
occurred, it was unlikely that a TED used offshore worked very effectively to reduce catches of small year
classes. Dr. Claverie stressed that his point was not directed at numbers, but in clarification to shrimp
fishermen and for giving them credit for the use of TEDs in 1989, for however a short time period.

Mr. Green supported Mr. Williams statements on potential changes in shrimping effort. Mr. Osburn felt
that a minimum target (44 percent) seemed fair at the present time; if necessary, the issue could be revisited
at a later date. Mr. Aparicio noted that shrimp vessels had decreased by 40 percent over the past several
years, thereby justifying the 44 percent goal. Dr. Kemmerer reiterated and supported Mr. Osburn's
comments. Mr. Williams, referencing Figure 1 of the amendment, stated that he did not perceive any decline
in effort and that effort seemed to have increased in the 1990-1994 time period. Mr. Green noted that one
shrimper had testified he was shrimping twice as much. Mr. King asked Dr. Branstetter for his conclusions
as a observer on board a vessel that had tested TEDs and BRDs. Dr. Branstetter replied that he had done
a limited amount of naked net work with hard TEDs. The tows in these experiments were unsuccessful.
There was bycatch reduction of red snapper that was attributed to the use of soft TEDs. Mr. Williams
asked if red snapper bycatch reduction had included all sizes. Dr. Branstetter responded affirmatively.
Motion carried by a vote of 12 to 4 that, with regard to Alternative C, the bycatch reduction criteria
be set at 44 percent, which is based on a 10 percent reduction in effort as assumed in the stock
assessment. Consequently, the first paragraph of Alternative C.1. would read as follows: It must
reduce the bycatch mortality of juvenile red snapper (age 0 and age 1) by a minimum of 44 percent
from the average level of mortality on those age groups during the years 1984-1989. Any bycatch
reduction contributed by a TED within the net is included as a part of an overall BRD reduction in
the bycatch.

On behalf of the committee, Mr. Woods moved that the fisheye in the 30 mesh position or an equivalent
distance from the top of a 120-mesh cod end bag of 1-5/8-inch mesh, and the Andrews TED (if not
prohibited from use by other applicable federal law or regulations) be certified with the implementation of Amendment 9. Consequently, the second paragraph of Alternative C.1. would read as follows: Based on the criteria above, the following gear will be considered as NMFS certified BRDs on implementation of this amendment:

- fisheye 30-mesh position or an equivalent distance from the top of a 120-mesh cod end bag of 1-5.8-inch mesh
  5-inch Andrews TED (if not prohibited from use by other applicable federal law or regulation).

Dr. Kemmerer commented that the Council was also charged to use specific language in identifying the fisheye. Mr. Swingle noted that the construction requirements for the device did not indicate that the fisheye should be mounted on top of the cod end. Mr. Watson responded from the audience that he had developed a description of the fisheye BRD and minimum construction and installation requirements that was being handed out (See attached).

Dr. Claverie offered a substitute motion that the fisheye in the 30 mesh position or an equivalent distance from the top of a 120-mesh cod end bag of 1-5/8-inch mesh, and the Andrews TED (if not prohibited from use by other applicable federal law or regulations) be certified with the implementation of Amendment 9. Consequently, the second paragraph of Alternative C.1. would read as follows: Based on the criteria above, the following gear will be considered as two NMFS certified BRDs on implementation of this amendment:

- fisheye 30-mesh position or an equivalent distance from the top of a 120-mesh cod end bag of 1-5/8-inch mesh
  5-inch Andrews TED (if not prohibited from use by other applicable federal law or regulation).

Mr. Swingle asked Dr. Kemmerer if his intent was that language drafted by Dr. Watson replace the description of the fisheye in the motion. Dr. Kemmerer replied affirmatively. Mr. Swingle stated if this was acceptable to the members that the motion description would be redescribed based on a footnote to that effect. Dr. Shipp questioned whether detailed descriptions of BRDs should be included in the plan amendment. He advocated more simple language, such as "devices approved by NMFS." Dr. Kemmerer noted that this had been discussed during the committee meeting. Dr. Shipp replied, that was understood, but expressed doubt that detailed descriptions of gear needed to be included in a plan amendment. Mr. Feder stated that if these devices that were already NMFS-certified were described in the plan amendment it would save processing time when, and if, the amendment was approved. Dr. Kemmerer asked if it was necessary to include extensive details in the description. Dr. Shipp remarked that his concern was that people might read these elaborate descriptions and conclude that this was the only device that would ever be approved. It could discourage the development of alternative devices. Mr. Feder recommended language be used that would explain that these two BRDs had been certified, but other acceptable devices may be developed at a later time. Mr. Osburn cautioned against allowing loopholes to become part of this amendment. Dr. Claverie commented that if a device written into the amendment proved at a later time to be defective, this could cause problems. Mr. Swingle advised that the framework procedure allowed for decertification in such cases. He felt that whoever drafted the regulations would include a good deal of description of the devices. Mr. Feder stated that the level of detail was up to the Council and that they could delegate the wording of the description to the Council staff or to NMFS. His opinion was that the motion did not need to contain a great deal of detail in the description. Dr. Shipp asked if someone would like to
offer a more generic motion. Mr. Green suggested that Dr. Kemmerer recommend language for the motion. Dr. Kemmerer stated that he was satisfied with the phrase "equivalent distance" in the motion. He asked if Dr. Shipp objected to that language. Dr. Shipp reiterated his concern that the public would see the description and think it was the only one that would ever be NMFS-certified. He felt that a simple sentence stating the all BRDs in use must be certified by NMFS would be sufficient. Dr. Kemmerer stated that, upon implementation of the rule, they wanted to indicate what two devices had been NMFS-certified. He recommended adding the following sentence: "Other BRDs can be certified according to the framework procedure." Mr. Osburn asked where in the plan was the description of the fisheye.

Mr. Williams offered an amendment to the substitute motion that the fisheye in the 30 mesh position or an equivalent distance from the top of a 120-mesh cod end bag of 1-5/8-inch mesh, and the Andrews TED (if not prohibited from use by other applicable federal law or regulations) be certified with the implementation of Amendment 9. Consequently, the second paragraph of Alternative C.1. would read as follows: Based on the criteria above, the following gear will be considered as two NMFS certified BRDs on implementation of this amendment:

- fisheye 30-mesh position or an equivalent distance from the top of a 120-mesh cod end bag of 1-5/8-inch mesh (as described in footnote below)
  5-inch Andrews TED (if not prohibited from use by other applicable federal law or regulation).

Minimum Construction and Installation Requirements

Fisheyes should be constructed of aluminum or steel rod of at least 1/4" diameter with a minimum opening dimension of 5 inches and a minimum total opening area of 36 square inches. Fisheyes must be installed in the top center of the codend of the trawl to create an opening in the trawl facing in the direction of the mouth of the trawl no further forward than 70 percent of the distance between the codend drawstring (tie off rings) and the beginning of the codend excluding any extension) or 11 feet, whichever is the shorter distance.

Mr. Williams stated, for the record, that the footnote was the technical specifications and minimum requirements for the fisheye BRDs from the document handed out by Mr. John Watson.

Amended substitute motion carried by a vote of 11 to 4 that the fisheye in the 30 mesh position or an equivalent distance from the top of a 120-mesh cod end bag of 1-5/8-inch mesh, and the Andrews TED (if not prohibited from use by other applicable federal law or regulations) be certified with the implementation of Amendment 9. Consequently, the second paragraph of Alternative C.1. would read as follows: Based on the criteria above, the following gear will be considered as two NMFS certified BRDs on implementation of this amendment:

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On behalf of the committee, Mr. Woods moved that the approval of Alternative C.2.(d): its shrimp retention rate when compared with seemingly identical nets containing only an approved TED is unspecified, i.e., fishermen may use any design that meets the criteria under Alternative C.1.

Mr. Feder asked for clarification on the intent of the motion. Dr. Kemmerer explained that "its" referred to the BRD and that, as long as it was certified, the BRD did not need to retain any set percentage of shrimp. Motion carried.

On behalf of the committee, Mr. Woods moved for the approval of Alternative D.1: Status Quo - No change in seasonal closures. Motion carried.

On behalf of the committee, Mr. Woods moved for the approval of Alternative E.2 (a, b, and c): Establish the following framework procedures for modifying bycatch reduction criteria and establishing BRD certification criteria and a BRD testing protocol for certifying additional BRDs; a: Framework procedure for modifying bycatch reduction criteria; b: Framework measure establishing BRD certification and decertification criteria and a BRD testing protocol; c: Modification of BRD certification criteria, with staff being given considerable latitude in editing and responding to NMFS comments relative to this section. Motion carried.

Dr. Kemmerer advised that new information on royal red shrimp had just been received. He noted that NMFS had no record of royal red shrimp having been landed within 100 fathoms in the Gulf of Mexico.

On behalf of the committee, Mr. Woods moved that Shrimp Amendment 9 be approved by the Council and forwarded to the Secretary of Commerce for implementation.

Dr. Kemmerer offered a substitute motion that Shrimp Amendment 9 be approved by the Council and reviewed by the SSC prior to forwarding to the Secretary of Commerce.

Dr. Shipp asked if this was a recognized procedure and asked what would occur if the SSC should reject the document. Dr. Kemmerer noted that the SSC had not had a quorum and this would given them an opportunity to review and discuss the amendment. Mr. Minton suggested another procedure: approval by Council, forwarded to the Secretary of Commerce upon review and approval of the SSC and SRP review of the model. He felt this might accelerate the implementation process. Mr. Williams asked what would happen if the SSC objected to something in the document; would this be giving them the right to hinder implementation of the amendment. Dr. Kemmerer responded that they would be able to halt the process at least for that point in time. He expected them to vote that the document contained the best available science. Mr. Horn remarked that this sounded contrary to what Dr. Kemmerer had argued earlier on postponing action on Shrimp Amendment 9. If the Council voted to approve this amendment now, why should anyone care about their opinion. Dr. Kemmerer did not feel that he was taking a position that was contrary to his earlier stance. He stated his suggestion was made to ensure that "all the t's were crossed and all the i's were dotted." This was also legal advice from General Counsel that the SSC could review the document after
Council had taken final action. If a major problem should surface, then Council could reconsider their action.

Dr. Claverie commented that he appreciated the thought on this motion since it allayed his concern regarding the validity of the science. However, he did not feel it was at all appropriate to abrogate his right as a Council member to have a final vote on whether the amendment went forward to the Secretary of Commerce. Though legally, it might be an acceptable procedure, it was somewhat offensive to him as a Council member. Dr. Kemmerer emphasized that his suggestion was simply intended to follow the normal procedure of having the SSC review the document prior to submission to the Secretary. Mr. Feder interjected that the amended motion was worded with reference to a review by the SSC, but nevertheless, it would still be forwarded to the Secretary of Commerce. If the SSC should reject the amendment, the Council would be able to return and reconsider their action. Dr. Shipp stressed that the Council had already carried out their function in regard to this document. Mr. Green suggested forwarding the document to the Secretary, but hold it in abeyance until after the SSC had met. He asked if this was a feasible solution. Mr. Swingle stated that the amendment could be submitted to the Secretary of Commerce and, if the SSC found a major deficiency in the scientific information, it could then be withdrawn by the Council. He noted that, upon request by the Regional Administrator, some amendments in the past had been withdrawn for modification and then resubmitted. Mr. Aparicio reiterated the concern of Dr. Claverie that Dr. Kemmerer's substitute motion implied that the Council's decision on the amendment was conditional. Dr. Kemmerer maintained that this was not stated or intended in his substitute motion. Mr. Minton pointed out that Dr. Kemmerer was concerned about delays, but what if the document was returned to Council because the proper procedure had not been followed. Mr. Feder stated that Dr. Kemmerer's substitute motion did not require the amendment to be returned to Council, and would be sent forward to the Secretary of Commerce following the SSC review. Mr. Osburn commented that he was satisfied that the Council had voted this morning that a quorum SSC review and accept or reject the amendment. Also, Mr. Swingle had advised that Council could withdraw and/or modify the document, working through the Regional Administrator. Dr. Kemmerer withdrew his substitute motion.

A roll call vote was held that Shrimp Amendment 9 be approved by the Council and forwarded to the Secretary of Commerce for implementation.

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<tr>
<td>Pete Aparicio</td>
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<tr>
<td>Irby Basco</td>
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<tr>
<td>Maunus Claverie</td>
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<tr>
<td>Felicia Coleman</td>
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<td>Philip Horn</td>
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<td>Karen Foote</td>
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<td>Andrew Kemmerer</td>
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<td>Albert King</td>
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<td>Karl Lessard</td>
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<td>yes</td>
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<td>Glade Woods</td>
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<td>Robert Shipp</td>
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Motion carried by a vote of 11 to 4, with 1 abstention. Messrs. King, Horn, and Aparicio stated, for the record, that they would be filing a minority report.

On behalf of the committee, Mr. Woods moved that the Council extend an invitation to a Mexican official to attend the January 1997 Council meeting to discuss closures and what they would like to see the Gulf Council do with regard to closures. Motion carried.
Ms. Karen Raines, Senior Enforcement Attorney for the Southeast Regional Office of General Counsel for Enforcement and Litigation (OGCEL), made the presentation. The following is the general text. It was her understanding that the Council was particularly interested in the penalty schedules for Magnuson-Stevens Act violations. She began by briefly reviewing the enforcement goals of NOAA General Counsel and the progress made toward reaching these goals. She commented that Mr. Simpson had written a letter (Tab M, No. 4) to the Secretary of Commerce regarding the penalty schedule and a response had been written by Deputy General Counsel Jay Johnson. She anticipated a meeting would take place between various NOAA officials in the near future on this matter. She remarked that though a great number of fishing violations were documented each year, resources to deal with all of these violations were limited. The challenge was how to best utilize the available resources in an effective manner. Meetings have been held quarterly since 1994 to discuss which fishery management areas were critically endangered, whether regulations were adequate, and anticipate problems associated with the fishery. From these meetings, strategies for dealing with these issues were formed. Enforcement priorities and strategies must be flexible in order to respond to current needs and current limitations. Enforcement cases had been prioritized in a general way, such as giving precedence to prosecuting serious violations. The fact that the penalty schedules were being revised was published in the National Fisherman in January 1996. These updates and modifications of the penalty schedules were done on a regular basis. Changes in regulations, policies, and the status of a particular fishery stock may factor into a revision. Although both criminal and civil sanctions were available under certain circumstances, the majority of cases documented under the Magnuson-Stevens Act were handled through the civil administrative process. Some of the civil sanctions included: verbal warnings, written warnings, a voluntary compliance program, a summary settlement system, a monetary penalty assessed through a notice of violation (referred to as a NOVA), permit sanctions and/or abandonment of catch or proceeds from the sale of the catch. Verbal warnings were generally issued by the officer on the scene, written warnings may be issued by law enforcement personnel or by NOAA General Counsel, and NOVAs which were issued only by NOAA General Counsel.

A relatively new sanction under the voluntary compliance program was called the "Fix It Notice (FIN)." The system was implemented in response to Presidential and Congressional directives that agencies shall allow for the reduction of waiver of penalties in certain circumstances and allow the violator to correct the violation. Under this FIN system, regional representatives from law enforcement, fisheries management, and General Counsel recommend to the Headquarters OGCEL and the Office of Law Enforcement, specific violations in which the violator will be given the opportunity to fix or correct the violation within a certain time frame. That time frame in the Southeast Region is generally 30 days; if, during a subsequent boarding or investigation the violation is determined not to have been corrected, the violator is subject to further action, ranging from a written warning to a monetary penalty. In this region, the Regional Administrator, the Special Agent in Charge and Ms. Raines reviewed various regulations under the Magnuson-Stevens Act and agreed to recommend a number of violations for the FIN program. Those recommendations were then forwarded to the Headquarters Offices. All regions forward their recommendations for FIN violations to the Headquarters Offices to ensure that consistency was maintained in the program. Examples of violations considered appropriate for this program in the Southeast Region included improper gear or vessel identification, various gear violations, including traps construction, some net size violations, failure to submit some permit information, such as a change in information, and failure to display an already issued permit.

The basic idea of the system was that law enforcement personnel may issue a ticket to a violator, either on-scene or at a later date, without going through a NOAA attorney, that specifies the monetary fine that the
violator may pay. This fine was less than a NOVA amount that would be assessed for a violation. If the violator paid the summary settlement amount, the case was over. In certain circumstances, particularly those involving the lapse of a permit, the summary settlement amount would be suspended if corrective action, such as obtaining the permit within a specified timeframe was taken. If the summary settlement amount was not paid, the case would be forwarded to NOAA General Counsel for a NOVA assessment. In order that the summary settlement ticket amounts do no vary among the various offices or agents who may be issuing the tickets, the types of violations for which a ticket may be issued and specific fines for those violations were spelled out in the penalty schedule issued by NOAA General Counsel. In any given situation, an officer or agent might believe that the circumstances did not warrant issuance of the summary settlement and, in the exercise of his/her discretion, forward the case to NOAA General Counsel for review and determination of whether a NOVA would be issued. The Magnuson-Stevens Act and the governing regulations under that Act, authorize permits to be sanctioned under two circumstances: (1) a permit may be suspended for non-payment of civil or criminal penalties; in this circumstance, the opportunity for a hearing was not provided because that opportunity was already provided when the NOVA or criminal indictment was issued and, (2) a permit may be revoked, suspended, or modified if a permit holder or permitted vessel violated a statute administered by NOAA for any regulation promulgated or permit condition proscribed thereunder. Under the second circumstance, the opportunity for a hearing is provided and, in addition, a monetary penalty may also be issued.

Under both the Magnuson-Stevens Act and the Civil Procedure Rules, property may be seized and forfeited. The property may consist of a catch, gear, or even the vessel. In this region, the property that was mainly dealt with was the catch from a fishing vessel. Often that catch was seized and, subsequently, sold. Either way, whether sold or not, the Agency usually sought to make the catch become the property of the government. This could be accomplished in one of two ways: (1) a claimant to the property, such as the owner or operator of the vessel, may voluntarily abandon his/her interest in the property or the Agency may take affirmative steps to have the catch forfeited to the government. If the forfeiture was opposed, an action was filed through the Department of Justice; generally, the local United States Attorney's Office in federal district court, where the matter was heard and determined. Due to the relatively higher importance placed on many other cases, it could be problematic to file forfeiture actions in federal district court when a relatively small number of fish were involved. While abandonment or forfeiture might be utilized in conjunction with monetary penalties, sometimes abandonment or forfeiture alone was sufficient penalty. There was a wide variety of enforcement action that may be taken in any given case. Although the Magnuson-Stevens Act provided for imposition of penalties in excess of $100,000 for a violation, a host of factors must be taken into account in determining an appropriate penalty. Pursuant to the Magnuson-Stevens Act, and procedural regulations, specific factors taken into account may include the nature, circumstance, extent and gravity of the alleged violations, the respondent's degree of culpability, a history of prior offenses, and other matters as justice may require. Not only was this list of factors important in determining a penalty in a specific case, these factors were considered in establishing a penalty schedule.

Within the past 19 months, guidance by way of the President and Congress had been issued. Specifically, on April 21, 1995, President Clinton issued a directive on regulatory reform, waiver of penalties, and reduction of reports. Pursuant to this directive, to the extent permitted by law, agencies were to use their enforcement discretion to modify the penalties for small businesses, to waive the imposition of all, or a portion, of a penalty when the violation was corrected within a time period appropriate to the violation in question. For those violations that may take longer to correct than the period set by the agency, the agency shall use its enforcement discretion to waive up to 100 percent of the financial penalties if the amounts waived are used to bring the entity into compliance. This provision applied only where there had been a good-faith effort to comply with the applicable regulations and the violation did not involve criminal wrong-
doing or a significant threat to health, safety or the environment. This agency, along with all others, was required to submit a plan describing the actions it would take to implement these policies. The Small Business Regulatory Fairness Act of 1996 was intended to ease the regulatory enforcement burden on small business entities by requiring regulatory agencies, NOAA included, to assist them with compliance, and by easing the enforcement burden on them, should they violate the regulations. One provision of the Act, Section 223, regarding rights of small entities, basically stated that the agency shall implement a policy of allowing for the reduction or the waiver of penalties under certain situations. The FIN program seemed to comport with this provision.

While both the Presidential directive and the legislation speak in terms of small business entities, which comprise the fishing businesses in this region, the spirit of these documents extended to recreational fishermen as well. Enforcement comments from both the OGCEL and the Office of Law Enforcement were provided on the various management measures that are considered by the Council. Unfortunately, many of their comments go unheeded. When regulations were not easily enforced due to problems in the management measures themselves, aggressive enforcement could not be reasonably expected. Also taken into account were management measures that were inconsistent either with each other, or in practice, or with state regulations. An example was that, even though the federal bag limit for red drum was zero, various coastal states allowed varying bag limits of red drum to be taken. Other factors were various court decisions, both at the administrative law judge level and at the federal court level that impact in general enforcement’s way of doing business. The available resources to prosecute violations also needed to be considered. Due to the high number of regulatory plans in the Southeast Region, the year-round fishing, the high number of enforcement personnel documenting violations, and other factors, the numbers of violations documented in the Southeast Region had recently been much higher than in other regions. In fact, the number of cases handled in the Southeast OGCEL had, in the recent past, comprised over 50 percent of the total NMFS cases nationwide. Of 14 NOAA enforcement attorneys, only 3 were in the Southeast Region. In reviewing cases in this region, it was seen that hundreds of cases involving relatively small numbers of fish were log-jamming the system so they could not be prosecuted in a timely manner. Timely prosecution was important for all law enforcement efforts, in that an immediate sanctions carried an impact, particularly to the individual violator, as well as the regulation industry as a whole. Due to budgetary concerns, and mandated reductions, they had not been able to hire more attorneys or even support staff to handle and prosecute every case that was made. At one extreme, the attorneys were being tasked with prosecuting cases involving one or two minimally-undersized fish or when the documentation numbers for a vessel were faded or absent; this system did not work. The number of violators who did not pay, and thus whose cases were forwarded to the Southeast General Counsel for Enforcement and Litigation were more than the attorneys could handle. She stressed that there were many state officers, Coast Guardsmen, and federal agents documenting cases that end up in an office staffed by three attorneys. When NOVAs were issued, particularly in cases wherein a summary settlement ticket was not paid, the respondents often took the opportunity for a hearing before an administrative law judge. They simply could not keep up with timely prosecuting newly received cases, while continuing to handle all the cases in which NOVAs had already been issued. They could not afford to continue with this system, therefore, they reached a point prior to the revision of the penalty schedules wherein the liberally used their prosecutorial discretion in handling cases and encouraged the Office of Law Enforcement to use its discretion in order to reduce the numbers of cases they were seeing. She emphasized that, historically, most of the law enforcement action that had resulted in violations referred to the Southeast Regional Enforcement attorneys had been opportunistic, that is, a fishing vessel was observed at random or located after a search-and-rescue mission, boarded, and a violation was discovered and documented. As had been seen, this type of enforcement activity tended to concentrate on the smaller violators, rather than the worst offenders, and log-jammed the total enforcement effort. For

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this reason, the OGCEL and law enforcement had combined forces to redirect effort in order to concentrate effort on serious violations. The penalty schedules reflected this strategy.

Ms. Raine noted that a document in the Council briefing book (Tab M, No. 1) was not the complete official penalty schedule and had not been provided to the Council by her office. She stated that she would be passing out an information sheet containing questions and answers regarding the penalty schedule for violations of the Magnuson-Stevens Act. Recreational and commercial fisheries, as in the past, were listed separately in determining monetary penalties. She noted, however, that recreational violators did not include anyone who was involved in commercial fishing activities, such as headboats and charterboats that were part-time commercial fishing, or persons who sold their catch. These persons would be treated as commercial fishermen. Internal guidance, which not a part of the officially published penalty schedule, had been provided to assist law enforcement in exercising discretion in regard to any case. Possible monetary penalties for commercial violators were, in general, higher than those for recreational violators because commercial fishermen were conducting business in a highly regulated industry. The commercial penalty schedule was a bigger document than the recreational penalty schedule. Regarding the penalty schedules, a question had been raised as to why the states were not invited to participate in the penalty schedule process, as well as concerns affecting the federal penalty schedules on state regimes. The authority to establish penalties was clearly delegated to the OGCEL and there was no requirement or process for setting penalty schedules through public comment or debate. This was because penalty schedules were not regulations and should not be treated as such. The goal of NOAA General Counsel was to handle, in a manner appropriate under all circumstances, violations of the fishery regulations.

Mr. Swingle asked if more severe penalties applied to illegal landings of overfished stocks. Ms. Raine replied that each situation was prosecuted on its own merits, depending on the circumstances. Mr. Simpson asked if the Council could be furnished with copies of Ms. Raine's presentation. Ms. Raine replied that she believed most of her presentation was covered in the question-and-answer sheet she had handed out to the members. Mr. Simpson inquired if Council members could be provided with copies of the recreational penalty schedule. Ms. Raine promised to provide copies of this document when it became available. Mr. Simpson asked if the Department of the Interior was going to apply the same policies to their wildlife activities. Ms. Raine responded that she did not know what policies the Department of the Interior would be implementing. Mr. Williams asked what would be the penalty if, for example, a recreational fisherman who was found to possess three amberjack under a bag limit of one fish. Ms. Raine replied that the NOAA penalty ranged from $100 to $5,000 for all recreational violations. This did not mean that penalties would be issued in every case. Mr. Williams asked if they would require abandonment of the fish. Ms. Raine replied affirmatively. Mr. Williams inquired if this meant there would be no monetary penalty. Ms. Raine replied that cases were determined on an individual basis. Mr. Williams asked the difference between the summary settlement system and NOVA. Ms. Raine responded that the summary settlement system generally involved a ticket that was issued by a law enforcement officer and was for an amount lower than that of a NOVA and offered the opportunity to settle a case before further action was taken. Mr. Gay asked if this presentation would also be given to the South Atlantic Council. Ms. Raine replied affirmatively. Mr. King, Dr. Claverie, and Mr. Minton stressed that the penalty schedule appeared to be undermining bag limit regulations by down-playing the seriousness of exceeding recreational bag limits. Ms. Raine stated that there was some enforcement action that would be taken in these cases, though it might not be a full court press by NOAA General Counsel. Mr. Williams expressed concern that the perception of the public might become that it did not matter if the bag limits were exceeded by double to triple the amount allowed since there would be no severe penalty imposed in so doing. Ms. Raine replied that if there was a problem, it would certainly be addressed. Dr. Shipp commented that the Council was stating that there was a problem; maximum sustainable yield (MSY) for cobia at present had now been reached under a 2-fish bag limit.
year there had been a tremendous amount of pressure to raise the bag limit and the Council had declined to do so. Ms. Raine responded that she was not here to argue about different TACs at that point; they had basically been using part of the strategy for some time. There were only three attorneys in her office and they did not anticipate they would be able to add extra staff to handle these cases.

Mr. Minton commented that one area of good compliance was the red snapper fishery. This was due to the cooperation between the state, NMFS agents and the boats. He believed the penalty schedule was sending the wrong message about catches of illegal fish. If penalties were going to be decided by the enforcement officers, inconsistencies were going to be assured. He expressed concern that these practices would impact on state management measures. Ms. Raine replied that the results of the penalty schedule would be reviewed for problems about one year after it had been implemented. Dr. Shipp expressed concern that the biological integrity of the managed species could be threatened under the enforcement latitude conditions of the new penalty schedule. He asked whether the Council could expect to be provided with the results of the end of the year review of the penalty schedule in order to try to take compensatory measures for stock slippages. Ms. Raine felt that this information would be in the public domain and should be available to the Council.

Mr. Minton moved that the Council go on record as concerned that the changes in the penalty schedule and the effects it may have on overfished stocks and the implementation of fishery management plans, and the effects on the states' ability to manage their fishery. Mr. Williams asked if Mr. Minton's principal concern was the slippages caused by abandonment of cases. Mr. Minton replied that if bag limit violations were treated lightly, it could lead to severe depletion of the stocks.

Dr. Kemmerer felt this motion was not specific enough and offered an amended motion that the Council not take any action until they have a report on the penalty schedule meeting. Amended motion failed for lack of a second.

Ms. Raine commented that every violation was being documented, but the level of enforcement action varied in individual cases. Mr. Simpson asked when the revised penalty schedule had been implemented. Ms. Raine replied that the recreational penalty schedule had been in effect since February 1996. Mr. Simpson inquired how many cases had been documented thus far. Ms. Raine was not sure of the number, but reiterated they were working their way through a backlog of hundreds of cases.

Motion carried, with Dr. Kemmerer abstaining, that the Council go on record as concerned that the changes in the penalty schedule and the effects it may have on overfISHED stocks and the implementation of fishery management plans, and the effects on the states' ability to manage their fishery.

Mr. Frugè asked if this penalty schedule was regional. Ms. Raine responded that this was a regional document, but some of the concepts were nationwide, such as the FIN program. Dr. Claverie noted that a lack of attorneys seemed to be a definite problem and asked if this situation might be corrected. Ms. Raine replied that there were 14 enforcement attorneys nationwide; 1 in Alaska, 1 for the Northwest Region, 1 for the Southwest region, 3 in the Northeast Region, and 3 in the Southeast Region, with the remainder in the Headquarters office. Cases were shifted around when an overload occurred in a region; however, this was not desirable. Mr. Gay warned Ms. Raine that she could probably expect a similar reaction from the South Atlantic Council following her presentation to them. He asked if the correct penalty schedule could be provided to South Atlantic Council members. Ms. Raine replied that she would check to see if the document was available. Agreed by consensus to send the Law Enforcement Committee to a meeting to discuss the penalty schedule.
Other Business

Sustainable Fisheries Act

Mr. Allen Risenhoover stated that the major provisions addressed in this Act were overfishing, stock rebuilding, bycatch, fish habitat, reducing conflict of interest, and user fees. There were some additional prohibitions on red snapper ITQs that involved a referendum, but there were also a variety of other actions taken under this Act. The Council had addressed overfishing definitions in some of their FMPs, and also bycatch in many cases. Submittal of plans had changed somewhat, and did not require an initial disapproval phase. Plans were transmitted to the Secretary of Commerce, they were published within five days, with a 60-day comment period. Following this, the Secretary must take action within 30 days. There was a new National Standard for safety at sea and a variety of other tools added for the Council. For the Gulf, commercial, recreational, and charter sectors had been identified. There were additional red snapper research requirements and extension of state jurisdiction on the Pacific coast. There were new provisions dealing with buy-out, assistance programs for disaster relief, and some study requirements. Of interest to the Gulf was the development of a standard fishing registration system; this did not mandate a system, it simply required that recommendations be sent forward to Congress for a future system. Clarification on enforcement procedures were mainly concerned with a person being required to prove they had no ability to pay a fine (previously just the opposite was required). Nearly 20 Congressional studies and reports were scheduled and 12 new programs must be implemented, with six new advisory panels. Every fishery management plan must be reviewed and amended within 24 months to ensure that it complied with the overfishing, bycatch, rebuilding of stocks, and habitat protection requirements of the Act. This would require a whole new set of regulations. NMFS had formed an internal task force that identified Headquarters personnel at the NOAA and regional level to review this Act. The act would be separated into sections that would be assigned to a person or unit to complete. The results of this task force action would be presented for discussion at the Council Chairmen's meeting on December 3, 1996 in Washington, DC. He did not believe that the Gulf Council had been given any specific requirements; the Pacific Council and the North Pacific Council had reports to submit to Congress.

Dr. Kemmerer asked what was the ruling on stock overfishing requirements. Mr. Risenhoover replied that the language was basically that all stocks needed to be rebuilt to a level consistent with MSY and it gave a specific time period of ten years, unless there were compelling biological or environmental reasons that the stock could not be rebuilt. For example, if a fish did not spawn until age 15 it would be difficult to rebuild that stock in ten years.

THE COUNCIL MEETING ADJOURNED AT 4:30 P.M.
February 10, 1997

MEMORANDUM

TO: Minutes Matrix
FROM: Camilla C. Moyer
SUBJECT: November 1996 Council Minutes

Enclosed is a copy of the November 1996 Gulf Council minutes.

CCM

Enclosure